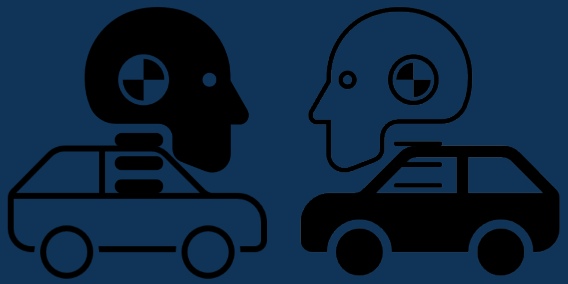
LIHTC Crash Course

Presented by Matt Rayburn



AGENDA

- What is LIHTC?
- LIHTC myth-busting
- What is a QAP?
- QAP Contents
- Partners in a LIHTC Deal
- Calculating Credits
- LIHTC Compliance 101
- Topics for PHAs
- Q&A / Discussion

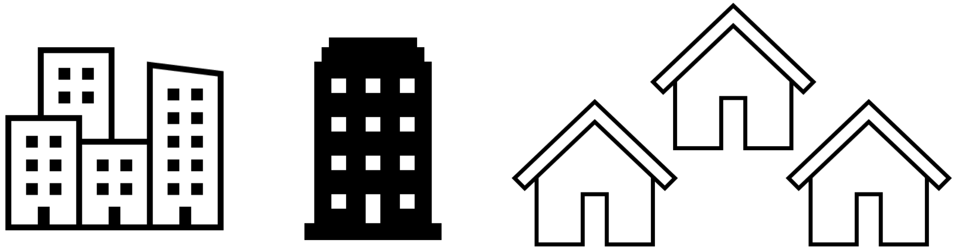
WHAT IS LIHTC?

-Low Income Housing Tax Credit program (also called Rental Housing Tax Credit program in IN)

-Federal program through the IRS (IRC Section 42)

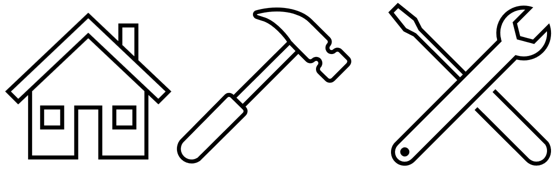
-Provides capital funding to for-profit and not-for-profit developers to build or rehab affordable rental housing

-LIHTC projects must comply with program rules for at least 30 years



INDIANA LIHTC BY THE #S*

- 805 projects operational or under construction



- 62,554 program units

*As of 5/8/23 “Existing Properties Report”

WHO DOES LIHTC SERVE?

Households at or below the applicable income limit:
-Possible income restrictions 20%, 30%, 40%, 50%, 60%, 70%, or 80% AMI
-If including 70% and 80% AMI units in the project, the average income restriction across program units cannot exceed 60%
-Must meet student status rules

Indiana data on LIHTC households*:
-33.9% contain at least member under 18
-35.3% head of household is 62+
-10.6% report at least 1 member with a disability
-45.1% receive federal tenant-based or project-based rental assistance

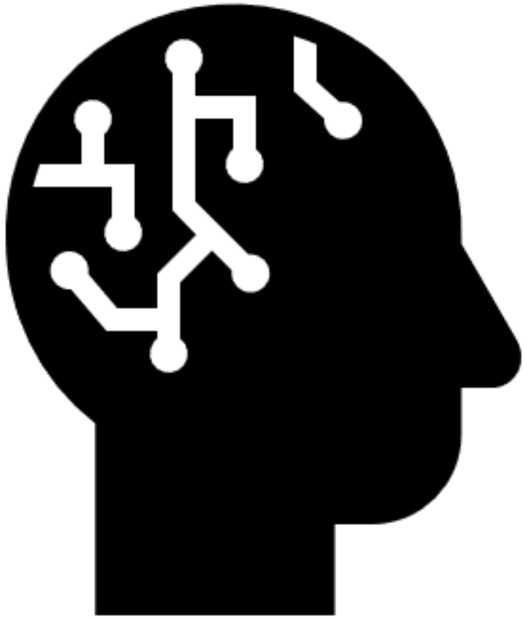
*Based on 2021 tenant event reporting

LIHTC MYTH-BUSTING

LIHTC is the same as Section 8 or public housing

LIHTC provides rental assistance

LIHTC provides a renter with a tax credit



LIHTC MYTH-BUSTING

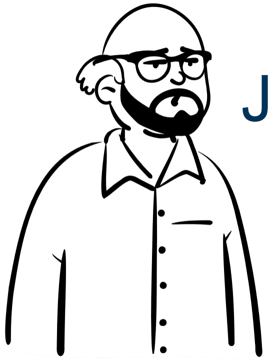
LIHTC rent is directly based on individual income

