



Fundamentals of LIHTC

SHCM Certification Exam Optional

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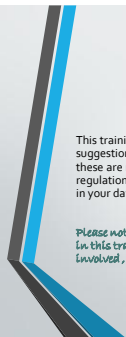


About the Presenter

Peggy Chavez, SHCM, BCP, NAHP-e, FHC



Peggy is currently the Director of Compliance for ComCap Management in Denver, Colorado. Peggy oversees a team of Compliance professionals and is responsible for nearly 3,000 units of affordable housing. With 30+ years' experience in affordable housing, Peggy has held multiple roles in the industry, prior to her current role: Deputy Director of a small housing authority; Director of Real Estate for a non-profit; on-site Property Manager; Regional Manager with a portfolio of over 1,000 units of multi-layered properties; and Administrator of Compliance for Moray Housing, managing a team of 15 Compliance Specialists and nearly 20,000 units of affordable housing across the United States. All of this brings Peggy a vast knowledge of the different programs within the world of affordable housing. Peggy holds many certifications, including SHCM, Fair Housing Compliance, HOME Compliance, Blended Occupancy, and NAHP-e.



DISCLAIMER

This training provides information based on the presenter's knowledge and experience. While suggestions may be given as to policies and procedures, it in no way is meant to imply that these are requirements that your company must adopt. If something is required by regulation, it will be clearly identified as such. Otherwise, use this session as a tool to help you in your day-to-day property management activities.

Please note, your state agency, and state laws, may require things different or not covered in this training. It is vital that you are familiar with what your State, and all agencies involved, require.

Before we begin....

- ✓ **Do not implement anything you hear today without approval from your corporate office.**
- ✓ Please ask questions as we go along – but keep in mind we only have 2 days to cover a lot of information.
- ✓ This training does not exactly follow the study guide, but I will give the pages of the study guide that correlate to what is being discussed. The study guide goes into much greater detail than we have time for in these 2 days.
- ✓ Always refer to your Monitoring Agency's Low Income Housing Tax Credit manual.
- ✓ You will be asked to participate in polls and quizzes.
- ✓ If you plan to take the exam, but miss something, please see me after the session or during a break.

PROGRAM REGULATIONS—20 % of Test

Historical Context

Pre-1986 Housing Policy

- Public housing owned and operated by local housing authorities
 - Project-based Section 8 contracts with private owners
 - Direct subsidies for construction and rehab
 - Tax shelters that often prioritized tax benefits over housing quality
- These programs faced criticism for creating concentrated poverty, requiring substantial Federal outlay, and sometimes producing poor quality housing

Tax Reform Act of 1986



Amended by the Omnibus Budget Reconciliation Act of 1989



Omnibus Budget Reconciliation Act of 1993

Made the credit permanent – previously required annual authorization

Enhanced compliance monitoring requirements

Clarified rules for scattered site projects

Strengthened resident protections

Housing and Economic Recovery Act of 2008 (HERA)

Fixed the 9% credit rate floor

Required demographic data collection

Permitted states to award basis boosts

Known by many names...

- Section 42
- LIHTC
- LIHC
- Tax Credit
- Housing Credit

So how does this all work?

- Tax credits are a dollar-for-dollar credit that reduces the owner/investor's tax liability.
 - The owner/developer is awarded the tax credits and then sells them to an investor.
 - The investors bid on the credits

Land Use Regulatory Agreement

- Also known as just the Regulatory Agreement or the LURA
- The agreement between the taxpayer (usually the project owner) and the housing credit agency
- Recorded with the County Clerk in the county where the project is located
- Details the IRS and State requirements for compliance with the LIHTC Program
 - May include State requirements in addition to the IRS Section 42 regulations
- Also defines the Extended use Period
- Stays with the property – if the property sells, any new owner assumes the requirements of the LURA

Program Partners

- IRS
- State Agency
- Owner/Developer
- Syndicator
- Investor
- Management Company
- On-Site Staff

IRS

- Responsible for overall enforcement of the LIHTC Program
- Allocates the credits to the State Agency
 - In 2024, the greater of \$2.90 per capita or \$3,360,000
 - Set by Congress

IRS Allocation Formula

- The IRS allocates credits to the states using a formula based on population:
- Base amount per capita (adjusted annually for inflation)
 - Small state minimum (also adjusted for inflation)
 - Calculation: Greater of State population x per capita amount or Small state minimum

