Reclaiming the Canopy: Acquisition/Rehab & Resyndication in the LIHTC Forest

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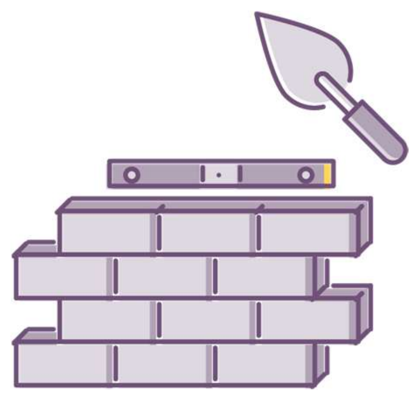
Introduction

Since 1986, the Low-Income Housing Tax Credit (LIHTC) program has been creating affordable rental housing opportunities for families throughout the United States.

- There are multiple ways to use tax credits to develop and sustain affordable housing opprotunities:
  - New Construction
  - Acquisition/Rehabilitation
  - Resyndication
- All options have specific requirements and nuances.
- This session will focus on Acquisition/Rehab and Resyndication.



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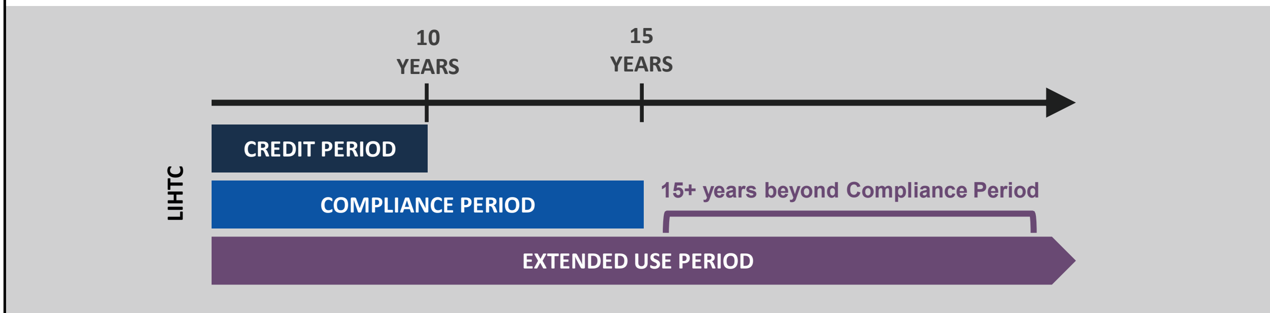
- During the life of a LIHTC property, there are three distinct "periods."
  - All three begin at the same time, but with individual durations.
  - Minimum 30 years of affordability.



The Extended Use Period is defined in the project's Extended Use Agreement (EUA) or Land Use Restrictive Agreement (LURA).

Introduction

- Whether this is the first or second credit allocation, those three periods will exist.
  - Extended Use Agreements may overlap

- Compliance is monitored by the State Housing Finance Agency (SHFA) at all times.
- Penalties for noncompliance are ultimately in the hands of the IRS in the first 15 years.
  - Credit Disallowance
  - Recapture

- Post Year 15, the SHFA will determine and impose penalties.

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Introduction

- Oftentimes, owners use tax credits to create or preserve affordable rental housing through the substantial rehabilitation of existing buildings.
  - In some cases, this is the first time tax credits are allocated.
  - Under other circumstances, owners of existing LIHTC sites are extending the affordability of their properties by applying for subsequent credit allocations post Year 15.

It is important that owners and managers understand the differences and nuances of Acquisition Rehabilitation (Acq/Rehab) and Resyndication.

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Acquisition/Rehab:

- Purchase of existing building(s) to rehabilitate to create or preserve affordable rental housing.
- Tax credits provide equity for the costs of acquiring the building(s) and the rehab work.
  - When the existing site receives its initial (first) credit allocation, existing tenants are <u>not</u> "grandfathered" for eligibility purposes.
  - New certifications are required.
  - LIHTC may be layered with other programs, but the site did <u>not</u> have a previous allocation of tax credits.

