



Tax Credit 101: IRS Form 8609 - Part I

by Kelly Wakefield, Preferred Compliance Solutions

IRS Form 8609 contains a treasure trove of information. Regardless of your level of knowledge or experience of Low-Income Housing Tax Credits (LIHTC), the 8609 will have pertinent information to help you maintain compliance. In this Compliance 101 article, we will go over two areas of the Form 8609: the Multiple Building Election and Minimum Set-Aside. After explaining each of these, we'll have some practice questions so you can apply your knowledge.

Before we get into these two areas of the form, a bit of general information. A form 8609 will be filed for each building, and each building is assigned a building identification number (BIN) by the finance agency. If a property has 17 BINs, there will be 17 separate 8609s. Each 8609 represents information on that BIN, including the amount of tax credits that the BIN is eligible for.

If a property has both Acquisition and Rehab Credits, then there will be an 8609 for each BIN for the Acquisition Credits as well as another set of 8609s for the Rehab Credits. The 8609 is filed no later than the due date of the first tax return being filed for tax credits, meaning the information is filled out after tenants begin occupying the units, not before.

Why does this matter? Because you will not have the form with the information available prior to lease-up, it is important to understand what is expected to be listed on the form. We'll discuss this in greater detail and some of the pitfalls that could happen if there is not clear communication and expectations between how the 8609 will be filed and how the property is leased up.

Multiple Building Election

Let's first discuss line 8b, "Are you treating this building as part of a multiple building project, yes or no?" Here is how it looks on the form:

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)?	<input type="checkbox"/> Yes <input type="checkbox"/> No

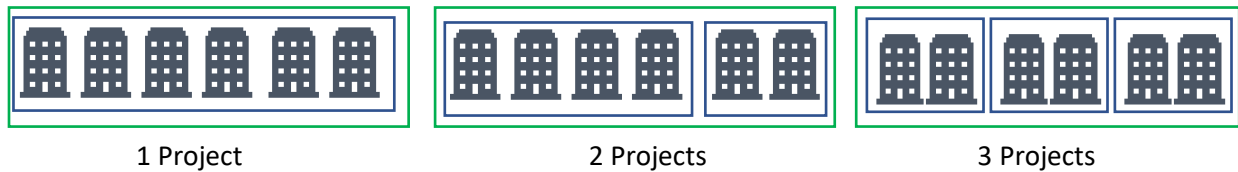
A project is one or more BINs in an LIHTC community. There is no limit to the number of projects allowed. The answer to this question is important because there are some rules that have to be met on a BIN basis, such as the Next Available Unit Rule, but some rules are Project Based. In order to meet these rules, you will need to know whether the project consists of 1 BIN or multiple. Let's explore what it means if the 8609 8b is marked "Yes" versus "No."



If the 8609 8b election is “yes,” it means that there are other BINs beyond the one currently referenced that make up the project. Attached to the 8609 will be an addendum that will outline each of the BINs that make up the project. There are countless ways the projects could be structured with the different BINs, and the addendum will allow you to map which BINs make up which project when the 8609 8b is marked “Yes.” When line 8b is marked “yes,” the project-based rules must be met by the BINs within that project collectively.

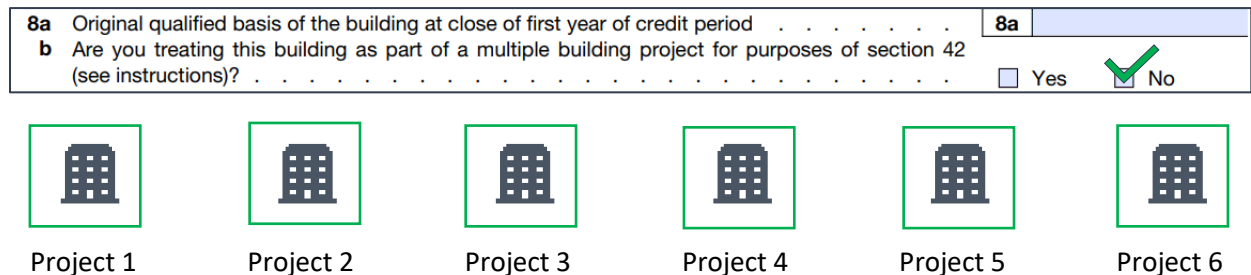
8a Original qualified basis of the building at close of first year of credit period	8a
b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

An example illustrating this is Brookside Apartments.



