

# Instructions for Form 8609

(Rev. December 2016)



Department of the Treasury  
Internal Revenue Service

## Low-Income Housing Credit Allocation and Certification

Section references are to the Internal Revenue Code unless otherwise noted.

### Future Developments

For the latest information about developments related to Form 8609 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/form8609](http://www.irs.gov/form8609).

### Reminder

The 9% minimum applicable percentage of section 42(b)(2) has been made permanent for certain buildings placed in service after July 30, 2008. For details, see the instructions for Part I.

## General Instructions

### Purpose of Form

Owners of residential low-income rental buildings are allowed a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 can be used to obtain a housing credit allocation from the housing credit agency. A separate Form 8609 must be issued for each building in a multiple building project. Form 8609 is also used to certify certain information.

**Housing credit agency.** This is any state or local agency authorized to make low-income housing credit allocations within its jurisdiction.

**Building identification number (BIN).** This number is assigned by the housing credit agency. The BIN initially assigned to a building must be used for any allocation of credit to the building that requires a separate Form 8609 (see *Multiple Forms 8609*, later). For example, rehabilitation expenditures treated as a separate new building shouldn't have a separate BIN if the building already has one. Use the number first assigned to the building.

**Allocation of credit.** For an owner to claim a low-income housing credit on a building (except as explained under *Tax-exempt bonds*, later), the housing credit agency must make an allocation of the credit by the close of the calendar year in which the building is placed in service, unless:

1. The allocation is the result of an advance binding commitment by the credit agency made not later than the close of the calendar year in which the building is placed in service (see section 42(h)(1)(C));
2. The allocation relates to an increase in qualified basis (see section 42(h)(1)(D));
3. The allocation is made for a building placed in service no later than the second calendar year following the calendar year in which the allocation is made if the building is part of a project in which the taxpayer's basis is more than 10% of the project's reasonably expected basis as of the end of that second calendar year; or
4. The allocation is made for a project that includes more than one building if:
  - a. The allocation is made during the project period,

- b. The allocation applies only to buildings placed in service during or after the calendar year in which the allocation is made, and

- c. Each building in the project to which the allocation applies is identified by a separate building identification number (BIN).

Regarding 3. and 4., (carryover allocations) see sections 42(h)(1)(E) and 42(h)(1)(F) and Regulations section 1.42-6.

The agency can only make an allocation to a building located within its geographical jurisdiction. Once an allocation is made, the credit is allowable for all years during the 10-year credit period. A separate Form 8609 must be completed for each building to which an allocation of credit is made.

**Multiple Forms 8609.** Allocations of credit in separate calendar years require separate Forms 8609. Also, when a building receives separate allocations for acquisition of an existing building and for rehabilitation expenditures, a separate Form 8609 must be completed for each credit allocation.

**Tax-exempt bonds.** No housing credit allocation is required for any portion of the eligible basis of a qualified low-income building that is financed with tax-exempt bonds taken into account for purposes of the volume cap under section 146 if principal payments on the financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide the financing or the financing is refunded as described in section 146(i)(6). An allocation isn't needed when 50% or more of the aggregate basis of the building and the land on which the building is located (defined below) is financed with tax-exempt bonds described in the preceding sentence. However, the owner still must get a Form 8609 from the appropriate housing credit agency (with the applicable items completed, including an assigned BIN).

**Land on which the building is located.** This includes only land that is functionally related and subordinate to the qualified low-income building. (See Regulations sections 1.103-8(a)(3) and 1.103-8(b)(4)(iii) for the meaning of "functionally related and subordinate.")

### Filing Requirement

**Housing credit agency.** Complete and sign Part I of Form 8609 and make copies of the form. Submit a copy with Form 8610, Annual Low-Income Housing Credit Agencies Report, and keep a copy for the records. The agency must send the original, signed Form 8609 (including instructions) to the building owner.

**Building owner.** You must make a one-time submission of Form 8609 to the Low-Income Housing Credit (LIHC) Unit at the IRS Philadelphia campus address below. After making a copy of the completed original Form 8609, file the original of the form with the unit no later than the due date (including extensions) of your first tax return with which you are filing Form 8609-A, Annual Statement for Low-Income Housing Credit.