Unless there is tenant-based or project-based subsidy (e.g., vouchers)

EX: (sample numbers)
50% 1-person income limit = $25,000
50% 1-bedroom rent limit = $625

Linda $22,000 annual income

Both pay $625 for a 50% unit (Adjusted for UA)



John $18,000 annual income

LIHTC DEVELOPMENT 101

WHAT IS A QAP?

-Qualified Allocation Plan

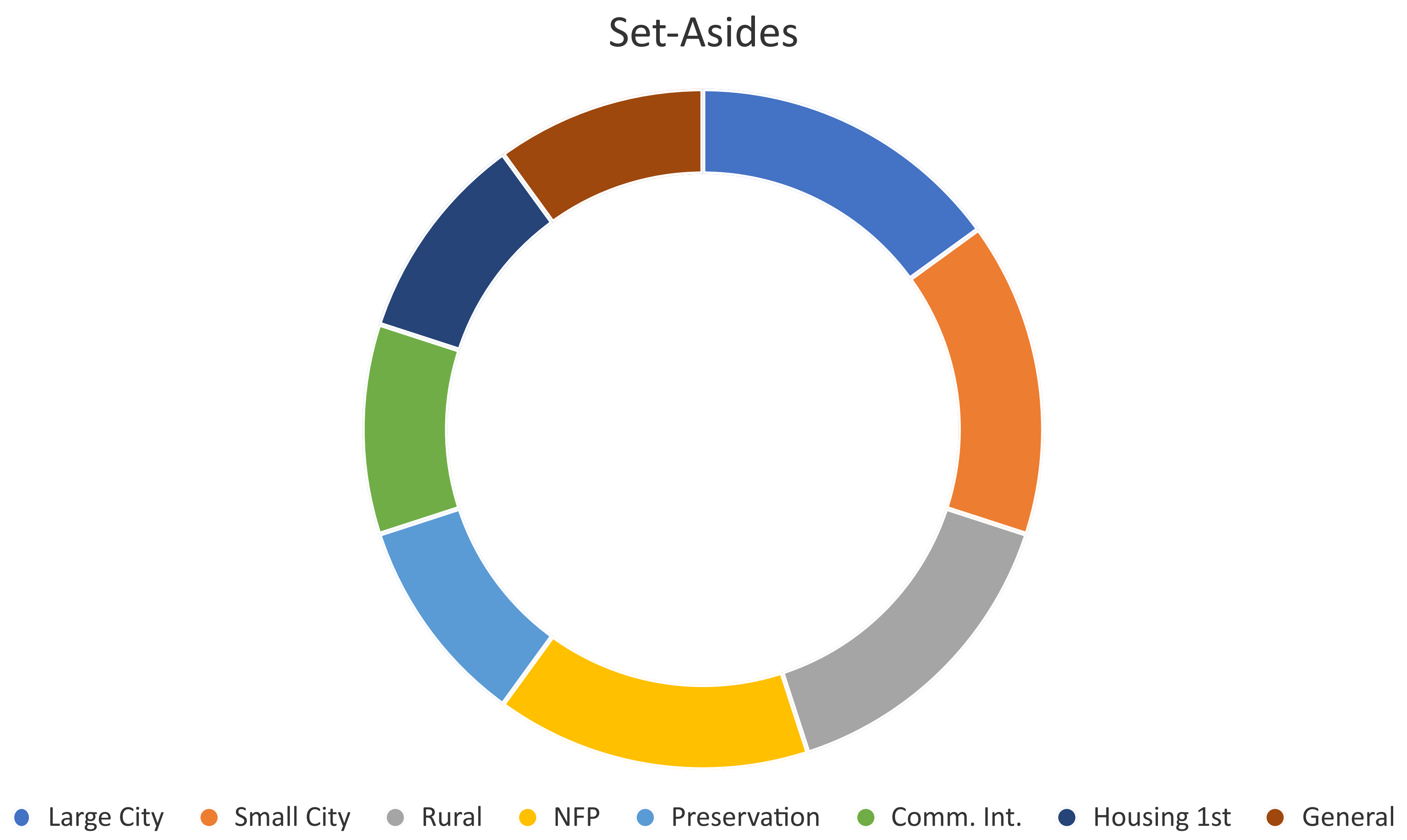
-Created by state allocating agency

-Required by IRS Code

-Defines:

- Who is eligible to apply for LIHTC
- How to apply
- Process IHCDA uses to review applications
- Requirements for awardees

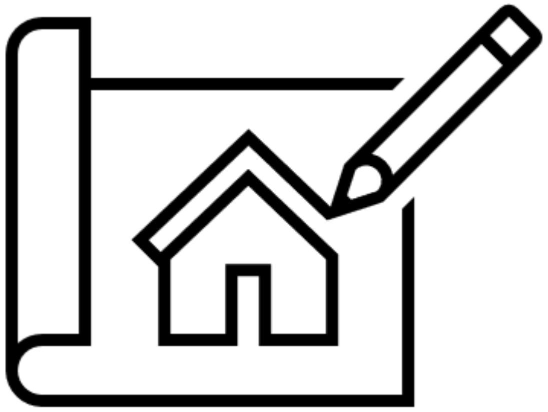
IHCDA QAP CONTENTS- SET-ASIDES FOR 9% ROUND



IHCDA QAP CONTENTS- THRESHOLD

Threshold = Mandates

- Program requirements
- Readiness to proceed
- Market analysis
- Underwriting requirements
- Funding caps, fee limitations, etc.
- Design standards



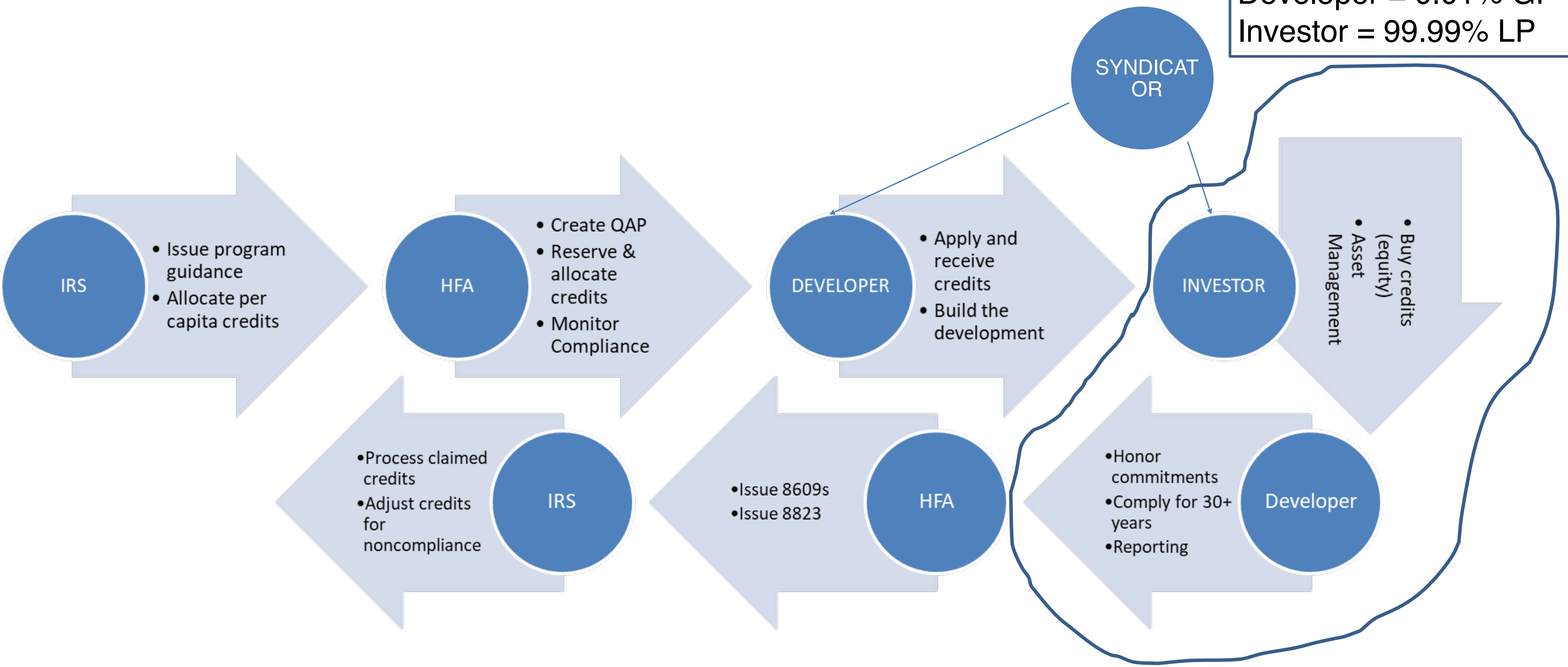
IHCDA QAP CONTENTS- SCORING

Scoring = Incentives

- Affordability
- Design characteristics
- Site-based scoring
- Financing
- Misc. priorities

PLAYERS IN A LIHTC TRANSACTION

Form unique L.P.
Governed by L.P.A.
Developer = 0.01% GP
Investor = 99.99% LP



TWO TYPES OF FEDERAL CREDITS

9% Credit

-Credits are limited
-Allocating agency receives a "credit ceiling"
-State population estimate x multiplier
-For $2023, per capita multiplier = $2.75

-Applicable % for determining amount of credits awarded = 9%

-Standard project 40-60 units

-More credits = more equity = less debt

4% Credit

-Awarded in conjunction with tax-exempt private activity bonds
-Credits are unlimited, but there is a cap on bond volume

-Applicable % for determining amount of credits awarded = 4%

-Standard project 100+ units

-Less credits = less equity = more debt

CALCULATING CREDITS

STEP 1: Eligible Basis x Applicable Fraction = Qualified Basis

Cost MINUS land, certain financing & soft costs, federal grants, etc.

% Affordable

STEP 2: Qualified Basis x Applicable % = Annual Credit

STEP 3: Annual Credit x 10 years = Total Credit Reservation/Allocation

9%

$10,000,000 x 100% = $10,000,000 QB

$10,000,000 x 9% = $900,000 Annual

$900,000 x 10 = $9,000,000 Total

4%

$10,000,000 x 100% = $10,000,000 QB

$10,000,000 x 4% = $400,000 Annual

