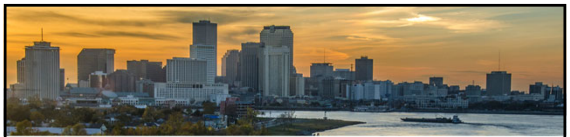

7 Tips for Getting First-Year Lease-Up Right in the LIHTC Program

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7 Tips for First-Year Lease-Up

1	Don't miss the120-day window
2	Train your staff
3	Make a plan for families who don't qualify
4	Understand your credit delivery schedule
5	Collect the right verifications
6	Manage file approvals
7	Don't wait until it's too late to get help

Why is the first year so important?

- Credits may be claimed at the beginning of the credit period
  - Credit period is the period of time owner/investor can claim LIHTCs
- Generally10 years from either:
  - The year the building is placed-in-service OR
  - May be deferred for one year only
    - Decision made by owner, investor, tax/legal advisor

Placed-In-Service Dates

- New construction
  - Usually based on certificates of occupancy
- Acq/rehab
  - Two PIS dates
    - Acq: Date of acquisition
    - Rehab: Artificial date established by the owner at the close of any 24-month period after minimum rehab expenditures have been met

Why does it matter?

- Once a building is placed-in-service, units in that building have the potential to produce a low-income housing tax credit

Why does it matter?

- Noncompliance in the first year of the credit period can result in a loss of credits

Types of Noncompliance

- Recapture
  - Loss of credits proportionate to percentage of building that was in noncompliance
- Disallowance
  - Earned portion of credit is taken away for current year and (potentially) going forward

Examples of noncompliance in first year

- Failure to meet the MSA in year one results in permanent loss of entire credit
  - Uncorrectable
- Failure to meet applicable fraction in year one
  - Uncorrectable in year one
  - May be corrected after year one, but results in 2/3 credits

Tip #1
For an acq/rehab, don't miss the 120-day window

Acq/Rehab Basics

- Typically, awarded to existing apartment buildings
- When used for acquisition, the building is also rehabilitated
  - Referred to as acq/rehab
  - Common for RAD deals

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Acq/Rehab Basics

- Two separate allocations of credits and two separate PIS dates
  - One for the acquisition
  - One for the rehabilitation
- Even though two separate allocations are received, both sets of credits are claimed once rehab is complete

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Acq/Rehab Basics

- Owner must determine in-place tenants are LIHTC-eligible
- IRS stated in-place families in acq/rehab buildings may be LIHTC eligible if the owner certifies their LIHTC eligibility 120 days before or 120 days after the acquisition date

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In other words…

- Window in which to qualify in-place families extends from 120-days prior to the date of acquisition up to 120-days after the date of acquisition
  - Owner has 240 days to certify in-place tenants

Certifying Tenants

- An in-place family who qualified at acquisition continues to qualify even if their income goes up between the date of acquisition and the start of the credit period
  - Provided the owner certifies the family within the 120-day window

Example

- Owner buys building May 1, 2018 (acq date)
- In-place resident Mrs. Lee is certified as LIHTC eligible on May 20, 2018
- Rehab starts June 1, 2018 and ends November 2018
- In the meantime, Mrs. Lee started a job in July 2018 that would put her over LIHTC income-limit
- Since an acquisition certification was completed within 120 days of May 1, the unit is qualified and credits can be claimed back to May 1, 2018

Certifying Tenants

- If the certification is completed more than 120 days before or after the date of acquisition
  - Household must be treated as a new move-in
    - Even though they are already living there

Example

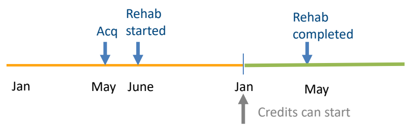
- Had the owner not certified Mrs. Lee within 120 days of the acquisition, the unit would not have been qualified since she is over-income because of her new job

Completing Rehab

- If rehab is completed in the same year the building is acquired credits may be produced as of the date of acquisition, not the date the rehab is actually completed
  - Date of acquisition is known as the *look back date*

Completing Rehab

- If rehab is completed in the year after the building is acquired, units cannot begin producing tax credits until January 1 of that year
  - January 1 becomes the look back date



What do you need to know?

- What is the date of acquisition?
  - For 120-day window
  - Don't start the process too early or too late
- What's the first year of the credit period?

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What do you need to know?