**Where to file Form 8609.** Send the properly completed and signed form(s) to:

Department of the Treasury  
Internal Revenue Service Center  
Philadelphia, PA 19255-0549

**Note.** The housing credit agency may require you to submit a copy of Form 8609 with a completed Part II to the agency. You should contact the agency to obtain agency filing requirements.

Also, file Form 8609-A for each year of the 15-year compliance period. The credit is claimed on Form 8586, Low-Income Housing Credit. See the forms for filing instructions.

## Building Owner's Recordkeeping

Keep the following items in your records for three years after the due date (including extensions) of the owner's tax return for the tax year that includes the end of the 15-year compliance period.

- A copy of the original Form 8609 received from the housing agency and all related Forms 8609-A (or predecessor Schedules A (Form 8609)), Forms 8586, and any Forms 8611, Recapture of Low-Income Housing Credit.
- If the maximum applicable credit percentage allowable on line 2 reflects an election under section 42(b)(1)(ii), (or former section 42(b)(2)(A)(ii), for buildings placed in service before July 31, 2008), a copy of the election statement.
- If the binding agreement specifying the housing credit dollar amount is contained in a separate document, a copy of the binding agreement.
- If the housing credit dollar amount allocated on line 1b reflects an allocation made under section 42(h)(1)(E) or section 42(h)(1)(F), a copy of the allocation document.

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## Specific Instructions

### Part I—Allocation of Credit

#### Completed by Housing Credit Agency Only

**Addition to qualified basis.** Check this box if an allocation relates to an increase in qualified basis under section 42(f)(3). Enter only the housing credit dollar amount for the increase. Don't include any portion of the original qualified basis when determining this amount.

**Amended form.** Check this box if this form amends a previously issued form. Complete all entries and explain the reason for the amended form. For example, if there is a change in the amount of initial allocation before the close of the calendar year, file an amended Form 8609 instead of the original form.

**Item A.** Identify the building for which this Form 8609 is issued when there are multiple buildings with the same address (e.g., BLDG. 6 of 8).

**Line 1a.** Generally, where Form 8609 is the allocating document, the date of the allocation is the date the Form 8609 is completed, signed, and dated by an authorized official of the housing credit agency during the year the building is placed in service.

However, if an allocation is made under section 42(h)(1)(E) or 42(h)(1)(F), the date of allocation is the date the authorized official of the housing credit agency completes,

signs, and dates the section 42(h)(1)(E) or 42(h)(1)(F) document used to make the allocation. If no allocation is required (i.e., 50% or greater tax-exempt bond financed building), leave line 1a blank.

**Line 1b.** Enter the housing credit dollar amount allocated to the building for each year of the 10-year credit period. The amount should equal the percentage on line 2 multiplied by the amount on line 3a. The housing credit agency is required to allocate only the amount necessary to assure project feasibility. To accomplish this, the agency can, to the extent permitted by the Code and regulations, lower the percentage on line 2 and the amount on line 3a. See the instructions for these lines for the limits that apply. For tax-exempt bond projects for which no allocation is required, enter the housing credit dollar amount allowable under section 42(h)(4).

**Line 2.** The maximum applicable credit percentage allowable is determined in part by the date the building was placed in service. Follow the instructions pertaining to the date the building was placed in service.

Enter the maximum applicable credit percentage allowable to the building for the month the building was placed in service or, if applicable, for the month determined under section 42(b)(1)(ii). This percentage may be less than the applicable percentage published by the IRS.



*A minimum applicable credit percentage of 9% is in effect for new non-federally subsidized buildings placed in service after July 30, 2008. The 9% minimum also applies to new non-federally subsidized buildings even if the taxpayer made an irrevocable election under former section 42(b)(1)(A)(ii). If this circumstance applies, don't enter less than 9% on line 2. See section 42(m) and Regulations section 1.42-8(a)(4).*

If an election was made under section 42(b)(1)(A)(ii) to use the applicable percentage for a month other than the month in which a building is placed in service, the requirements of Regulations section 1.42-8 must be met. The agency must keep a copy of the binding agreement. The applicable percentage is published monthly in the Internal Revenue Bulletin. For new buildings that aren't federally subsidized under section 42(i)(2)(A), use the applicable percentage for the 70% present value credit, but don't enter less than 9%, unless the housing credit agency determines that a lesser amount is necessary to assure project feasibility. For new buildings that are federally subsidized, or existing buildings, use the applicable percentage for the 30% present value credit. See the instructions for line 6 for the definition of "federally subsidized," and the time period for which the definition applies. A taxpayer may elect under section 42(i)(2)(B) to reduce eligible basis by the proceeds of any tax-exempt obligation in order to obtain the higher credit percentage.