$400,000 x 10 = $4,000,000 Total

CALCULATING CREDITS

STEP 4: Total Credit Allocation x Equity Pricing = Equity

STEP 5: Total Development Cost – Equity = Gap

A few equity pricing considerations:
-IRR/Yield
-CRA demand (bank)
-Timing- claiming credits
-Timing- equity installments
-Risk
-PBV/PBRA inclusion

9%

$9,000,000 x $0.90 = $8,100,000 equity

$10,000,000 - $8,100,000 = $1,900,000 gap

4%

$4,000,000 x $0.90 = $3,600,000 equity

$10,000,000 - $3,600,000 = $6,400,000 gap

Actual gap may be higher (remember Eligible Basis didn't count land, etc.)

Gap may mean layered funds (HOME, CDBG, Trust Fund, AHP, etc.)- but remember, fed grants reduce basis!
Solution = Loan into project

EQUITY INSTALLMENTS 101

Equity is paid to the GP in installments, as defined in the LPA

Sample pay-out schedule:
- X% at closing
- X% at 50% construction completion
- X% at 100% construction completion
- X% at stabilization
- X% at issuance of IRS Form 8609

Developer does **not** receive all equity upfront. Therefore, construction financing is needed.

Deferring/bridging equity may result in higher equity pricing

YOU RECEIVED A RESERVATION… WHAT'S NEXT?

- Reservation Letter
  - Reservation Fee (> of 6.5% or $15,000 due within 30 days)
- Carryover Agreement
- 10% Test- deadline to incur 10% of "reasonably expected basis"
- Placed-in-Service Deadline- end of 2nd taxable year after year allocation is made
- Final Application / Cost Certification / Final Inspection
- Issuance of IRS Form 8609s
- Compliance Period / Extended Use Period

KEY DOCUMENTS

-Final Application

-IRS Form 8609

-Extended Use Agreement

Form **8609**
(Rev. December 2021)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Allocation and Certification

▶ Go to *www.irs.gov/Form8609* for instructions and the latest information.