Key IRS Forms & Publications

- Form 8609 – Low Income Housing Credit Allocation and Certification
- Form 8586 – Low Income Housing Credit – Filed annually with Owner's Federal tax return
- Form 8823 – State Agency's Report of Non-Compliance to the IRS

State Agency

- Receives applications and allocates tax credits
- Provides the Building Identification Numbers
- Monitors compliance and reports any noncompliance to the IRS
- Must develop a state specific Qualified Allocation Plan (QAP)

QAP

- Defines how the state agency will allocate credits
- The state agency scores applications based on the QAP
- Published annually

QAP

- Key aspects of a QAP:
 - Selection criteria – the specific criteria used to evaluate applications for tax credits.
 - Application requirements – outlines the application process, documentation needed, and other requirements for the project to be eligible for tax credits.
 - Scoring system – details how projects earn points based on how well they meet the criteria. Applications with the most points are awarded tax credits.
 - State Housing Priorities – must detail the state's specific housing needs and goals, such as prioritizing certain types of projects (e.g. supportive housing or projects in specific locations).

Owner/Developer

- Responsible for construction and development
- Completes and submits the application for tax credits
- Responsible for ensuring that the program is administered properly
- Referred to as the General Partner with the right to build and run the project on a day-to-day basis



Syndicator

- Gathers multiple investors and helps to identify projects in which to invest capital.
- Manages the equity fund from the investors.
- Provide strategies for a successful exit plan for the investor once the Compliance Period is complete.
- Usually the Limited Partner with ownership interest but not involved in the day-to-day operations of the project.



Investors

- Provide the capital (cash) to the Owner/Developer
- Get the benefit of the tax credits reducing their tax liability
- Meets specific community development obligations.



Management Company

- Oversight of the project through lease-up and beyond.
- Responsible for:
 - Financial supervision
 - Project inspections
 - Liaison between owner and on-site staff
 - Ensures compliance with the Partnership Agreement and the LURA
 - Reporting to State Agency and Investors

On-Site Management



- Responsible for:
 - Completing lease-up
 - Ensuring apartments are rented to income qualified households
 - Collecting rent
 - Maintaining good files
 - Day-to-day operations of the property
 - Maintaining the physical property

Critical Timeframes and Deadlines

Important Time Frames

- **Placed in Service Date** – this is usually the date the property receives its Certificate of Occupancy
- **Credit Period** – credits spread over 10 years, beginning with either:
 - The taxable year in which the building is placed in service; or
 - At the election of the taxpayer, the succeeding taxable year
 But only if the building is a qualified low-income building as of the close of the first year as designated above.

Timeframes

- **Compliance Period** – Also a building rule – the period of 15 years beginning with the first taxable year of the Credit Period.
- **Extended Use Period** – Beginning on the first day in the Compliance Period, and ending on the latter of:
 - The date or number of years specified in the LURA, or
 - The date which is 15 years after the close of the Compliance Period.
 - Must be a minimum of 30 years total
- **Post Year-15** – Beginning on the first day of the year after the close of the Compliance Period.
 - Minimum of 15 years

Deadlines for Specific Requirements

Utility Allowance Updates

- Owners are required to review utility allowances at least annually.
 - Document the review even if no change
 - Maintain historical UA records
- 90-Day implementation when UA changes
 - Must use most recent data
 - Cannot delay implementation
 - Recommend implementing immediately – especially if the UA increased

Income Limit Implementation

- When HUD publishes new income limits, owners must adopt them by the later of:
 - 45 days after HUD's publication
 - HUD's stated effective date (very rare that this is after date of publication)
- Also suggest that you implement immediately

Recertification Scheduling

- Most programs allow recerts to be completed 120 days prior to effective date
 - Due on anniversary of move-in or the 1st day of the anniversary month – varies by state
 - Cannot extend deadline
- Best practice is to give notices at 120 days, 90 days, and 60 days, with a Demand for Compliance at 30-days
 - Be diligent because some courts will not grant eviction for non-compliance with recert requirements if you haven't given all notices

State Agency Deadlines

- Annual Owner Certification of Compliance
 - Know when your State Agency requires this to be submitted
 - Must be signed by owner, not Management Agent
- Initial Monitoring Review and Inspection
 - Must be conducted by the end of the 2nd year after the last building places in service
- Ongoing Reviews
 - At least every 3 years (some states conduct reviews every 5 years when property is post-year 15)
 - May be more often if property is troubled or had 8823(s) issued

Building Identification Numbers (BIN Numbers)

- Assigned by the State Agency
- Can be found in the LURA
- A unique number for every building in the project
- The number is:
 - 2 letter state code
 - 2 digit year that the credits were allocated
 - State designated number
- For example a property with 2 buildings in Colorado where the credits were allocated in 2023 would have BINs something like this:

Building 1: CO 23 4567 01

Building 2: CO 23 4567 02

MORE ABOUT PLACED IN SERVICE (PIS)

New Construction

- The PIS date is the date leasing can begin in a particular building
 - Generally when the **Certificate of Occupancy** is received

Acquisition Credits

- The PIS date for Acquisition Credits is the date the new owner purchased the property.

