

LIHTC
Unit Rules

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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%)

Building Rules

Available Unit Rule

Unit Transfer

Project Rules

Vacant Unit Rule

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A BIN May Not a “building” Make

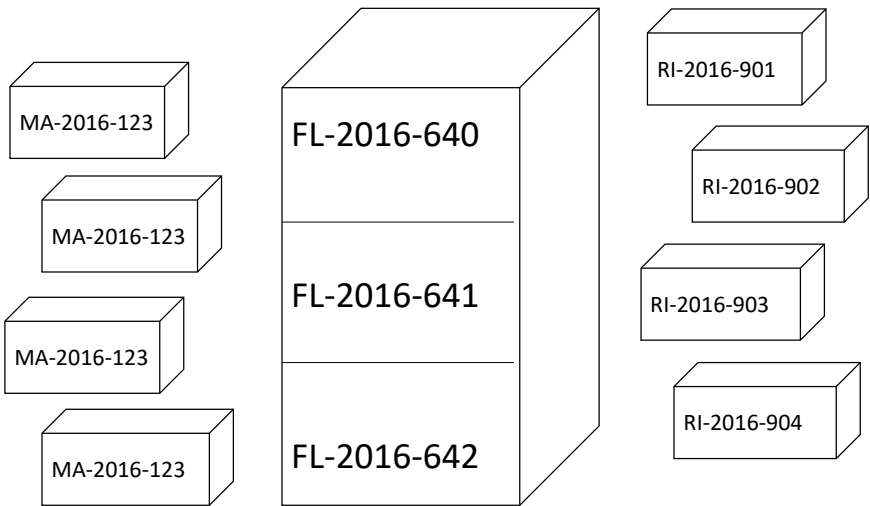
A single structure that we typically think of as one building may consist of more than one building for tax credit purposes.

- 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



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Project Examples

RI-2016-901

RI-2016-902

RI-2016-903

RI-2016-904

8b –"Yes" One project with four BINS

RI-2016-901

RI-2016-902

RI-2016-903

RI-2016-904

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
108 units	
BIN MA-2016-125 26 units	BIN MA-2016-126 26 units

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:

Number of Units Occupied
by Eligible Households

÷

Total Number
of Units in BIN

=

Unit
Fraction

Floor Space Fraction:

Total Sq. Ft. of Units Occu-
pied by Eligible Households

÷

Total Sq. Ft. of
Units in BIN

=

Floor Space
Fraction

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Calculating Applicable Fraction

<div>BIN MA-2016 123 14 1 BR units (10 HC) 14 2 BR units (14 HC)</div>	<div>BIN MA-2016-124 14 1 BR units (14 HC) 14 2 BR units (5 HC)</div>
<div>108 units</div>	
<div>BIN MA-2016 125 26 3 BR units (20 HC)</div>	<div>BIN MA-2016 126 26 1 BR units (22 HC)</div>

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>
14 1-BR X 650 sq. ft.	=	9,100 sq. ft.
14 2-BR X 875 sq. ft.	=	<u>12,250 sq. ft.</u>
Total		21, 350 sq. ft.

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

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Calculating the Applicable Fraction

Example: BIN CA 2016 123

Unit Fraction:

24 Units Occupied by HC Eligible Households

28 Total Units in BIN

85.71%

Floor Space Fraction:

18750 Sq. Ft. Occupied by HC Eligible Households

21350 Sq. Ft. in BIN

87.82%

What is the Applicable Fraction?