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Resyndication:

- Existing LIHTC property post Year-15 receives a subsequent (second) credit allocation.
- May be under the current owner or a new owner.
  - If a new owner, credits may be for both acquisition and rehab.
  - A new Extended Use Agreement (EUA) will be issued & will overlap with the existing EUA; the owner must comply with both.
  - Existing, eligible households remain income qualified after resyndication ("grandfathered").
  - New Income Certifications do not need to be performed on existing households.

NOTE: If a LIHTC property is resyndicated after the end of the original EUA, tenants are not "grandfathered," and new certifications are required.

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Acquisition/Rehab & Resyndication

- Whether it is the first or the second credit allocation, substantial rehab work is part of the process.
  - But a resyndication does not *require* acquisition.

- It may help to think about this like the rectangle and square comparison:
  - Every square is a rectangle, but every rectangle is not a square.
  - Every Resyndication is a Rehab, but not every Rehab is a Resyndication.

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Qualifying Units & Tenant Households

- Unlike new construction, Acq/Rehab and Resyndication often happens with in-place tenant households.
  - How tenant households are certified as tax credit-qualified varies.
  - Certain criteria must be met to start the “credit clock.”
  - This can be particularly challenging for our residents to understand and for compliance management staff to accomplish.
- In this section, we will break down the differences and walk through some examples.

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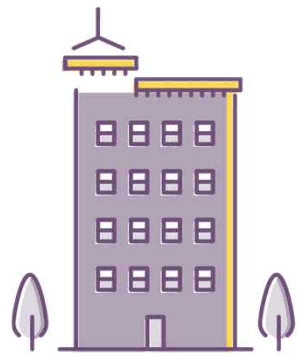
Qualifying Units & Tenant Households

- In order to generate tax credits, a unit must be "qualified."
  - This begins on the date the first qualified tenant moves in.
  - The building must be placed in service for a full month.
  - The rent must be appropriately restricted.
- With new construction, the Placed in Service Date (PISD) is triggered by the receipt of the Certification of Occupancy (CO).
  - When an existing building receives tax credits, the PISD is determined by the actions of the owner.



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Qualifying Units & Tenant Households

Acquisition:

- Acquisition Date is the date of purchase
  - "Closing Date"
- Often one Acquisition Date and multiple Rehab Dates

Rehabilitation:

- Minimum Expenditure Test
  - 20% of Adjusted Basis, or
  - Aggregate per unit minimum is spent
    - Adjusted annually for inflation
    - $8,700 in 2026

- While there is one Acquisition Date, each building may have its own PISD depending on when the rehab is completed.
  - This can be found on Line 5a of Form 8609
- Starting the "credit clock" depends on a few factors.

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Qualifying Units & Tenant Households

- Starting the "credit clock" requires careful attention to certification dates for tenant households.
  - The expectations for existing tenants are not the same as for new tenant households

- Under Rev. Proc. 2003-82:
  - A unit occupied before the beginning of the credit period will be considered a low-income unit at the beginning of the credit period.
  - Regulations contain provisions for households with income that exceeds the income limit at the beginning of the first year of the credit period.
    - Conditions related to program qualification (including student status and rent restriction) must be met.

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Qualifying Units & Tenant Households

While income limits are held harmless under a credit allocation (held to the highest level since placed in service), this can cause confusion with Acq/Rehabs and Resyndications.

Acquisition/Rehab

- Existing tenant households are subject to the income limits in effect at the Date of Acquisition if the certification is completed within 120 days of that date
  - If after 120 days, then they are subject to the limits in effect a that time.
- New tenant households are subject to the income limits in effect at the time of move-in.

Resyndication

- Existing tenant households are "grandfathered" under original income qualification.
- New tenant households are subject to the income limits in effect at the time of move-in. These may be lower than the original limits.