Rehab Credits

- The PIS date for rehab credits is the date anytime withing a 24-month period when the minimum rehab expenditure has been met.
 - This is 20% of the adjusted basis or \$6,000 per unit (adjusted for inflation).

IMPORTANT TO KNOW

- The PIS date is a building rule. If you have a multiple building project, then you could have multiple PIS dates.
- If an owner is wanting both Acquisition and Rehab credits, the Acquisition credits **cannot** be taking until the Rehab credits are placed in service.

LIHTC Acquisition/Rehab

What You Need to Know

- What is the date of acquisition?
- What are the set-asides?
- When will credits be taken?
- Who is the Investor?
- When will rehab start?
- Is relocation required? Temporary or permanent? Rolling rehab?
- Incentives for existing residents who are FT Student HH or over-income ?

Oh those pesky dates!

- 120-Day & Safe Harbor rule – all residents who fully certified either 120-days before acquisition date (120-day rule) **OR** 120-days after acquisition date.(safe harbor rule), the effective and MI dates on the TIC will be the acquisition date.
 - For a property with an acquisition date of 07/07/2025 – you can begin completing certifications **no sooner** than 03/10/2025, and you have until 11/03/2025 to complete all certifications and use the Acquisition date as the MI and effective date on the TIC.
 - Any household certified after 11/03/2025, the MI and effective date will be the date the last household member signs the TIC.
 - New MIs are treated as normal – the MI and effective date is the date they move in.

Safe Harbor Rule



- If Owners certify residents within 120 days of acquisition.
- If the HH is income qualified at acquisition, but is over income when rehab is completed, they are still considered an income eligible HH.

Safe Harbor Rule

- If the acquisition takes place prior to September 3rd and rehab is scheduled to be completed in the following year, the owner will need to "test" the income of all residents between September 3rd and December 31st.
- What does "test" mean?
 - The owner will need to contact all residents to obtain a self certification of their current income status and test their income to ensure that their current income is below 140% of the income limit.
 - If the household's income is above 140% of the current income limit, then the Next Available Unit Rule would be invoked.
- 3rdparty verifications are not needed for this process.
- Each file must be documented to show the status at the end of the year.

Acq/Rehab

- You should develop a detailed tracking process for certifying existing residents and try to get all certified by 120-days after acquisition.

Unit Transfers During Rehab

- If this is a multiple building project you must know if the owner intends to answer question 8b on the 8609 yes or no.
 - If answer is No, then you Cannot transfer residents between buildings. You must do a move-out and move-in.
- Is the resident going to be temporarily or permanently transferred to another unit on the property?
 - The resident's eligibility moves with them.
 - Permanent transfers need a new Unit Transfer TIC with the UT date as the effective date.
- This is a very complicated process and you must track the following:
 - Date the unit was "suitable for occupancy"
 - Who is residing in the unit at the end of every month?
 - Also, keep track of qualified vacant units.

Extended Use Agreement

- Any LURA with an allocation of tax credits after 1989 requires owners to enter into extended use agreements with the State Agency allocating the credits.
- The agreement requires a commitment by the owner to keep the building as LIHTC for a minimum of 30 years beginning with the first day of the 15-year compliance period.
 - Some State Agencies require longer extended use periods.
- So the Extended Use Period is *a minimum of 15 years past the compliance period.*

What is a Multiple Building Project?

- Question 8b on 860g is answered yes
- Two or more buildings may be considered a multiple building project only if:
 - They are located on the same tract of land, unless all of the units are LIHTC units;
 - All buildings are owned by the same entity;
 - All are financed under the same financing; and
 - All are similarly constructed residential units.
- **If question 8b is answered No – then each building is treated as its own project.**

Minimum Set Aside

- 20/50
- 40/60
- Average Income
- 25/60
- Deep Rent Skew



20/50 Minimum Set Aside

- 20% of the units in the project must be rented to households with income no more than 50% AMI

40/60 Minimum Set Aside

- 40% of units must be rented to households with income no more than 60% AMI.
- Most common

Average Income

- Owner must commit to having at least 40% of the units affordable
 - Most states only allow AI on 100% LIHTC properties
- Set Asides ranging anywhere from 20% to 8% AMI – in 10% increments only
- Set Aside is assigned to each *UNIT*
- The average of all *UNIT* set asides cannot exceed 60% AMI
 - This only works if you have lower set asides to off set the higher set asides.