This community has six total buildings, and the 8609 election is “Yes.” It could be that all six buildings are part of one project or this community could have two projects, with Project 1 having four buildings and Project 2 comprising the remaining two. The community could even have three projects consisting of two buildings in each project. The addendum following the 8609 for each BIN would tell you which building is part of which project.

Now, if the 8609 8b is marked “No,” it means that this BIN alone makes up the project and individually it will meet all project rules; there are not multiple buildings in the project. If Brookside Apartments had “No” on each 8609 on line 8b, it would have six projects, each constituting one BIN as shown below:



Because each BIN has its own 8609, Brookside Apartments could have some BINs that are part of a multiple building project and some BINs that are not part of a multiple building project. The owner will make the determination of the makeup of the BINs; it is not decided by the Housing Finance Agency or the IRS.

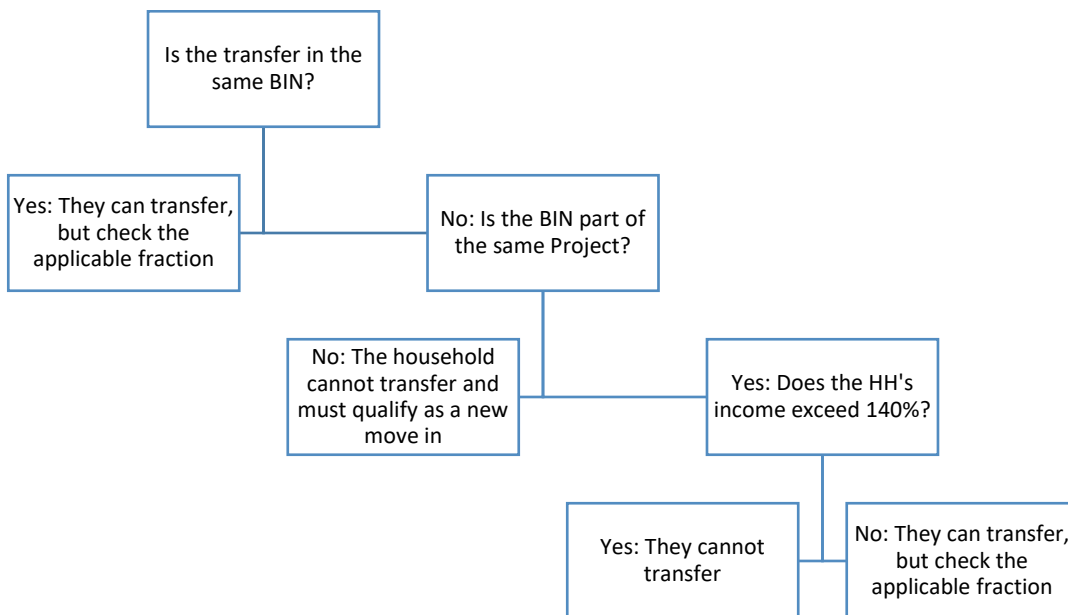


One reason on a day-to-day basis this information is important relates to transfers. Households that transfer to a different BIN would need to be handled differently depending on whether the BIN they are leaving and their new BIN are part of the same project.

As long as the household's income does not exceed 140%, tenants can transfer to a different BIN within the same project. The household would retain its original move-in date and does not need to requalify. If a household is transferring to a BIN that is not part of the same project they currently live in, they would be treated as a new move-in, not a transfer.

Remember that an LIHTC community can have multiple projects, so a BIN that is not in the same project as another does not mean they are leaving the community altogether. Stay tuned to a future Compliance 101 article that will delve deeper into transfers, especially during an acquisition/rehab.

To work through whether a transfer is or is not permitted, you can utilize the below flow chart.



Minimum Set-Aside

Another reason it is important to know the 8609 8b election is to ensure that the Minimum Set-Aside is being met across the property. The Minimum Set-Aside is an irrevocable election that is made on the 8609 line 10c.



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):

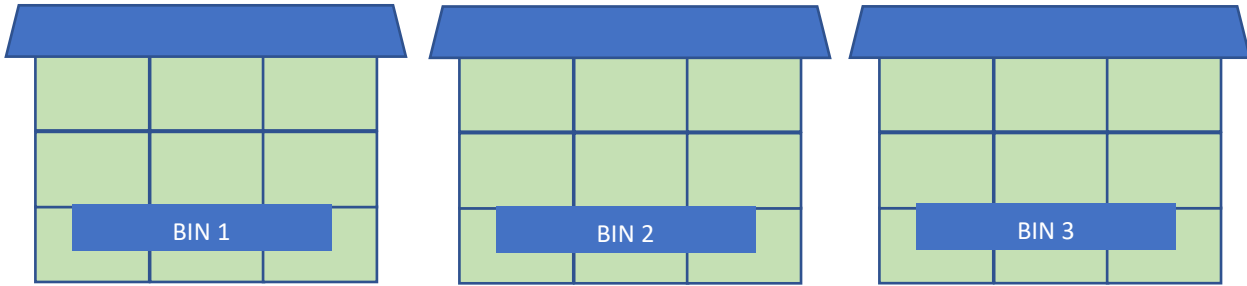
20-50 40-60 Average income 25-60 (N.Y.C. only)