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Qualifying Units & Tenant Households

Acquisition/Rehab:

- The year that credits are first claimed becomes the first year of the credit, compliance, and extended use periods.
  - If the rehab is completed the same year, then credits may be taken that year.
  - If the rehab is completed the following year, then credits may be taken as early as January of that year.
  - Building must be in service for a full month to generate credits.

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Qualifying Units & Tenant Households

Acquisition/Rehab: Existing Tenants

- Units may be qualified 120 days *before* or *after* the acquisition date.
  - This is a strict 120 days – *not 4 months.*
  - It creates a 240-day window.
- The Effective Date of the certification is the Acquisition Date.
  - Since there is no “move-in” for existing tenants
- Signature Date is the date they sign the TIC.
- Following this process may allow owners to claim credits as early as the Acquisition Date for existing tenant households.
  - Building must be in service for a full month to start the credit clock.

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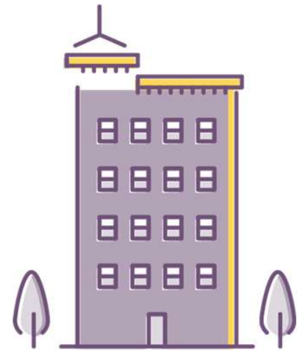
Qualifying Tenant Households: Acquisition/Rehab

Meadowbrook Manor first opened its doors in 1978. This property has a HAP contract, and all of the residents receive Project-Based Section 8 rental assistance.

The property has received a reservation of low-income housing tax credits and is undergoing Acquisition/Rehab.

- The Acquisition Date is 4/1/2026.
- The rehab will be completed the same year.
- In order to start the credit clock on 4/1/2026, existing tenant households must be certified as tax credit eligible no earlier than 12/2/2025 and no later than 7/30/2026



Meadowbrook Manor
Acquisition Date: 4/1/2026
Rehab complete same year

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Qualifying Tenant Households: Resyndication

Resyndication: Existing Tenants

- Existing tenant households are considered low-income qualified, or "grandfathered," under initial low-income qualification.

Per the IRS's Guide for Completing Form 8823 (Pub. 5913), J.3.(2) (page 74):

> *Households determined to be income-qualified for purposes of the IRC §42 credit during the 15-year compliance period are concurrently income-qualified households for purposes of the +30-year extended use agreement. As a result, any household determined to be income qualified at the time of move-in for purpose of the extended use agreement is a qualified low-income household for any subsequent allocation of IRC §42 credit.*

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Qualifying Tenant Households: Resyndication

Resyndication:

- Some SHFAs have specific forms and procedures for the resyndication tenant certification process.
  - May require full recertification for all households for resyndication.
  - May require/recommend summary and/or tracking forms.
- Investors often have additional documentation requirements.
  - Many require a third-party compliance review.
- Available Unit Rule is applicable.
- Need to ensure ongoing student eligibility.
  - Some SHFAs "relax" student eligibility Post Year-15. Existing tenant households must meet student eligibility requirements under the new allocation.

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Qualifying Tenant Households: Resyndication

Foxwell Farms placed in service and started claiming credits in 2008.
The property was sold in 2025, and the new owner has received a second reservation of credits and is undergoing resyndication and will start claiming credits in 2026.

Original Allocation Periods:
- Credit 2008 – 2017
- Compliance 2008 – 2022
- EUA 2008 – 2037

Foxwell Farms
Original PISD: 2008
Resyndication: 2026

Resyndication Periods:
- Credit 2026 – 2035
- Compliance 2026 – 2040
- EUA 2026 – 2055

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Qualifying Tenant Households: Acquisition/Rehab

Acquisition/Rehab New Tenants:

- For move-ins after the Acquisition Date, households are treated like any new move-in.
- The Effective Date of the TIC is the move-in date.
- Use the income limits in effect at the time of the certification.
  - If new income limits are released, these will apply.
  - Watch for limits in the spring, usually released in late March to early May.

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Qualifying Tenant Households: Resyndication

Resyndication New Tenants:

- New tenant households will be subject to the income limits effective at the time of move-in.
  - Income limits are based on the placed in service date for the resyndication.
  - These limits may be lower than those under the initial allocation.