- Shouldn't certify in-place families any earlier than 120 days prior to the date of acquisition
- There may be unexpected delays, start the process about 60 days before the expected acquisition date

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Tip #2
Train your staff

Train Your Staff

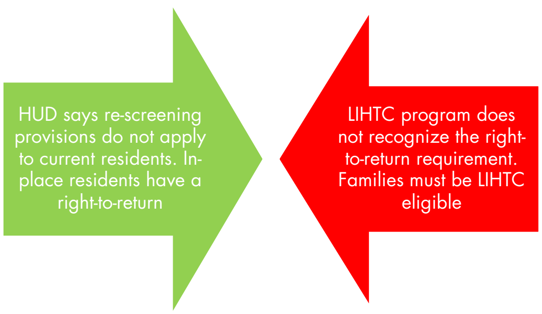
- Even if staff is experienced, a LIHTC unit is not like a HUD unit
  - IRS and state agency requirements are very different
  - Consequences for noncompliance are more severe in LIHTC
- If you're not self-managing, have staff shadow the management company

Train Your Staff

- Send staff to a certification level training or conduct detailed in-house training
  - Train staff before they start lease-up
- Conduct QC throughout lease-up to assess additional training needs
- Establish a clear and detailed procedures for initial LIHTC eligibility and train each staff member on the procedures

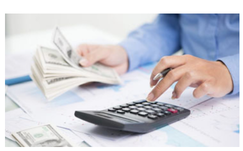
Tip #3
Make a plan for families who don't qualify

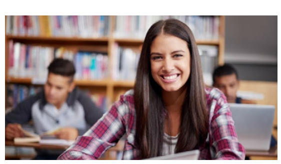
RAD: In-Place Families



Qualifying Residents

- In-place residents typically don't qualify either because of income or student status





Income Limits

- Household's anticipated annual gross income must initially be at or below the applicable income limit
  - 50%, 60%, or income averaging option in 10% increments
  - Pay attention to deep skew income limits or other set-asides, if applicable

Income Limits

- Multifamily tax subsidy projects (MTSP)
- Published by HUD each year
  - Beginning in 2009, HUD began publishing separate income limits for LIHTC projects
  - www.huduser.gov
- Calculate income in LIHTC using Multifamily rules in HUD Handbook 4350.3 and state agency requirements

Student Status

- Units comprised entirely of full-time students do not qualify as LIHTC units
  - Unless they meet an exception
  - Part-time students are ok

Definition of Student

- An individual, who during each of five calendar months during a calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization described in IRC §170 (b)(1)(A)(ii) or is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in IRC §170 (b)(1)(A)(ii) or of a state or political subdivision of a state.
- The five calendar months need not be consecutive.

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Student Status

- 5 calendar months
  - Need not be consecutive
  - May be partial months
- Example:
  - Student attends full time from Jan 1 to April 13 and then again from Oct 1 through Oct 15
  - Student is full time even though the months are not consecutive and only went for part of April and October

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Exceptions

- An individual who is:
  - Receiving assistance (Title IV of SS Act) = TANF
  - Formerly in foster care
  - Enrolled in job training program under JTPA or similar program
- Students who are:
  - Single parents and their child(ren) all of whom are not dependents of another individual, except other parent (not living in the unit)
  - Married and eligible to file joint tax return

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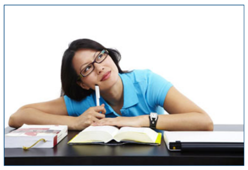
Exceptions

- Interpretations differ by state, be sure to check with your HFA



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Make a Plan

- Evaluate current residents early, so you have a plan
  - Don't wait until you're qualifying residents
- Communicate with any households that will not qualify for the LIHTC program
  - Meet with these families early

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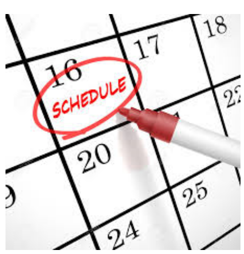
Tip #4 Understand your credit delivery schedule



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Credit Delivery Schedule

- Owner of the project enters into a partnership with an investor(s)
- Agreement governs when units need to start generating credits
  - Usually has specific unit counts within specific timeframes and penalties if they aren't achieved
  - Governs when units must be leased