OMB No. 1545-0988

Part I **Allocation of Credit**

Check if: ☐ 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

TIN ▶

D Employer identification number of agency

E Building identification number (BIN)

1a Date of allocation ▶ b Maximum housing credit dollar amount allowable . 1b

2 Maximum applicable credit percentage allowable (see instructions) . . . . 2 %

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(d)(5)(B). Enter the percentage to which the eligible basis was increased (see instructions) . . . . 3b 1 ___ ___ %

4 Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-.) . . . 4 %

5a Date building placed in service . . . . ▶

b Check here ▶ ☐ if the date of allocation on line 1a is in calendar year 2021 or 2022 and the building is located in a qualified disaster zone (see instructions).

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 set-aside under sec. 42(h)(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)(B)? ☐ 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(d)(3)(B)? . ▶ ☐ 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(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 ☐ Average income ☐ 25-60 (N.Y.C. only)

d Elect deep rent skewed project (section 142(d)(4)(B)) (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

NOTICE OF LIEN AND EXTENDED USE AGREEMENT

BY

____

Dated: ______________________

*FOR USE WITH ALL SECTION 42 DEVELOPMENTS, INCLUDING DEVELOPMENTS FINANCED WITH TAX-EXEMPT BONDS, RECEIVING ALLOCATIONS UNDER THE 2020-2021 QAP

Development Name: ______________________________

Development Location: ______________________________

Development Building Identification Number ("BIN") ______________

LIHTC COMPLIANCE 101

LIHTC COMPLIANCE- AFFORDABILITY PERIOD

Length of Affordability:

10-year Credit Period (well maybe 11…)

15-year Compliance Period

30+ year Extended Use Period (recorded restrictions)

LIHTC COMPLIANCE - BASICS

Compliance = Qualified Households + Rent Restrictions + Suitable for Occupancy

•Qualified household = income eligible + student status eligible

- Income eligibility = annual gross household income
- Calculate and verify using the Part 5 / “Section 8 Methodology”

•Rent restricted = tenant-paid rent + utility allowance + non-optional fees $\leq$ rent limit

- Tenant-based or project-based rental assistance is **<u>not</u>** included in gross rent calculation

•Suitable for occupancy = must pass Uniform Physical Conditions Standards (UPCS)

- Soon to be NSPIRE

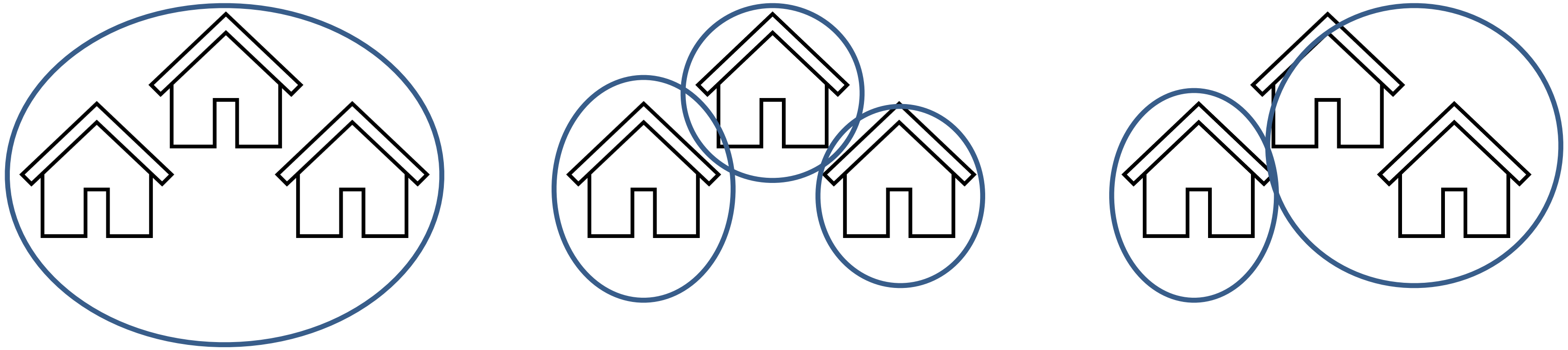
LIHTC COMPLIANCE- BUILDINGS VS. PROJECTS

Credits are calculated, claimed, and lost on a building-by-building basis
•Each building is assigned its own Building Identification Number (“BIN”)
•Each building receives its own IRS Form 8609
•Certain compliance rules apply at the building level- e.g., Applicable Fraction