FY 2026 MTSP HERA Special Income Limits		
Income Limit Category	1 Person	2 Person
50 Percent HERA Special Income Limits	$84,300	$96,350
60 Percent HERA Special Income Limits	$101,160	$115,620

FY 2026 MTSP Income Limits		
Income Limit Category	1 Person	2 Person
80 Percent Income Limits	$117,680	$134,480
70 Percent Income Limits	$102,970	$117,670
60 Percent Income Limits	$88,260	$100,860
50 Percent (Very Low Income Limits)	$73,550	$84,050

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Rent Limits

- Whether or not the property is resyndicating, we have seen that new tenant families are subject to the limits in effect at move-in.
- Income limits are held harmless at the highest level since placed in service under a credit allocation.
- But when a property is undergoing resyndication, the rent limits are *not* held harmless.
  - If new limits are lower under the resyndication than the original allocation, the rents will need to be lowered to be compliant.

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Rent Limits

RESYNDICATION

All tenant households – existing and new – are subject to the gross rent limits as determined by the income limits for the new placed in service date.

- In the example of Foxwell Farms, this would be the FY 2026 limits.
- If the owner was charging the maximum allowable rent for existing tenants, that must be reduced to remain in compliance.
- Many owners include energy efficiency upgrades as part of resyndication rehabs to decrease utility allowances and stabilize rent.

Foxwell Farms
Original PISD: 2008
Resyndication: 2026

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Rent Limits

RESYNDICATION DECREASED LIMIT EXAMPLE

Original Allocation

HERA Special	2-Bedroom	3-Bedroom
Gross Rent Limit	$1,375	$1,588
Utility Allowance	$ 100	$ 150
Contract Rent	$1,275	$1,438

Resyndication

FY 2026	2-Bedroom	3-Bedroom
Gross Rent Limit	$1,354	$1,565
Utility Allowance	$ 100	$ 150
Contract Rent	$1,254	$1,415

Foxwell Farms
Original PISD: 2008
Resyndication: 2026

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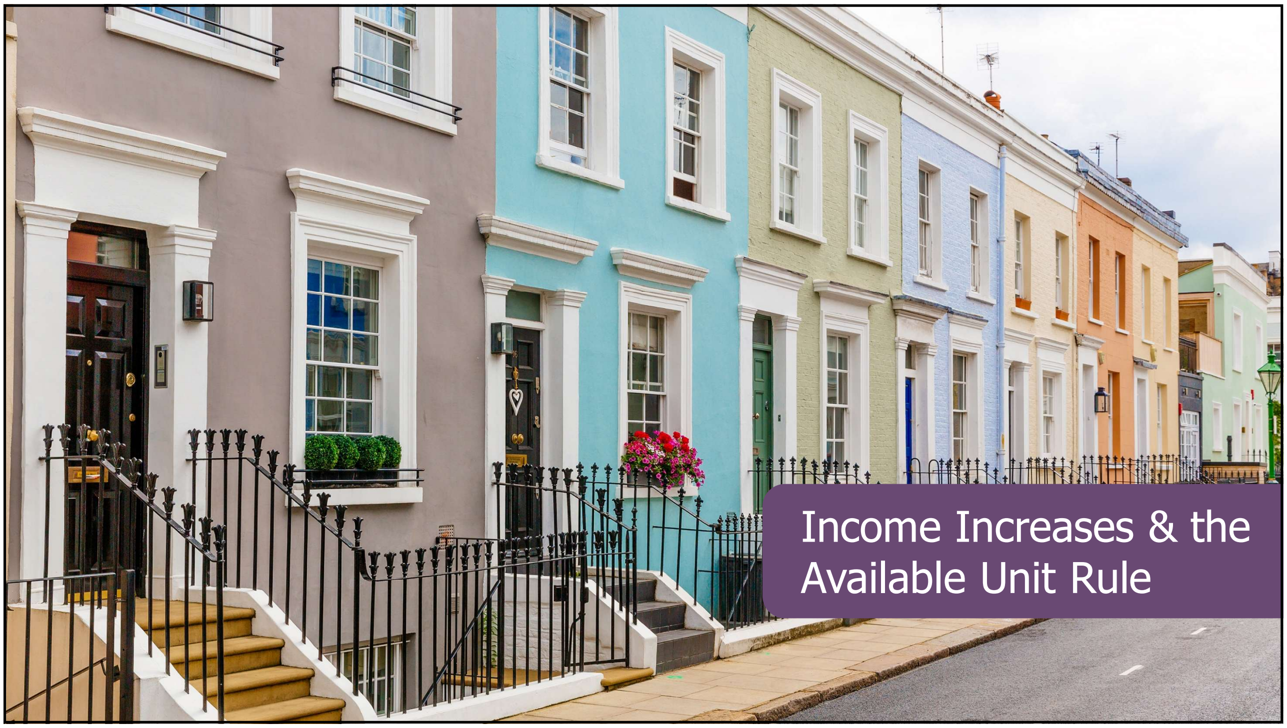

