TAX CREDIT RULES: BUILDING VS UNIT

SUE SILVA

47th Annual AHMA-PSW Conference & Expo
May 19 – 21, 2024

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Disclaimer

Disclaimer: Follow your company's policies. Do not change your policy based on this training without your company's approval.

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Agenda

- Manager Unit Rule
- Totem Pole Rule
- 140% Next Available Unit Rule
- Vacant Unit Rule
- Unit Transfer Rule

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Exempt / Manager Unit Rule

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Exempt / Manager Unit Rule

- The exempt/resident manager's unit may be considered in one of two ways.
  - It can be considered a common area reasonably required within a project that will benefit all the units. The unit would be excluded from low-income occupancy requirement.
  - With TCAC approval, it can be treated as a rental unit occupied by an income qualified household. Note: In California, the law required an onsite manager or maintenance fore rental housing with 16 or more units (California law 25 CCR § 42).

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Exempt / Manager Unit Rule

- When the exempt/resident manager's unit is considered a common area, the unit is included in the eligible basis, but excluded from the low-income occupancy calculation.
- The unit can be used by the manager without concern as to the effective rent being charged to or the income level of the manager.
- The unit is **required** to be occupied by the onsite manager, assistant manager, or maintenance personnel who work primarily at the property which the unit is located.

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Exempt / Manager Unit Rule

- TCAC has been clear that the unit may not be occupied by resident/social services coordinator, regional supervisor or other owner or manager staff. It must be occupied by a manager, assistant manager, or maintenance personnel who work primarily at the property which the unit is located in order to qualify for purposes of Section 42.
- Employees occupying the manager's unit but working primarily at a different property is not a qualified use of the manager's unit and will be reporting to the IRS on Form 8823.

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Exempt Unit Question

- Question:

Ernest, a maintenance technician for the management company, is living in the exempt unit at Sunshine Cottage Villas, a LIHTC building. Ernest helps occasionally with overflow work orders at Sunshine Cottage Villas (about twice a month). But he works full-time at Shady Pines Manor, another Tax Credit building about five miles away.

Is this a qualified use of the exempt unit?

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Exempt Unit Answer

- Answer:

Ernest, a maintenance technician for the management company, is living in the exempt unit at Sunshine Cottage Villas, a LIHTC building. Ernest helps occasionally with overflow work orders at Sunshine Cottage Villas (about twice a month). But he works full-time at Shady Pines Manor, another Tax Credit building about five miles away.

This is not a qualified use of the manager's unit and may be reported to the IRS on an 8823 form.

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Exempt Unit Question

- Question:

Maria, an assistant manager for the management company, is living in the manager unit at Sunshine Cottage Villas, a LIHTC building. She works full-time at Sunshine Cottage Villas as the property Assistant Manager.

Is this a qualified use of the exempt unit?

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Exempt Unit Answer

- Answer:

Maria, an assistant manager for the management company, is living in the manager unit at Sunshine Cottage Villas, a LIHTC building. She works full-time at Sunshine Cottage Villas as the property Assistant Manager.

This is a qualified use of the manager's unit as Maria primarily works at the property that she is residing in.

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Exempt / Manager Unit Rule

- If the owner determines the exempt/manager's unit is not going to be occupied by a manager or maintenance person, then it may be treated as a rental unit provided the owner has prior approval from TCAC. Approval may be granted if the owner can demonstrate there is not an immediate need for a management agent to be onsite due a 24-hour desk clerk available or that there are more exempt/manager's units required than are needed for the day-to-day functioning of the property.

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Exempt / Manager Unit Rule

- Failure to obtain approval from CTCAC of the change from an exempt/manager's unit to a LIHTC rental unit, **will result in a monthly fine being assessed** to the property until the unit is either approved or it is occupied by qualified personnel.

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Exempt / Manager Unit Rule

- In a project that is 100% tax credit, changes may be permitted by CTCAC to the size or location of the approved managers unit(s) noted in the recorded Regulatory Agreement.
- CTCAC will review each owner request after performing due diligence and will approve each individual request for changing the exempt/managers unit size or location based on the circumstances around the change.
- Written request must be made by the owner to CTCAC before making any changes to the exempt/managers unit.

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Exempt / Manager Unit Rule

- If the exempt/manager's unit is a single unit attached to the common room, pool area, or any other common space that where a BIN is not assigned to the building, the unit cannot be changed, and a qualified household cannot occupy that unit in lieu of treating it as an exempt/manager's unit.
- In a mixed-income tax credit project (tax credit with conventional market rate units), the owner elects the unit size and the location of the on-site managers unit. Once this election is made, the on-site manager unit may never change size or location in the project.