For allocations to buildings for additions to qualified basis under section 42(f)(3), don't reduce the applicable percentage even though the building owner may only claim a credit based on two-thirds of the credit percentage allocated to the building.

**Line 3a.** Enter the maximum qualified basis of the building. In computing qualified basis, the housing credit agency should use only the amount of eligible basis necessary to result in a qualified basis which, when multiplied by the percentage on line 2, equals the credit amount on line 1b. However, the housing credit agency isn't required to reduce maximum qualified basis and can lower the maximum

applicable percentage on line 2. To compute qualified basis, multiply the eligible basis of the qualified low-income building by the smaller of:

- The fractional amount of low-income units to all residential rental units (the "unit fraction") or
- The fractional amount of floor space of the low-income units to the floor space of all residential rental units (the "floor space fraction").

Generally, the term "low-income unit" means any unit in a building if the unit is rent-restricted and the individuals occupying the unit meet the income limitation applicable to the project of which the building is a part. See section 42(g). Generally, a unit isn't treated as a low-income unit unless it's suitable for occupancy and used other than on a transient basis. Section 42(i)(3) provides for certain exceptions (e.g., units that provide for transitional housing for the homeless may qualify as low-income units). See sections 42(i)(3) and 42(c)(1)(E) for more information.

Except as explained in the instructions for line 3b below, the eligible basis for a new building is its adjusted basis as of the close of the first tax year of the credit period. For an existing building, the eligible basis is its acquisition cost plus capital improvements through the close of the first tax year of the credit period. See the instructions for line 3b and section 42(d) for other exceptions and details.

**Line 3b. Special rule to increase basis for buildings in certain high-cost areas.** If the building is located in a high-cost area (i.e., "qualified census tract" or "difficult development area"), the eligible basis may be increased as follows.

- For new buildings, the eligible basis may be up to 130% of such basis determined without this provision.
- For existing buildings, the rehabilitation expenditures under section 42(e) may be up to 130% of the expenditures determined without regard to this provision.

Enter the percentage to which eligible basis was increased. For example, if the eligible basis was increased to 120%, enter "120."

Section 42(d)(5)(B)(v) permits a similar increase in basis for any non-federally subsidized building designated by the state agency to need the basis increase to be financially feasible as part of a qualified low-income housing project.



See section 42(d)(5)(B) for definitions of a qualified census tract and a difficult development area, and for other details.

**Note.** Before increasing eligible basis, the eligible basis must be reduced by any federal subsidy which the taxpayer elects to exclude from eligible basis. For buildings placed in service after July 30, 2008, the eligible basis can't include any costs financed with federal grant proceeds.

**Line 4.** Enter the percentage of the aggregate basis of the building and land on which the building is located that is financed by certain tax-exempt bonds. If this amount is zero, enter -0-. Don't leave this line blank.

**Line 5.** The placed-in-service date for a residential rental building is the date the first unit in the building is ready and available for occupancy under state or local law. Rehabilitation expenditures treated as a separate new building under section 42(e) are placed in service at the close of any 24-month period over which the expenditures are aggregated, whether or not the building is occupied during the rehabilitation period.

**Note.** The placed-in-service date for an existing building is determined separately from the placed-in-service date of rehabilitation expenditures treated as a separate new building.

**Line 6.** Not more than 90% of the state housing credit ceiling for any calendar year can be allocated to projects other than projects involving qualified nonprofit organizations. A qualified nonprofit organization must own an interest in the project (directly or through a partnership) and materially participate (within the meaning of section 469(h)) in the development and operation of the project throughout the compliance period. See section 42(h)(5) for more details.

Generally, no credit is allowable for acquisition of an existing building unless substantial rehabilitation is done. See sections 42(d)(2)(B)(iv) and 42(f)(5) that were in effect on the date the allocation was made. Don't issue Form 8609 for acquisition of an existing building unless substantial rehabilitation under section 42(e) is placed in service.