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Available Unit Rule

Tenant income changes over time.

- When extending the affordability of a property – whether through Acquisition/Rehab or Resyndication – we may encounter families with income above the applicable income limit.
- For Acquistion/Rehab, a family with income above the income limit is not LIHTC eligible.
    - An owner cannot qualify their unit and must consider their options.
- For Resyndication, families' income eligibility is grandfathered.
    - If their income increases above 140% of the applicable income limit, the Available Unit Rule must be followed.
- With either process, there are protections for tenant families who are certified as eligible but whose income increases between the Effective Date and the start of the credit period.

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Available Unit Rule

Safe Harbor Rule from Rev. Proc. 2003-82

- Income of those occupying a unit before the beginning of the first credit year is tested for purposes of the Next Available Unit Rule.
  - "Test" is conducted within 120 days before the beginning of the first year of the credit period.
  - The "test" will confirm that sources and amounts of income on the TIC are current.
  - If changes are identified, the TIC will be updated based on the household's documentation.
  - Test to be completed according to SHFA guidance.

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Income Increases

- Owners need to have a contingency plan in place for those who don't qualify – whether re-syndicating or a first round of acquisition/rehab credits.
- Most common is to 'incentivize' the tenant to vacate
  - Must be in accordance with the lease, landlord/tenant law, and local ordinances.
  - HUD Memo on Occupancy Protections from January 2015 makes it clear that it must be stated clearly in writing that incentives are optional.

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Tenant Relocation

Often tenants are relocated during the rehabilitation.

- The tenant's TIC (with effective date) goes with the tenant to the new unit in the *same project*.
- Tax credits *cannot* be generated by the same tenant in more than one unit at the same time.
- Tenants may generate credits in more than one unit if moved for *rehab purposes only*.

- **When households vacate the property to facilitate the rehab, the move-out date should be reflected.**
- **When the household moves back in, they must be properly certified as low-income.**

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Tenant Relocation

Households moving from one building to another must be certified as eligible households before moving.

- Unit transfer rules are governed by the multiple building election on Line 8b of Form 8609.
- If 8b is checked "Yes," transfers are allowed between buildings if household income is not above 140% of the current applicable income limit.
- If 8b is checked "No," then transfers between buildings do not exist. Households must be re-qualified as new move-ins to make this move.
- Either way, transfers within the same building are allowed.

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Tenant Relocation

With Acquisition/Rehab, there are no 8609s at the time of funding.

- If the Owner has obtained approval for the 8b election of a multiple-building project, transfers can be handled accordingly.
- Households may move within the building without being certified again once the required certification is completed.

For Resyndication, the new award does not have 8609s at the time of funding.

- Buildings are considered individual projects, and households moving from one project/building to another must be certified as eligible.
- If the Owner has obtained approval for the 8b election of a multiple-building project, transfers can be handled accordingly.