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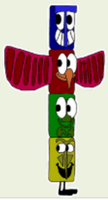
Totem Pole Rule



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Totem Pole Rule

- When all Original Household members move out of a Tax Credit unit, the household could be out of compliance unless:
  - The remaining member is qualified at the time the last original household member moves out.

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Totem Pole Rule

- Children who were minors at the time the household originally moved in who were on the Tenant Income Certification but did not sign the initial lease are still considered original household members.

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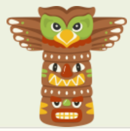
Totem Pole Rule

- If at any point there are no original household members in the unit, the current household members must qualify under the current income limit for the unit to retain the ability to get credits.



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Totem Pole Rule

- Note: The California Tax Credit Allocation Committee has stated during workshops and verbally that they will allow for the additional household member to be certified on their own at the time they move into their unit. However, the language in the current CTCAC Compliance Manual does not state that.
- Some CTCAC auditors have required an initial certification to be in the file at the time the last original household member moves out.

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Totem Pole Rule

- Per CTCAC Compliance Manual:

"Totem Pole Rule - A household will continue to be considered tax credit eligible as long as there is at least one original household member residing in the unit. Children who were minors at the time the household originally moved in who were on the TIC but did not sign the initial lease are still considered original household members. If at any point there are no original household members in the unit, the current household members must qualify under the current income limit in order for the unit to retain the ability to get credits. This must be done as soon as no original members occupy the unit, it cannot be done at the next recertification."

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Totem Pole Rule

- Thomas Safran & Associates requires all additions to the household to sign a Totem Pole Rule agreement.
- This agreement explains the rule and has them sign that they understand that they must qualify on their own if no original household members are occupying the unit.

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Totem Pole Question

- Joe and his son, George, move into a Tax Credit unit. After three years Joe's girlfriend, Dawn moves in. After two years Joe and George move out. What has to happen to ensure the unit remains Tax Credit qualified?

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Totem Pole Answer

- Dawn has to income qualify at the current income limits for the unit in order to keep the unit in compliance. This can be completed on an Interim Recertification at the time the last original household member is removed (if your software does not allow for a second IC for a current household). Be sure to note it is IC for Dawn in comments of TIC. Follow your company policy.

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Totem Pole Question

- A four-person household moved into a unit 2004. Alice was a year old at the time. One household member moved out in 2019. Alice's parents moved out in May 2024. Does Alice have to qualify on her own at the current income level for the unit to remain qualified?

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Totem Pole Answer

- No, Alice does not have to qualify on her own at the current income limits. She was an original household member.

Note: If the property is mixed use, the household can still trigger the Next Available Unit Rule if it exceeds 140% of the income limit at recertification.

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140% Next Available Unit Rule

140% Next Available Unit Rule

- This rule is referred to as the Next Available Unit Rule (NAUR).
- It is also referred to as the 140% rule.

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140% Next Available Unit Rule

- If the income of the occupants of a qualifying unit increases to more than 140% of the current applicable income limitation, the unit may continue to be counted as a low-income unit if the unit continues to be rent-restricted and the next unit of comparable or smaller size is occupied by a qualified low-income tenant.

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140% Next Available Unit Rule

- Please note: The 140% calculation is based off the Federal set-aside of either 40/60, 20/50, or Average Income Target/Test (AIT) elected by the owner of the property. It is not used with any State required deeper targeting requirements stipulated in the Regulatory Agreement for the property.

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140% Next Available Unit Rule

- For Average Income Target/Test (AIT) units that are designated at 20%-60%, the NAUR determination is calculated at 140% of the current 60% limit. For AIT units that are designated 70% or 80%, the calculation is based on 140% of the current income limit for that designation.

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140% Next Available Unit Rule

- At mixed use properties (not 100% Tax Credit) the 140% or Next Available Unit Rule (NAU Rule) must be tracked <u>by building based on recertification income.</u>

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140% Next Available Unit Rule

- To monitor the Next Available Unit Rule, CTCAC may ask to see a tracking spreadsheet of the units in the building. The spreadsheet should show the following:
  - Number of LIHTC units currently in place;
  - Number of Market units currently in place;
  - Number of units currently under the NAU rule;
  - The date the NAU rule went into effect per unit;
  - The move-in dates for all units, market and LIHTC;
  - Any marketing used to advertise the next unit as LIHTC.

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140% Next Available Unit Rule

- Tracking the Next Available Unit Rule (NAUR) can only be done by performing a full income and asset recertification on the anniversary move-in date of each tenant that occupies a LIHTC unit at a mixed-income project.

