

A. Background

The Allocation Plan provides that Applicants of Developments may not transfer LIHTCs without the prior written consent of the Authority. Terms used herein, not otherwise defined, shall have the meanings ascribed to them in the Allocation Plan. The purpose of these policies and procedures is to provide guidance to sponsors and/or owners of Developments regarding the transferability of LIHTCs.

As used herein, the term “transfer” or “transfer of LIHTCs” refers to the proposed transfer of a direct or indirect ownership interest in a Development. For example, and not limitation, a transfer of a Development may be made directly by a transfer of the physical assets, or, indirectly, by a transfer of interests in an entity which owns the physical assets comprising the Development. The term “transfer” includes the transfer of a Development to or from a partnership or other entity, a substitution or change of the general partner of a partnership, or the direct or indirect transfer of any beneficial ownership in a general partner of a partnership or equity interest in any other entity. Notwithstanding, the term “transfer” shall not include the transfer of a limited partner interest in a limited partnership.

B. Procedures for Transfer Prior to Issuance of Form 8609

As a condition precedent to the Authority’s consideration of a proposed transfer of credits prior to the issuance of Form 8609, the following criteria must be met by the owner:

1. The proposed transferee shall submit a new Rental Housing Tax Credit application setting forth any and all information contemplated therein as if the proposed transferee were the original applicant, sponsor, or owner (the “New Application”). The New Application must be filed and marked to show any and all changes in information from that which is set forth in the Original Application.
2. The proposed transferee must also submit a schedule identifying all differences between the Original Application and New Application with cross-references to page numbers and sections, which differ.
3. All applicable filing fees for the New Application must be paid at the time of the filing of the New Application. The Authority may, in its sole discretion, refund a portion of the fees to the Applicant.
4. The proposed transferee of the credits shall certify that the information set forth in the New Application or otherwise filed with the Authority is true, complete and not misleading in any respect. The proposed transferee shall agree therein to complete the Development in the manner and within the time schedule set forth in the New Application.

5. The proposed transferee must submit such further documents, assurances, certificates and other information and materials in support of the New Application, as the Authority shall require in its sole and absolute discretion.
6. The transferor must sign a certification releasing all rights of the tax credits to the transferee. The transferee assumes all obligations associated with the tax credits/development from the transferor to the Authority.

C. Approval and Documentation

Based upon the Authority's review of the New Application and other filings referred to herein, the Authority may approve or disapprove the proposed transfer in its sole and absolute discretion. No consent or approval of the Authority with respect to the proposed transfer shall be effective without the written consent of the Authority and any attempt to affect a transfer without such prior consent shall be void from inception. Such approval may be conditioned upon receipt by the Authority of any and all documents or instruments to be executed by the proposed transferor and transferee in order to effectuate the transfer contemplated hereby and such future conditions as the Authority may impose from time to time. Consent to a transfer shall not be deemed to be consent to any subsequent transfer or a waiver of the Authority's right to require the Authority's consent to any future transfers. Any consent, action, review, recommendation, approval, or other activity taken by or on behalf of the Authority shall not, expressly or impliedly, directly or indirectly, suggest, represent, or warrant that the sponsor, owner, and/or Development qualify for the LIHTC, or that the Development complies with applicable statutes and regulations or that the Development is or will be economically feasible.

The Authority may waive any of the above requirements if the Authority determines, in its sole and absolute discretion, that compliance with the above procedures is not necessary for the Authority to achieve its housing goals.

D. Procedures for Transfer After Issuance of Form 8609

After the issuance of Form 8609, upon the sale, transfer, or disposition of a qualified low-income building or an interest therein, the transferee shall immediately submit a "Property Ownership Change Form" to IHCD, along with the following supplemental documentation:

1. A copy of all sale documents;
2. The newly amended and stated partnership agreement; and
3. Any other additional information the Authority may request.

IHCDA must approve any change in ownership or transfer request if (1) the Development has other IHCDA financing, such as HOME, Housing Trust Fund, Development Fund loan, or Project Based Vouchers; or (2) the project is subject to the non-profit material participation requirements.

If a building is in foreclosure, the receivership documents must be submitted to IHCDA immediately. Additionally, once final foreclosure occurs, the foreclosure (or instrument in lieu of foreclosure) documents must be submitted to IHCDA immediately so that proper reporting to the IRS may occur.