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Tenant Relocation

REMINDERS

- Households may move within the building without being certified.
- Households are grandfathered in under the original, existing EUA, and do not need to be certified as eligible under the new funding.
  - If the new EUA includes lower set-asides, households will need to be certified as qualified as applicable.
- Applicable fraction must be maintained.
- Annual requirements will continue to be done based on the original move-in, qualifying date.
- If there is additional funding, be sure to comply with all regulations regarding relocating tenants.
  - If regulations conflict, the most restrictive layer will apply.

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Conclusion

THE MISSION OF OUR INDUSTRY IS TO CREATE STRONG, SUSTAINABLE, INCLUSIVE COMMUNITIES AND QUALITY AFFORDABLE HOMES FOR ALL RESIDENTS.

- The LIHTC program was designed with the intention of allowing people to experience greater financial stability over time.
- Taking care to comply with regulations ensures that the intended benefits exist for our residents, owners, and the community at large.

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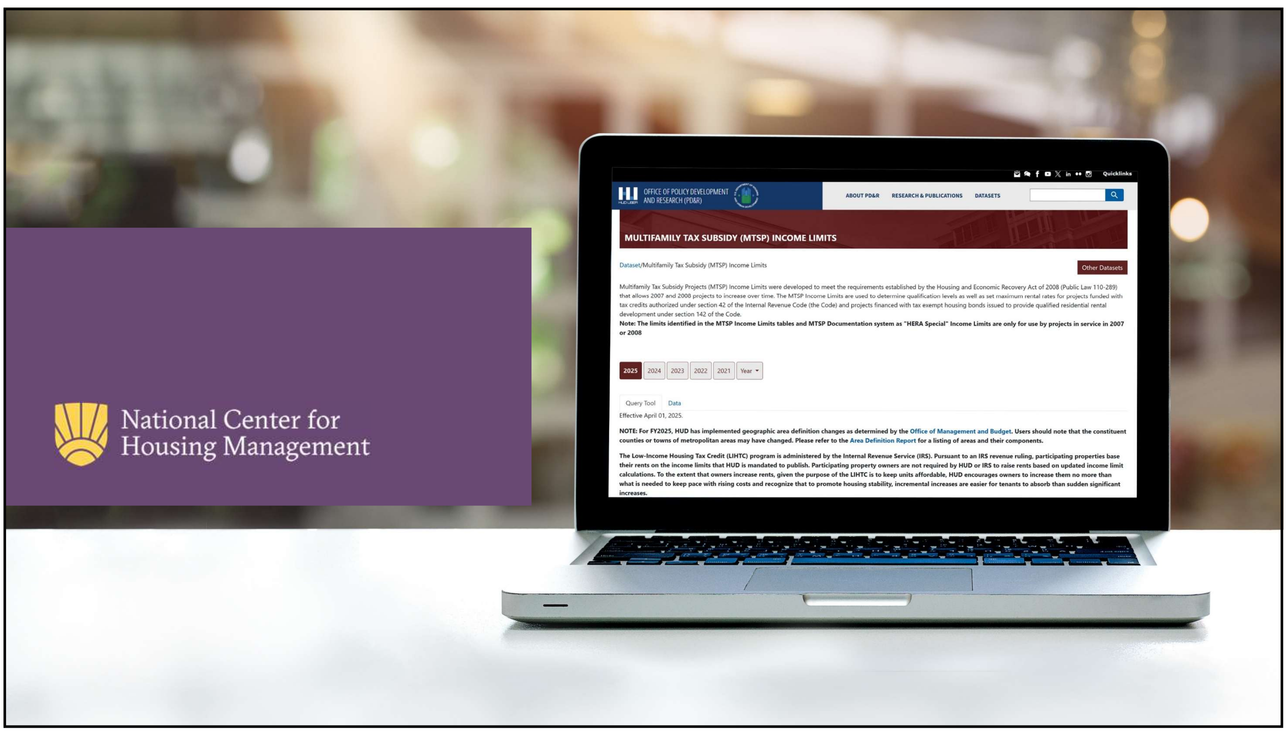

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