	Combinations				Multiple Breakdown - Percentages				Total % / Number of Units =			
	Units	%	Units	%	Units	%	Units	%	Units	%	Units	%
TOTAL	1	20%	0/10/0/0/0	4	20%	20%	20%	20%	20%	20%	20%	20%
	1	20%	0/10/0/0/0	3	20%	20%	20%	20%	20%	20%	20%	20%
	1	40%	0/10/0/0/0	2	20%	40%	20%	20%	20%	20%	20%	20%
	1	60%	0/10/0/0/0	1	20%	60%	20%	20%	20%	20%	20%	20%
80%	1	20%	0/10/0/0/0	2	20%	20%	20%	20%	20%	20%	20%	20%
	2	20%	0/10/0/0/0	1	20%	40%	20%	20%	20%	20%	20%	20%
	1	40%	0/10/0/0/0	1	20%	40%	20%	20%	20%	20%	20%	20%
	2	40%	0/10/0/0/0	1	20%	40%	20%	20%	20%	20%	20%	20%
100% & 80%	1	20%	0/10/0/0/0	2	20%	20%	20%	20%	20%	20%	20%	20%
	1	20%	0/10/0/0/0	1	20%	20%	20%	20%	20%	20%	20%	20%

25/60 Minimum Set Aside

- ****ONLY FOR NEWYORK CITY**** 25% of the units must be rented to households with income no more than 60% AMI

Deep Rent Skew

- The owner commits to either the 20/50 or the 40/60 election
- AND**
- Commits to renting at least 15% of those units to households with an AMI of 40% or lower

More About Minimum Set Aside

- This is an irrevocable election made by the owner on the IRS Form 8609
- This is a project rule – must be the same for all buildings in a multiple building project
- The election **MUST** be met by the end of the first year of the credit period or all credits are lost
- The owner must maintain compliance with the election throughout the Extended Use Period
- Unit must be rent restricted at 30% of the imputed income for the unit. (Not 30% of HH income)

[illegible][illegible][illegible]

Eligible Basis

- This is the total area of the property that the owner is **eligible** to earn tax credits on.

[illegible]

Eligible Basis - Acquisition

- For Acquisition the eligible basis includes:
 - The cost of acquiring the building
 - All units
 - Common areas offered to all residents without a fee

Eligible Basis - Rehabilitation

- Eligible basis includes:
 - Aggregate cost of rehab over a 24-month period
 - Developer and general contractor fees
 - Cost of construction and/or demolition

Eligible Basis

- Eligible basis **cannot** include:
 - The cost of the land
 - Commercial space
 - Non-depreciable costs
 - Permanent financing costs
 - Syndication costs
 - Capital improvement or lease-up reserves

Target Fraction

- This is the number of LIHTC units that the owner committed to in their original application
 - If the owner ends up having more than the targeted amount of units, they do not receive more tax credits.

Applicable Fraction

- The applicable fraction is the percentage of LIHTC units in each building
- This is calculated on a building-by-building basis

How To Calculate the Applicable Fraction

- The applicable fraction is the **LESSER** of:
 - The percentage of tax credit units in the building (the unit fraction)
 - OR
 - The percentage of tax credit unit square footage in the building (floor space fraction)
- The applicable fraction of a building where all units are tax credit is always 100%

Example

- A building has 60 units and the total square footage of all units is 65,000
 - 30 units are tax credit
 - The total square footage of the tax credit units is 31,000
 - The unit fraction is $30/60 = .50$ or 50%
 - The square footage fraction is $31,000/65,000 = .477$ or 48%
 - The applicable fraction for the building is _____?