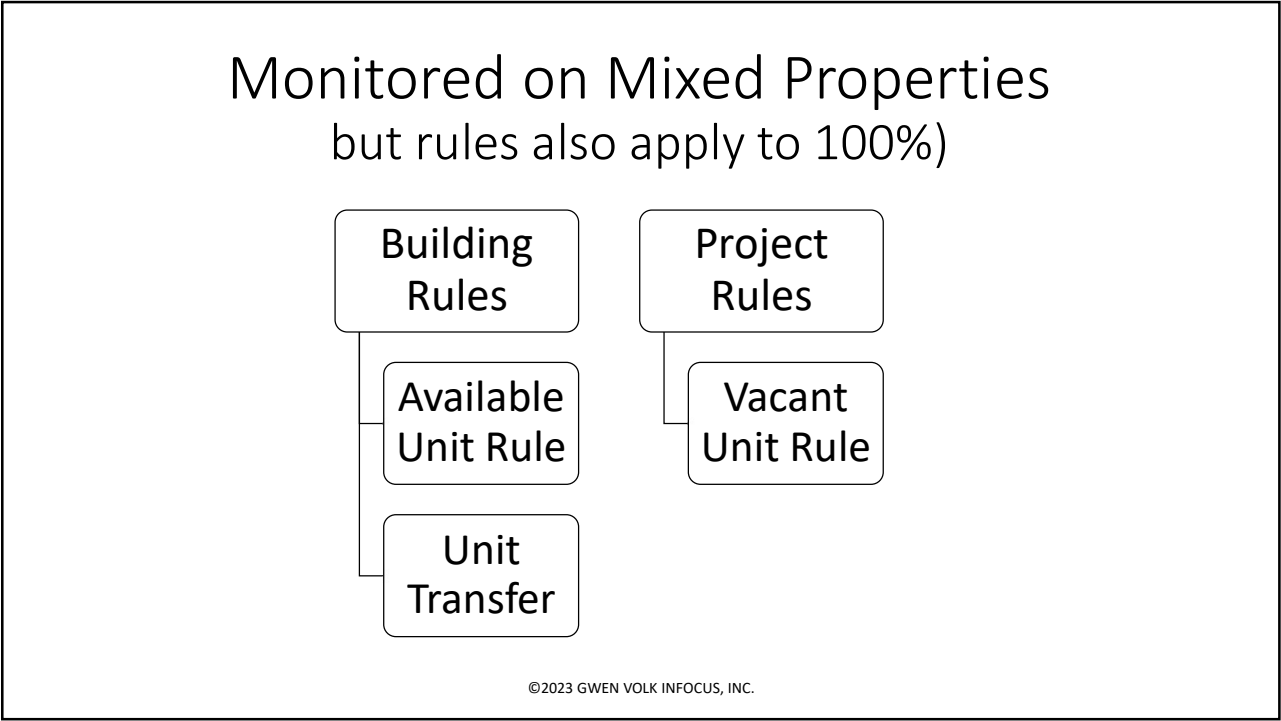
85.71%

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<p>Available Unit Rule: Building Rule</p>	
	<ul style="list-style-type: none">• 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 <p>©2023 GWEN VOLK INFOCUS, INC.</p>

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Available Unit Rule:
Building Rule



- 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

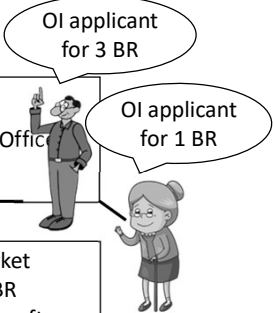
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Available Unit Rule in an LIHTC With Market Rate Units
Example is not applicable to the Average Income Set-Aside

What would you do?

Market 1 BR 600 sq. ft. 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	

CA-2016-101

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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.
Vacant

HC
2 BR
800 sq. ft.
AR Over 140%

HC
1 BR
600 sq. ft.
Occupied

Rental Office

Ol applicant
for 1 BR

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.
Vacant

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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<div><h3>Vacant Unit Rule: Project Rule</h3></div>	<ul style="list-style-type: none">• 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. <p>©2023 GWEN VOLK INFOCUS, INC.</p>
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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

What would you do?

OI applicant
for 1 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

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

What would happen if we moved them in?

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

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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 instructions)?	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
9a	If box 6a is checked, are you electing to reduce the eligible basis of the building by the amount of the transfer?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b	For market-rate units, are you electing to reduce the eligible basis of the building by the amount of the transfer?	<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	

Transfers among buildings are not allowed because each building is a separate project. Moving to a different project is a move-in subject to initial qualification requirements.

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Unit Transfers

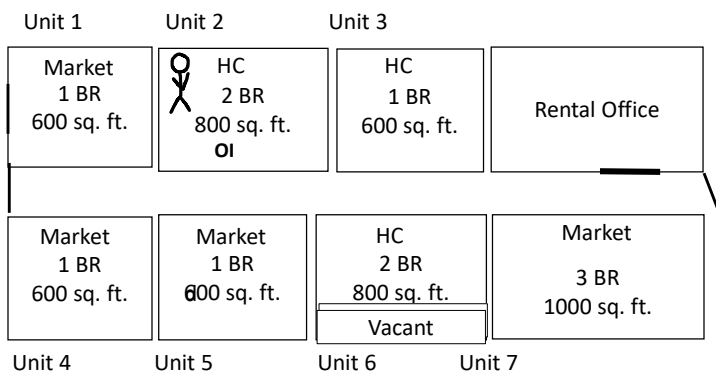
- If a LIHC household wants to transfer to a different LIHC unit in the same BIN, the household does not need to be recertified
- A previously qualified household whose income now exceeds the applicable income limit (regardless of how much) may relocate to another low-income unit within the same BIN.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

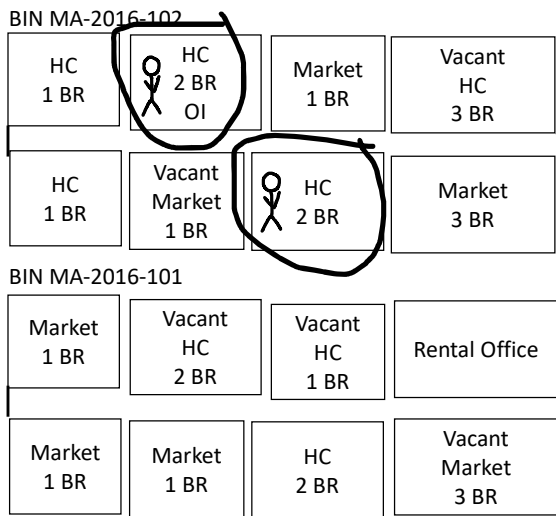
What will happen if Unit 2 transfers to Unit 6?



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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-2015-102

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

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

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

Can they transfer?

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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	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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