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140% Next Available Unit Rule

- There is a misconception that this rule does not apply at a 100% Tax Credit properties. This is not true. It is true that the next available unit should always be rented to a qualified individual. If there was a calculation error at move-in, then both units could fall out of compliance and lose tax credits until they are rented to qualified individuals.

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NAUR Question

- Question:

At 100% Tax Credit property, unit 212 goes over 140% of the current federal income limit at recertification.

What has to happen for this unit for the building to remain in compliance?

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NAUR Answer

- Answer:

Nothing happens if the next available unit is rented to a qualified household. At 100% Tax Credit building, the next available unit must always be rented to a qualified household.

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Vacant Unit Rule

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Vacant Unit Rule

- If a low-income unit becomes vacant during the year, reasonable attempts must be made to rent that unit or the next available unit of comparable or smaller size to qualifying tenants before ANY units of comparable or smaller size in the project are rented to non-qualifying tenants.

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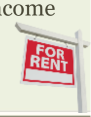
Vacant Unit Rule

- Units that are vacant at the end of the initial tax year which previously were qualified as low-income units can be considered “low-income” for purposes of determining the amount of credits claimed only if the units were occupied for a minimum of one month by an eligible low-income tenant.



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Vacant Unit Rule

- To be eligible to continue claiming units while the unit is vacant, it must be in turnkey ready condition and be actively marketed.
- Units that are being held vacant due to the owner having a contract with a social services agency or other funding restrictions where applicants are directed to the property from a third party/outside agency, may be out of compliance if the vacancy exceeds 60 days and no marketing efforts are being made to fill the units by the general public.

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Vacant Unit Rule

- If LIHTC units are held vacant for more than 60 days waiting for an applicant, the property may be in violation of the Vacant Unit rule and subject to submission of an uncorrected Form 8823.

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Vacant Unit Rule

- If a Social Services Agency is providing applicants, they must follow all LIHTC rules and eligibility requirements including income verification requirements and CTCAC required forms.

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Unit Transfer Rule

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Transfers

- If the property has more than one Building Identification Number (BIN), then a transfer between buildings **may need to be treated as a move-out and new move-in**. The household must qualify for the new unit as a new move-in (meeting income and occupancy standards).

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Transfers at Tax Credit Properties

- If the project is only one BIN (or 8b of 8609 is check Yes), then there is no need for any new certification. However, the household must be under the 140% income level. The file must include documentation verifying income eligibility for the originating unit and document the reason for the transfer.

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Transfers

- If the owner has elected "no" to the Line 8b on the IRS Form 8609, this indicates that each building is to be considered its own project for tax purposes and the household must re-qualify under the federal set-aside to be able to transfer to a different building. The household is treated as a complete move-out and complete move-in.

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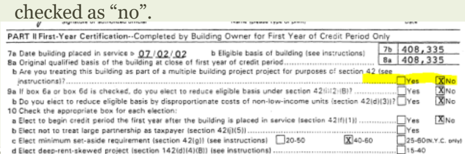
Transfers

- CTCAC Rule Update as of 03/01/2017
  - Even Medical Accommodations must be treated as a move-out and move-in if the part 8b of the 8609 (Low Income Housing Credit Allocation Certification) is checked as "no".



PART II First-Year Certification--Completed by Building Owner for First Year of Credit Period Only

7a Date building placed in service ▷ 07/02/02 b Eligible basis of building (see instructions) 7b 408,335
8a Original qualified basis of the building at close of first year of credit period 8a 408,335
b Are you treating this building as part of a multiple building project 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)(B)? ☐ Yes ☒ No
b Do you elect to reduce eligible basis by disproportionate costs of non-low-income units (section 42(d)(3))? ☐ Yes ☒ No
10 Check the appropriate box for each election:
a Elect to begin credit period the first year after the building is placed in service (section 42(f)(1)) ☐ Yes ☒ No
b Elect not to treat large partnership as taxpayer (section 42(j)(5)) ☐ Yes
c Elect minimum set-aside requirement (section 42(g)) (see instructions) ☐ 20-50 ☒ 40-60 ☐ 25-60 (N.Y.C. only)
d Elect deep-rent-skewed project (section 142(d)(4)(B)) (see instructions) ☐ 15-40

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Transfer Question

- Can residents at a Tax Credit property with ten BINs transfer between buildings if line 8b of the 8609 is checked "No"?

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Transfer Answer

- Answer – No, all transfers between buildings at this property would have to be a move-out and move-in.

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Thank You.