To briefly recap the minimum set-aside, it is quite literally the minimum number of units that must be “set aside” for low-income tenants. Each minimum set-aside option tells you both the percentage of units and at what income set aside they must qualify. “20-50” means that 20% of the total units must be for low-income tenants, and those tenants must qualify at or below the 50% income limit. “40-60” means 40% of the units are for low-income tenants that qualify at or below the 60% income limit.

The third option available to everyone is average income: 40% of the units are for low-income tenants that qualify at income limits in 10% increments from 20% to 80%, but the entire project’s set-asides must average to no more than 60%. Because this is a minimum set-aside, a community can have more affordable units than required, as long as they have the minimum.

The minimum set-aside must be met every year of the compliance period, and if it is not met, it results in a loss of tax credits. The first year, however, is the most critical. If the minimum set-aside is not met by the end of the first year of the credit period, the project is not eligible to ever receive tax credits.

To ensure you meet the minimum set-aside, you must know how many units you’re required to have. Because it is a project rule, you need to know the total number of units in the project to find out the minimum you must have. Look at the example below:



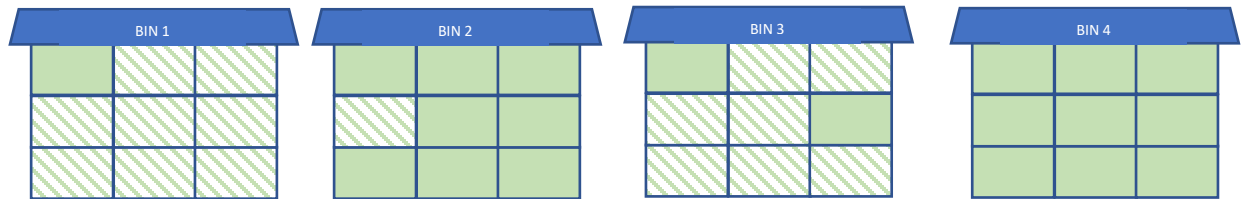
There are three BINs that each have nine units. Let’s say our minimum set-aside is 40/60; how many units must be affordable? Before we can answer that, we must know what the 8609 8b election was. If the 8609 for each BIN was marked “yes” and part of the same project, we would



need to have 40% of the 27 units in the project affordable. But if each BIN was its own project, each BIN must have 40% of the nine units in that project as affordable.

Below are some practice questions that will test your knowledge of the multiple building project and minimum set-aside elections. Use the below graphics of BINs to answer the questions.

= Market Unit = LIHTC unit



1. Assume 8b of each BIN's 8609 was marked "No" and 10c is marked "20/50." Is the minimum set-aside being met? _____ If no, which BIN(s) is/are not meeting it?

2. Assume all BINs are part of the same project, and the minimum set-aside is 40/60. How many units must be LIHTC, and how many are actually LIHTC?

3. Could any of the above BINs have "No" marked on 8b with a minimum set-aside of 40/60 and still be in compliance? If so, which BIN(s)? _____
4. BIN 1, 2 and 3 are part of the same project and BIN 4 is a separate project. Jones lives in 2-101 and wants to transfer to a larger unit in building 4. Is this transfer allowed? Why or why not? _____
5. BIN 1, 2 and 3 are part of the same project and BIN 4 is a separate project. Breck is recertifying unit 1-301, and her income is \$68,725 and the income limit is \$56,000. What BIN(s) could she transfer to and why? _____

Kelly Wakefield, executive vice president, has been with Preferred Compliance Solutions, a consulting and advisory firm, since 2005. Kelly oversees the asset management and training divisions that work closely with lenders, syndicators, management companies and owners to ensure compliance with affordable and federally funded programs. Making affordable housing education easily accessible and affordable to those that need it most is a priority. Her certifications include HCCP and COS. To discuss any of the above examples or for any questions, she can be reached at kellyw@preferredcompliance.com.



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