**Lines 6a and 6d.** A building is treated as federally subsidized if at any time during the tax year or prior tax year there is outstanding any tax-exempt bond financing, the proceeds of which are used (directly or indirectly) for the building or its operation. If a building is federally subsidized, then box 6a or 6d must be checked regardless of whether the taxpayer has informed the housing credit agency that the taxpayer intends to make the election under section 42(i)(2)(B) to reduce eligible basis by the proceeds of any tax-exempt obligation.

## Part II—First-Year Certification

### Completed by Building Owner With Respect to the First Year of the Credit Period



By completing Part II, you are certifying the date the building is placed in service corresponds to the date on line 5. If the Form 8609 issued to you contains the wrong date or no date, obtain a new or amended Form 8609 from the housing credit agency.

**Line 7.** Enter the eligible basis (in dollars) of the building. Eligible basis doesn't include the cost of land. Determine eligible basis at the close of the first year of the credit period (see sections 42(f)(1), 42(f)(5), and 42(g)(3)(B)(iii) for determining the start of the credit period).

For new buildings, the eligible basis is generally the cost of construction or rehabilitation expenditures incurred under section 42(e).

For existing buildings, the eligible basis is the cost of acquisition plus rehabilitation expenditures not treated as a separate new building under section 42(e) incurred by the close of the first year of the credit period.

If the housing credit agency has entered an increased percentage in Part I, line 3b, multiply the eligible basis by the increased percentage and enter the result.

Residential rental property may qualify for the credit even though part of the building in which the residential rental units are located is used for commercial use. Don't include the cost of the nonresidential rental property. However, you may generally include the basis of common areas or tenant facilities, such as swimming pools or parking areas, provided there is no separate fee for the use of these facilities and they are made available on a comparable basis to all tenants in the project.



The eligible basis shall not include any costs paid by the proceeds of a federal grant. Also, reduce the eligible basis by the entire basis allocable to non-low-income units that are above average quality standard of the low-income units in the building. You may, however, include a portion of the basis of these non-low-income units if the cost of any of these units doesn't exceed by more than 15% the average cost of all low-income units in the building, and you elect to exclude this excess cost from the eligible basis by checking the "Yes" box for line 9b. See section 42(d)(3).

You may elect to reduce the eligible basis by the proceeds of any tax-exempt obligation to obtain a higher credit percentage. To make this election, check the "Yes" box in Part II, line 9a. Reduce the eligible basis by the obligation proceeds before entering the amount on line 7. You must reduce the eligible basis by such obligation proceeds before multiplying the eligible basis by the increased percentage in Part I, line 3b.

**Line 8a.** Multiply the eligible basis of the building shown on line 7 by the smaller of the unit fraction or the floor space fraction as of the close of the first year of the credit period and enter the result on line 8a. Low-income units are units occupied by qualifying tenants, while residential rental units are all units, whether or not occupied. See the instructions for Part I, line 3a.

**Line 8b.** Each building is considered a separate project under section 42(g)(3)(D) unless, before the close of the first calendar year in the project period (defined in section 42(h)(1)(F)(ii)), each building that is (or will be) part of a multiple building project is identified by attaching the statement described below.

The statement must be attached to this Form 8609 and include:

- The name and address of the project and each building in the project,
- The BIN of each building in the project,
- The aggregate credit dollar amount for the project, and
- The credit allocated to each building in the project.



*Notwithstanding a checked "Yes" box on line 8b, failure to attach a statement providing the above required information will result in each building being considered a separate project under section 42(g)(3)(D). The minimum set-aside requirement (see the instructions for line 10c) is a project-based test.*

Two or more qualified low-income buildings may be included in a multiple building project only if they:

- Are located on the same tract of land (including contiguous parcels), unless all of the dwelling units in all of the buildings being aggregated in the multiple building project are rent restricted units (see section 42(g)(7));
- Are owned by the same person for federal tax purposes;
- Are financed under a common plan of financing; and
- Have similarly constructed housing units.

A qualified low-income building includes residential rental property that is an apartment building, a single-family dwelling, a town house, a row house, a duplex, or a condominium.