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Credit Delivery Schedule

- Your whole team needs to understand this schedule
- Communication between all parties is key
- Schedule needs to be realistic for property management staff and relocation staff (if any)

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Things to Consider: Acq/Rehab

- Are families transferring or being moved off-site?
  - Need to take into consideration unit availability and qualification of households
  - If residents are being transferred in the building, track units to make sure you aren't double counting
    - One household can't qualify two units

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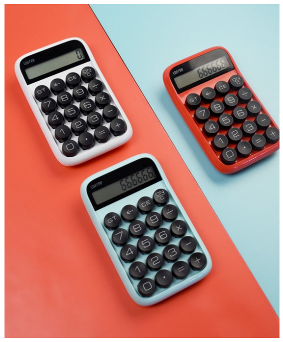
Tip #5
Collect the right verifications



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Verification

- All sources and forms of income and assets must be verified
- Verification is required using Chapter 5, Section 3 of the HUD Handbook 4350.3 REV-1
- Treasury regulations require:
  - Income certification at MI and annually, if required
  - Documentation to support income certification
- Many state HFAs have specific verification requirements

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Due Diligence

- Must demonstrate *due diligence*
  - Go beyond the minimum expectations
  - May be different for each file
    - New job
    - Seasonal/sporadic
    - Zero income
  - State agencies may have specific requirements for how an owner must demonstrate this

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Due Diligence

- Make sure applications, income/asset questionnaires, and verification forms:
  - Ask thorough questions
  - Are filled out completely
  - Are consistent
- Failure to show due diligence can result in a report of non-compliance

3rd Party Verification

- Most state HFAs require written third-party verification of income
- Verifications must be no older than 120 days before the certification effective date
- 4350.3 requires 4-6 most recent concurrent pay stubs – if state HFA allows pay stubs

3rd Party Verification

- Many state HFAs have more stringent requirements than those listed in the HUD 4350.3
  - May require use of specific written third-party verification forms
- Important to understand the verification requirements in your state's compliance manual and to use any forms your state HFA may require

3rd Party Verification

- Some states accept 50058s or 50059s as verification of annual income
- For properties with LIHTCs and another form of subsidy from HUD, EIV printouts may NEVER be used in LIHTC tenant file

Verification

- Many states prohibit:
  - Blue AND black ink in the file
  - Pencil
  - Whiteout
    - Cross out incorrect info and initial
- Blank spaces on forms are unanswered questions – don't assume they mean "no"
  - If the source doesn't respond, contact them, and document on a separate form

Tip #6 Manage file approvals

Manage File Approvals

- You want your first-year files to be audit-proof
- Best practice is to establish layers of compliance
  - Onsite staff → central office compliance → third-party company
- Even if you're working with a management company, QC their work

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Manage File Approvals

- Best practice is a separate LIHTC file
  - HFA does not want to filter through other program's documentation
  - Don't assume more paperwork is better
    - You need the correct paperwork

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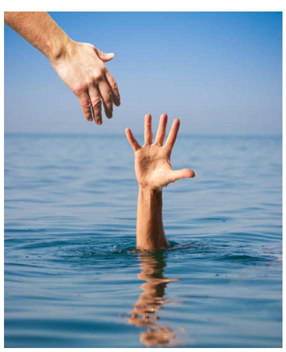
Tip #7
Don't wait until it's too late to get help



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Don’t wait until it’s too late

- Don’t wait until the HFA is at your property auditing to think this through
  - Make sure you’re using the right forms and verifications
  - QC first-year files (100% QC)
  - Train your staff
  - Monitor your management company
- Remember, some noncompliance isn’t correctable

Don’t wait until it’s too late

- Know what your HFA wants
  - Go to their compliance training
    - Often times this is mandatory
    - Generally low-cost or free
    - Typically doesn’t replace certification training
- If you do end up with reports of noncompliance (8823s), fix the problem immediately
  - HFA will inform you of the deadline
  - Don’t ignore

Questions

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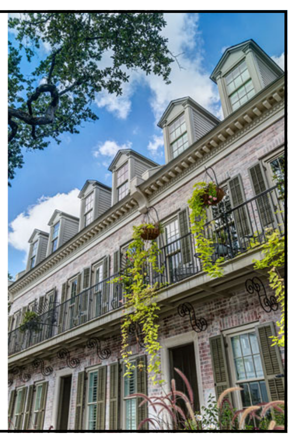

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