

Missouri Housing Development Commission Low Income Housing Tax Credit Program

Compliance Requirements REVISION NOTICE #11-001

Compliance Manual section 4.7: (4) QUALIFYING TENANTS

4.7 Certification of Existing Residents of Acquisition and/or Rehabilitated Buildings

Some acquisition and rehabilitation developments qualify for two sets of tax credits, one for the acquisition of the building(s) and one for the rehabilitation of the building(s). Each set of credits may have a different placed-in-service (the "P-I-S") date. In order for the development to claim the credits, tax credit units must be initially occupied by qualified tenants. If there are tenants who lived in the units PRIOR to the P-I-S date(s) of the credits, these tenants must be also be certified as if they were new tenants. **The effective date on the TIC must match the PIS date of that building. See 4.6 for completing the TIC Exhibit (B) form at initial qualification only.** Technically, if there are two sets of credits each with a different P-I-S date, the existing tenants should need to initially qualify twice, once prior to the P-I-S date of the acquisition credits and a gain prior to the P-I-S date of the rehabilitation credits. The Code does not provide separate requirements for developments with two sets of credits each with a different P-I-S date. Some have interpreted this silence to mean that the existing tenants need to be certified only once, prior to the P-I-S date of the acquisition credits. Because of the complexity of this issue and there could be far-reaching consequences, it is recommended that owner's of such developments seek guidance and documentation from legal counsel.

Amendment effective 6/25/2011

4.7 Certification of Existing Residents of Acquisition and/or Rehabilitated Buildings

Some acquisition and rehabilitation properties may qualify for two types of tax credits, one for the acquisition of building(s) and another for the rehabilitation of building(s). Each type of tax credit may have a different placed-in-service (PIS) date. In order for the owner to claim tax credits, the units must be initially occupied by qualified residents. However, the owner is not required to determine two applicable fractions.

NOTE: The effective date on the initial TIC must match either the:

1. Building's Acquisition PIS date, if the initial resident qualification is completed 120-days before or after the Acquisition PIS date;
2. Building's Rehabilitation PIS date if the initial qualification is completed 120-days before the Rehabilitation PIS date; or
3. Resident move-in date.

See 4.6 for completing the TIC Exhibit (B) form at initial qualification only.

Income certification for residents of buildings undergoing Acquisition/Rehabilitation:

Existing households that will occupy units in Acquisition/Rehabilitation buildings are required to be initially qualified for the unit up to 120-days prior to the Acquisition PIS date, but no later than the Rehabilitation PIS date. All over income households must be addressed in accordance with the following guidelines:

- 1) Relocation Plan established specifically for the property as of the credit allocation date.
- 2) Continue residence at the property subject to applicable safe harbor rules addressed under Rev. Proc. 2003-82.

Revenue Procedure 2003-82 provides a “safe harbor” for an occupant whose income has increased above the income limit at the beginning of the building’s 10-year credit period. To be considered an income qualified household under the safe harbor, the household must have been income qualified at the time the new owner acquired the building or the date the household began occupancy, whichever is later. The following test requirements must be applied to existing households that occupied units before the acquisition/rehabilitation.

1. The test must be completed within 120 days before the beginning of the first year of the credit period.
2. The test consists of confirming with the household that sources and amounts of anticipated income included on the TIC are still current. If additional sources or amounts of income are identified, a new TIC (Exhibit B) must be completed based on the household’s updated documentation. It is not necessary to complete third party verifications.
3. If the household is over income based on current income limits, the Next Available Unit Rule applies.

NOTE: Vacant Units that are suitable for occupancy and previously occupied by income-qualified households are:

- 1) considered qualified low income units but must apply the vacant unit rule for the Acquisition credits.
- 2) not considered qualified low income units for the Rehabilitation credits.

Documentation Required:

For a unit to be considered a low-income unit, the owner must have documentation of the household’s initial eligibility. The preparation, maintenance and recording of resident files must sufficiently document and support household eligibility for purposes of claiming the tax credit under Section 42 requirements.