Projects are defined by the owner
•Irrevocable election made on Form 8609, Part II, Line 8b
•Certain compliance rules apply at the project level- e.g., Minimum Set-Aside

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	



LIHTC COMPLIANCE- MINIMUM SET-ASIDE

Establishes two critical items:

1. The minimum % of units in a project that must be income/rent-restricted and in compliance to claim any credits; and

2. The federal definition of low-income that applies to the project

In reality, a project likely:

1. Has a higher % of units committed as income/rent-restricted
   WHY? = In order to maximize credits by increasing the Applicable Fraction

2. Has additional (lower) income and rent restrictions on some of the units
   WHY? = In order to obtain points under the QAP

LIHTC COMPLIANCE- MINIMUM SET-ASIDE

3 MSA options:

•40/60

- At least 40% of units in the project must be tax credit qualified units to claim any credits
- Federal definition of low-income = 60% AMI w/ max 60% tax credit rents

•20/50

- At least 20% of units in the project must be tax credit qualified units to claim any credits
- Federal definition of low-income = 50% AMI w/ max 50% tax credit rents

•Average Income Test

- At least 40% of units in the project constitute a “qualified group of units” where the units are qualified tax credit units with an average imputed income limitation that does not exceed 60% AMI
- Units may have a range of income restrictions from 30%, 40%, 50%, 60%, 70%, or 80% AMI

LIHTC COMPLIANCE- APPLICABLE FRACTION

- The percentage of a building designated for occupancy by low-income households
- Defined as the lesser of:
  - The % of residential floor space in a building comprised of LIHTC qualified units (“floor space fraction”); or
  - The % of units in a building that are LIHTC qualified units (“unit fraction”)

Tax Credit calculation for a building:

Eligible Basis x **Applicable Fraction** = Qualified Basis
Qualified Basis x Applicable Percentage = Annual Credit

If Applicable Fraction decreases, Qualified Basis decreases = loss of credits and recapture

LIHTC COMPLIANCE- MSA VS. AF

Minimum Set-Aside

Minimum % to get any credits

If not hit, cannot claim any credits

Project rule

Applicable Fraction

% to maximize credits

If not hit, cannot claim all credits

Building rule

LIHTC COMPLIANCE – REPORTING AND MONITORING

Annual submission of Annual Owner Certification of Compliance

At least once every three years, the HFA conducts:

- File monitoring
- Physical unit inspection

LIHTC TOPICS FOR PHAS

COMBINING LIHTC & HCV ACCEPTING VOUCHERS

LIHTC projects may not deny an applicant solely because of their status as a voucher holder (or similar federal or state rental assistance)

O/A may still apply all other project screening criteria per TSP

•E.g., credit check, criminal background, eviction/rental history, etc.

•Exception: IHCDA requires any minimum income requirement to be waived for voucher holders

Caveat:

•O/A can deny if the PHA payment standard is less than their LIHTC rent rate

COMBINING LIHTC & HCV
FINDING LIHTC UNITS FOR HCV TENANTS

Housing navigation considerations:

•List of all LIHTC projects in Indiana available at https://www.in.gov/ihcda/developers/rental-housing-tax-credits-rhtc/

- Click header “Recent Awards and Existing Properties”
- Download the “Existing Properties” report (Excel spreadsheet)

•LIHTC projects are required to set up the projects and list vacancies in the Indiana Housing Now housing locator tool- www.indianahousingnow.org

•WARNING: Average portfolio wide occupancy rate is around 97%

- Generally waitlists in place for available units
- Waitlists maintained by project, not by IHCDA

COMBINING LIHTC & HCV
GROSS RENT CALCULATION

LIHTC gross rent calculation excludes any amount of federal or state funded tenant-based rental assistance

If a household is receiving at least $1 of subsidy, the O/A may ignore LIHTC rent limits and take the total rent (tenant portion + subsidy) allowable by the subsidy program

To verify the tenant is receiving subsidy and prove compliance with LIHTC regulations, the LIHTC tenant file must contain:

- HAP contract and amendments; OR
- Copies of 50058s

COMBINING LIHTC & HCV INCOME VERIFICATION

In lieu of obtaining third party income and asset verification, LIHTC O/A may ask the PHA to confirm income of a voucher holder

O/A may document through one of two methods:

- Copy of 50058 completed within 120 days prior to LIHTC certification date; or
- IHCDA Form #16- PHA Verification completed/signed by the PHA representative

Reminder- LIHTC eligibility is based on gross annual household income

- LIHTC never uses adjusted income for any purposes

COMBINING LIHTC & PBV

LIHTC projects may be layered with a PBV HAP contract

As with HCV, PBV subsidy amount is not included in the LIHTC gross rent calculation

For more info on PBV, including combining PBV + LIHTC, attend tomorrow's session "Project Based Vouchers & Subsidy Layering Review" @ 9:45 a.m.

DEVELOPMENT OPPORTUNITIES

PHAs could participate in LIHTC development in multiple ways:

- Owner

- Developer or co-developer
    - New construction to add new units
    - Demolition/new construction to replace existing units
    - Rehabilitation to preserve existing units
    - LIHTC as part of a RAD conversion

- Property management
    - For project for which PHA is also the owner
    - As third-party agent for another owner

- Tenant service provider

DEVELOPMENT OPPORTUNITIES
QAP SET-ASIDE FOR PRESERVATION

10% of annual 9% credits reserved for the Preservation Set-aside

Purpose of set-aside is the “substantial rehabilitation of existing federally assisted affordable housing and/or demolition and decentralization of federally assisted affordable housing units utilizing the same site (over 50% of the units must be replaced).”

To qualify for set-aside:
•At least 50% of units in the development must qualify as preservation units
•Rehabilitation hard costs must exceed $35,000 per unit excluding furniture and common areas
•Must conduct a third-party Capital Needs Assessment and submit 30 days prior to LIHTC app
•Must submit documentation proving project is currently operating as federally assisted affordable housing with an enforced rent and income restriction

DEVELOPMENT OPPORTUNITIES
QAP POINTS FOR PRESERVATION

6-point scoring category for “Preservation of Existing Affordable Housing”

Points available for both 9% and 4% applications

One way to receive points is to propose the “preservation of HUD or USDA affordable housing, including but not limited to Project Based Section 8, public housing, or Rural Development 515 properties.”

DEVELOPMENT OPPORTUNITIES
QAP POINTS FOR RENTAL ASSISTANCE

2-point scoring category for “Non-IHCDA Rental Assistance”

Points available for both 9% and 4% applications

Awarded if application has a conditional commitment of non-IHCDA rental assistance, such as PBV

- Must be project-based
- Must be from a federal or state program
- Term must be at least 15 years
- Rental assistance agreement must cover at least 20% of units to receive 2 points
    - 1 point if covers at least 10% of units

For PBV, PHA must provide conditional commitment letter that includes the requirements above and identifies the payment standard to be used for rents

DEVELOPMENT OPPORTUNITIES
NON-LIHTC

IHCDA HOME Program
•Annual competitive round for HOME rental grants
•Only non-profits may apply- $1M max request, $1.5M if a certified CHDO
•Only for projects located in areas that are not HUD-designated Participating Jurisdictions- i.e., in areas that do not receive their own HOME funds directly from HUD
•Average project 9-11 units- can be new construction or rehab
•HOME funds cannot be used for public housing

Development Fund
•Non-competitive, rolling round
•Low-interest loan of up to $750,000
•1.5% interest, fixed rate, 15-year term, 30-year amortization, subordinate debt
•Can be used for new construction or rehab

Ramp Up Indiana
•Non-competitive, rolling round
•$50,000 grant to build ramps for low-income
homeowners (up to $10K as admin)

Questions?

CONTACT & ADDITIONAL INFORMATION

Matt Rayburn, Deputy Executive Director & Chief Real Estate Development Officer
mrayburn@ihcda.in.gov

Alan Rakowski, Director of Real Estate Allocation
arakowski@ihcda.in.gov

Carol Farzetta, Director of Real Estate Compliance
cfarzetta@ihcda.in.gov

QAP/Allocation webpage: https://www.in.gov/ihcda/developers/rental-housing-tax-credits-rhtc/

Compliance webpage: https://www.in.gov/ihcda/developers/red-compliance/