**Line 9a.** Follow the instructions that apply for the date the building was placed in service.

You may elect to reduce the eligible basis by the proceeds of any tax-exempt obligation and claim the 70% present value credit on the remaining eligible basis. A minimum

applicable percentage of 9% is in effect for new non-federally subsidized buildings placed in service after July 30, 2008, unless the housing credit agency determines a lesser amount is necessary to assure project feasibility. However, if you make this election, you may not claim the 30% present value credit on the portion of the basis that was financed with the tax-exempt obligation.

**Line 9b.** See the instructions for Part II, line 7.

**Line 10a.** You may elect to begin the credit period in the tax year after the building is placed in service. Once made, the election is irrevocable.

**Note.** Section 42(g)(3)(B)(iii) provides special rules for determining the start of the credit period for certain multiple building projects.

**Line 10b.** Partnerships with 35 or more partners are treated as the taxpayer for purposes of recapture unless an election is made not to treat the partnership as the taxpayer. Check the "Yes" box if you don't want the partnership to be treated as the taxpayer for purposes of recapture. Once made, the election is irrevocable.

**Line 10c.** You must meet the minimum set-aside requirements under section 42(g)(1) for the project by electing one of the following tests.

- **20-50 Test.** Twenty percent (20%) or more of the residential units in the project must be both rent restricted and occupied by individuals whose income is 50% or less of the area median gross income or
- **40-60 Test.** Forty percent (40%) or more of the residential units in the project must be both rent restricted and occupied by individuals whose income is 60% or less of the area median gross income.

**Note.** Owners of buildings in projects located in New York City may not use the 40-60 Test. Instead, they may use the **25-60 Test.** Under the 25-60 Test, 25% or more of the residential units in the project must be both rent restricted and occupied by individuals whose income is 60% or less of the area median gross income (see section 142(d)(6)).

Once made, the election is irrevocable.

**Rural projects.** For purposes of the 20-50, 40-60, and 25-60 tests, "national non-metropolitan median income" will be used for determining income if it exceeds "area median gross income," but only for determinations of income made after July 30, 2008, and buildings with an allocation of credit. See section 42(i)(8) for details.



*The minimum set-aside requirement is a project-based test and must be met by the close of the first year of the credit period in order to claim any credit for the first year or for any subsequent years.*

**Line 10d.** The deep rent skewed 15-40 election isn't an additional test for satisfying the minimum set-aside requirements of section 42(g)(1). The 15-40 test is an election that relates to the determination of a low-income tenant's income. Generally, a continuing resident's income may increase up to 140% of the applicable income limit (50% or less or 60% or less of the area median gross income (or, when applicable, national non-metropolitan median income) under the minimum set-aside rules described earlier in line 10c). When the deep rent skewed election is made, the income of a continuing resident may increase up to 170% of the applicable income limit. If this election is made, at least 15% of all low-income units in the

project must be occupied at all times during the compliance period by tenants whose income is 40% or less of the area median gross income (or, when applicable, national non-metropolitan median income). A deep rent skewed project itself must meet the requirements of section 142(d)(4) (B). Once made, the election is irrevocable.

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**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. Claiming this credit is voluntary; however, if you do claim the credit, sections 42, 6001, and 6011 require you to provide this information. Section 6109 requires you to provide your taxpayer identifying number (SSN, EIN, or ITIN). We need this information to ensure that you are complying with the revenue laws and to allow us to figure and collect the right amount of tax. We may disclose this information to the Department of Justice for civil or criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. Failure to provide this information may delay or prevent processing your claim. Providing false information may subject you to penalties.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law.

The time needed to complete and file the form will vary depending on individual circumstances. The estimated average time is:

<b>Learning about the law or the form</b> . . . . .	4 hr., 10 min.
<b>Recordkeeping</b> . . . . .	10 hr., 45 min.
<b>Preparing and sending the form to the IRS</b> . . . . .	4 hr., 31 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making these forms simpler, we would be happy to hear from you. You can send your comments from [www.irs.gov/formspubs](http://www.irs.gov/formspubs). Click on “More Information” and then on “Give us feedback.” Or you can send your comments to the Internal Revenue Service, Tax Forms and Publications, 1111 Constitution Ave. NW, IR-6526, Washington, DC, 20224. Do not send the tax form to this office. Instead, see *Filing Requirement*, earlier.

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