Back to Basics: Household Transfers

by Scott Michael Dunn, CEO of Costello Compliance and Director of Policy for the Costello Companies

In this series, we cover the basics of tax credit compliance and how to research answers to questions tax credit professionals have in their daily practice. In this Basics article, the focus will be on household transfers for tax credit properties. As continued household eligibility for units is one of the fundamental requirements of tax credit housing, this is a crucial topic to understand.

Because of costs involved, many owner/agents may seek to limit household transfers, especially during a household's initial lease term. However, there are times when a good household can be retained by allowing a transfer to a unit they prefer at lease renewal. Additionally, changes in household composition or reasonable accommodation requests to units that better meet the needs of persons with disabilities may require unit transfers. Similarly, the Violence Against Women Act (VAWA) requires tax credit properties to have emergency transfer plans in place for victims of covered VAWA violence. Of course, along with meeting business and legal requirements for a tax credit owner/agent, compliance concerns are also important. What does a tax credit owner/agent need to know before allowing unit transfers?

First, the approach necessary will vary depending on if the transfer is within a building or between two buildings. Then, if the transfer is between buildings, a crucial multi-building election that an owner makes will determine the correct approach.

Transfers Within a Building

According to tax credit regulations, when a household moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit. Thus, if a current household, whose income exceeds the applicable income limitation moves from an over-income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident (Treas. Reg. §1.42-15(d)). The 8823 Guide, 4-24, provides the following example, under the header "*Household in Over-Income Unit Transfers Within Building.*"

"An initially income-qualified household occupying a low-income unit in a mixed-use project was determined to have income in excess of 140 percent of the current AMGI at the time of the last annual income recertification. The household subsequently moved from Unit A, a 2-bedroom

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over-income unit to Unit B, a vacant 3-bedroom low-income unit. Even though the units are not comparably sized, Unit A is now a low-income unit and Unit B is an over-income unit."

Notice, that transfers are not prohibited, nor are households required to qualify under current income limits to transfer as if they were new move-ins. Especially if a building is 100% tax credit, these transfers do not affect tax credit building compliance; the applicable fraction is still 100%. Units in buildings with market units also switch status upon transfer. However, ensuring that the applicable fraction is not negatively affected when transferring a household into a formerly market unit of differing size will need to be monitored.

Transfers Between Two Buildings Within a Project

If someone wants to transfer to another building, an owner/agent needs to know if the buildings involved are part of the same project. This can be determined if both buildings have the line 8b election on tax form 8609 checked "yes" (the building is part of a multi-building project) AND both buildings must be included on an attached list of buildings part of the multi-building project. If both are not true, then transfers to the new building must be treated as a new move-in, with the household qualifying for the new unit under current income limits.

For buildings that are part of the same project, IRS guidance established that units also switch status when a household who is not "over income" (not over 140% of the current income limit) moves to a unit in a different building. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident (Rev. Rul. 2004-82, Q&A #8).

Note that the option to leave the building is only available to households that are not over the 140% income limit at their most recent recertification. This is part of the Available Unit Rule (Treas. Reg. 1.41-10). What about projects where annual income recertification is irrelevant because they are 100% tax credit (IRC §42(g)(1) & §42(g)(1))? The 8823 Guide explains, *"households residing in 100% LIHC projects, where a household's current income is not known, can also transfer between buildings within the project."* To demonstrate this principle, the Guide goes on to provide an example titled "Household in 100% LIHC Project Transfers Between Buildings." It says, *"On August 15, 2008, an income-qualified household moved into a low-income unit. The unit was part of a 100% LIHC multi-building project as identified by the owner on Form 8609, line 8b. The household was not required to complete annual income recertifications and, therefore, the household's current income was not known when, on January 15, 2010, the household requested a transfer to a low-income unit in another building within the project. The household may transfer to a low-income unit in another building within the project even though the household's income is not known."*

A Special Case – First-Year Credits

Knowing the above principles helps us understand how transfers work during a crucial time – the first year that credits are claimed for a building or buildings. This can be during a new

construction lease-up or for a rehabilitation when existing residents are transferred to meet construction needs. To address this scenario, the 8823 Guide provides an additional example of when a household is the first occupant of low-income unit. *"On May 31, 2004, of the first year of the credit period, an income qualified household moved into a new, never-occupied, low-income unit in Building A. On October 19, 2004, the household moved, and the lease was transferred, to a similar rent- restricted unit in Building B, which had never been occupied, and continued to occupy the unit until the end of the first credit year. The unit in Building A was not rented again until February 2005. Only the unit the household actually occupies qualifies as a low-income unit.*

- The unit in Building A would qualify for May, June, July, August and September. The unit would not qualify as a low-income unit in October, November or December for purposes of computing the Applicable Fraction for the first year. The unit will continue to be treated as a never occupied unit until a qualified household moves in.
- The unit in Building B is a qualified low-income unit for October, November and December."

Thus, a qualified household can only qualify one unit **at a time** and transferring them around a property does not qualify more than one unit.

State Policies

Readers of this series will not be surprised to hear that they should check with their state agency and company compliance officer before implementing the above federal rules. State agencies and company policy may dictate a more conservative approach. This could include prohibiting transfers between buildings or conducting recertification at the time of transfer to ensure the household is below 140%. Just under half of state agencies also require one full recert at the time of annual recertification for 100% tax credit properties. How to handle transfers for households who are over 140% at the first recert, where the IRS would not otherwise limit the right to transfer, needs to be clarified by these states. Finally, the implication on rehab projects of state polies that require full recertification at transfer or that limit transfers to persons below the current income limit needs to be discussed. Legal challenge may be made when households are denied continued occupancy because of state policies despite IRS rules designed to prevent them from being displaced. An owner will want, in writing, that this is the state's intent. States may make exceptions where such makes sense, especially during rehabs, where transfers are almost always necessary.

Transfers are a helpful tool in many property management scenarios. Sometimes they are even legally necessary, such as for Fair Housing or VAWA reasons. Knowing the basic tax credit rules with respect to unit transfers leaves a tax credit professional better able to keep their property in compliance.

Scott Michael Dunn is the CEO of Costello Compliance and Director of Policy for the Costello Companies. The Costello Companies are developers, builders and managers of affordable housing with clients throughout the country. They are headquartered in Sioux Falls, S.D. Scott Michael has served as part of the Technical Advisor Group on the HCCP Board of Governors for over a decade. He can be reached by email at smdunn@costelloco.com.