

IHC 2023

LIHTC 201 – Deal Structure,
8609s, 8823s and more

Panelists

Ellen Wilde - Member, Dauby O'Connor & Zaleski, LLC | ewilde@dozllc.com

Matt Rayburn - Deputy Executive Director & Chief Real Estate Development Officer & State Disaster Housing Manager | mrayburn@ihcda.in.gov

Gary Hobbs - President and CEO, BWI |

Paul Connolly - Managing Director, R4 Capital LLC | pconnolly@r4cap.com



Agenda

- Introduction
- 4% vs 9% LIHTC
- Application Process
- Capital Stack
- Form 8609s
- Form 8823

4% vs 9% LIHTC

4% vs 9%

	Not Federally Subsidized	Federally Subsidized
Also Known As	New Construction	Bond Deals
Credit %	9%	4%
Fixed Rate?	Yes	Yes – after CAA 2021
Competitive App. Process?	Yes	No
Credits Capped?	Yes	Not Usually
Financing	Private Mortgage	Bond Issuance
50% Test needed?	No	Yes
Tenant Certification?	Upon occupancy	Re-cert existing tenants within 120 days, new tenants upon occupancy
When Can Credits Start?	Month after BIN is PIS unless PIS on 1 st day of the month	Upon acquisition or Jan. 1 of the year rehab is PIS



4% vs 9%

- 70% PV / 9% / Competitive credits:
 - ✦ Allocated to states based on population
 - ✦ Reservations received based on a competitive application process
 - ✦ 9% deals receive more equity because of higher %



4% vs 9%

- 30% PV / 4% / Tax-exempt bond credits:
 - ✦ Allocated to developments for financing property with tax-exempt bonds
 - ✦ Reservations received based on obtaining tax-exempt bond allocation
 - ✦ 4% deals have much more debt due to lower credit percentage per \$1 of eligible basis

Acquisition / Rehab LIHTC

- Excerpt from IRS Form 8823 Audit Guide page 4-30
 - Section of “Income Qualifying Households during the First Year of the Credit Period”

Unit	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
1								LIHC	LIHC	LIHC	LIHC	LIHC
2								LIHC	LIHC	LIHC	LIHC	LIHC
3								LIHC	LIHC	LIHC	LIHC	LIHC
4								LIHC	LIHC	LIHC	LIHC	LIHC
5								LIHC	LIHC	LIHC	LIHC	LIHC
6								LIHC	LIHC	LIHC	LIHC	LIHC
7	LIHC	LIHC	LIHC	LIHC	LIHC	LIHC	LIHC		LIHC	LIHC	LIHC	LIHC
8	LIHC	LIHC	LIHC	LIHC	LIHC	LIHC	LIHC	LIHC				
9	LIHC	LIHC	LIHC	LIHC	LIHC	LIHC	LIHC	LIHC		LIHC	LIHC	LIHC
10	LIHC	LIHC	LIHC	LIHC	LIHC	LIHC	LIHC	LIHC		LIHC	LIHC	LIHC

- Mechanics of 1st year credit computation – Acquisition/Rehab
- Applicable fraction for the first year of the LIHTC period looks at the % of units or floor space (lesser of the two) that is qualified occupied as of the end of each month of the first taxable year of the credits period
- In acquisition/rehab deals, this computation can be complicated when units are being rehabbed throughout the year, and tenants are potentially being moved around
- Using a grid by building, unit and month to track status is helpful



Application Process

Capital Stack



Form 8609s and Form 8823

See IHEDA Slides

- Form 8609
- Form 8823



Impact of Receiving a Form 8823

- Impact of state inspection / audit – the process that could generate an 8823
- Steps to take once an 8823 is received from the state
 - What happens to the 8823?
 - Who generates? Who gets copies
 - What steps should be taken once the 8823 is received by the partnership
 - Gather and organization documentation; talk to CPA in determining action steps
- Impact of 8823 received by partnership – credit loss and/or recapture?
 - Must analyze the 8823 itself, and facts and circumstances that led up to its issuance
 - Were there unit(s) out of compliance across a year end (or more than one)?
 - Watch out for minimum set-aside IRS view of Form 8823

Impact of Receiving a Form 8823

- Consideration of impact on tax returns (before an IRS audit) – change in credit claimed, recapture, need for amendments/AARs for previous years
- What does it mean to get pulled for IRS audit?
 - Letter of intent to audit received by Partnership and Partnership Rep
 - Watch out for correct “Page 1” address on Form 1065 each year – this is where mail is sent
 - Importance of Partnership Representative and Designated individual
- Steps of IRS audit (variable depending on office/agent but can include)
 - Conference and/or site visit
 - Information Document Request(s),
 - Statute of Limitations extension,
 - Notice of Preliminary Partnership Examination Changes OR Closed Case with no changes
 - Notice of Proposed Adjustment – OR file an appeal
 - Final Partnership Adjustment – partnership pays tax due OR pushout to partnership (*watch for timeframe here)

IRS Audit Process