Qualified Basis

- The qualified basis is the amount of **claimable** tax credits
- Based on the number of income qualified, occupied households on the last day of the year the building was placed in service.
 - Or the end of the next year at the election of the owner
 - Calculated on an annual basis

Two Thirds Rule

- Any units **NOT** rented until after the initial year of the credit period only receive $2/3$ of the annual tax credit
- This amount is collected through the 15-year compliance period instead of the 10-year credit period

4% or 9% credits

- A property that is also financed with tax-exempt bonds receives 4% tax credits.
 - These credits are not "competitive" and the total allocation is much less – usually around 30% of the total project cost
 - Often used for Acquisition/Rehab projects
 - Also used for new construction

4% or 9% Credits

- 9% credits are competitive – awarded through the HFA's QAP
- Higher amount of tax credits allocated – usually around 70% of the total project cost
- For New Construction or Substantial Rehab

A property that will be going through rehab but doesn't use tax-exempt bond financing can use a combination of 4% and 9% credits

How is the Annual Credit Calculated?

Eligible Basis x Applicable Fraction = Qualified Basis
 THEN
 Qualified Basis x Credit Percentage = Annual Credit Amount

Calculation of 4% Annual Credit

100 unit project

- \$5,000,000 credit allocated over 10-year credit period = \$500,000 in annual credit (\$5,000,000/10)
- Tax Credit Investor pays the Developer \$.95 for every \$1 of credit
- Developer gets a total of \$4,750,000 cash/equity

Calculation of 4% Annual Credit

- \$5,000,000 annual credit allocated over the 10-year credit period is:
 - \$50,000 per unit for the 10-year credit period
- OR
- \$5,000 per unit per year
- OR
- \$500 per unit per month

Calculation of the 9% Credit

- \$10,000,000 in credit allocated over the 10-year credit period = \$1,000,000 in annual credit
- Investor pays \$.95 for every \$1 of credit
- Developer gets \$9,500,000 in cash/equity

Calculation of the 9% Credit

- 100 unit project
- \$10,000,000 in tax credit allocated over 10-year credit period is:
 - \$100,000 per unit for the 10-year credit period
 - OR
 - \$10,000 per unit per year
 - OR
 - \$1,000 per unit per month

ACCELERATION - Annual credits are valued for 15 years, but paid in 10 years

PLS	CREDIT PERIOD	COMPLIANCE PERIOD
2020	2020-2030	2030-2035
Credit Period starts on Placed in Service or following year at election of owner	CREDIT PERIOD ENDS	Credit valued for 15 years but PAID during the first 10 years

Recapture

- Noncompliance with the LIHTC regulations may result in recapture of the tax credits. Here's an example based on our previous 100 unit property with 9% tax credits:
 - The eligible basis of our property is \$10,000,000 and the applicable fraction is 100%
 - In year 6, non-compliance was found on 5 units, and those units were out of compliance for a full year.
 - This lowered the eligible basis to 95%

Recapture

- Recapture is calculated as follows:
 - Years 1-5 $\$10,000,000 \times 9\% \times 100\% = \$900,000$
 - Year 6 $\$10,000,000 \times 9\% \times 95\% = \$855,000$
 - Loss of credit is $\$900,000 - \$855,000 = \$45,000$

Recapture



- Recapture is $1/3$ of the credit total value that was accelerated and paid in years 1-10
- Recapture is the loss of credit in year 6 $\times$ years 1-5 $\times 1/3$
- $\$45,000 \times 5 \text{ units} \times 1/3 = \$74,250$

OWNER'S TOTAL LOSS IS $\$45,000 + \$74,250 = \$119,250$

THIS IS WHY COMPLIANCE IS SO IMPORTANT!

Property Wide Rules

Non-Compliance is Applied to The Entire Property

- There are only two rules that are property wide:
 - Minimum Set Aside
 - Record Retention Requirements



Building Rules

- Placed in Service
- Eligible Basis
- Applicable Fraction
- Next Available Unit Rule
- Building Identification Number (BIN)
- Utility Allowances



Unit Rules

- Vacant Unit Rule
- Unit Transfers
- Maximum Rents
- Model Units
- Manager's Unit
- Full-Time Student Rule



Lessons
Learned



If a project Placed in Service on 07/08/2024, what is the very last date the owner has to meet the minimum set aside?

- A. July 31, 2024
- B. December 31, 2025
- C. June 30, 2024
- D. December 31, 2024

How long is the Credit Period?

- A. 5 YEARS
- B. 10 YEARS
- C. 30 YEARS
- D. 99 YEARS

The Applicable Fraction Is The Lesser Of The:

- A. Common Area Fraction And The Commercial Space Fraction
- B. Floor Space Fraction And The Unit Fraction
- C. Minimum Set Aside And The Qualified Basis
- D. Qualified Fraction And The Eligible Fraction

The IRS allocates Housing Credits to the State HFAs based on:

- A. Area Median Income
- B. Population of the State
- C. High Performance
- D. The Most 8823s Given
