2012

Revised January 2012

MISSISSIPPI HOME CORPORATION

[HOUSING CREDIT COMPLIANCE MONITORING PLAN]

This Plan is designed to provide a basic description and explanation of the rules and regulations of the Housing Credit program as it relates to developments receiving an allocation of credits in the state of Mississippi pursuant to Section 42 of the Internal Revenue Code.

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COMPLIANCE MONITORING DIVISION

Ensuring Compliance through Education and Training

Robert D. Collier
Senior Vice President of Program Compliance
Robert.Collier@mshc.com; 601.718.4630

Teri Nguyen
Senior Compliance Officer
Teri.Nguyen@mshc.com; 601.718.4641

Ron Cannon
Senior Building Inspection Administrator
Ron.Cannon@mshc.com; 601.718.4640

Brandon Morey
Compliance Officer
Brandon.Morey@mshc.com; 601.718.4679

Daffiney A. Johnson
Compliance Officer
Daffiney.House@mshc.com; 601.718.4637

Valeska Robinson
Compliance Officer
Valeska.Robinson@mshc.com; 601.718.4675

Derrick Lee
Physical Inspector
Derrick.Lee@mshc.com; 601.718.4677

Deborah Heard
Compliance Assistant
Deborah.Heard@mshc.com; 601.718.4622

Ashley Underwood
Compliance Clerk
Ashley.Underwood@mshc.com; 601.718.4655

Magnolia Robinson
Compliance Clerk
Magnolia.Robinson@mshc.com; 601.718.4632

The Mission of the Mississippi Home Corporation is to offer the opportunity of a safe, decent, and affordable home to every Mississippian.

P O Box 23369

735 Riverside Drive

Jackson, Mississippi 39225-3369

601.718.4642; fax 601.718.4643

www.mshomecorp.com

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GENERAL POLICIES AND PROCEDURES

The Corporation will adhere to the following general policies and procedures (GP&P) when carrying out its compliance monitoring obligations:

1. An applicant should verify prior to submitting an application for tax credits that she/he is in compliance with all programs offered or administered by the Corporation. The Corporation must receive compliance status requests at least 45 working days before a tax credit application cycle. A charge of $55.00 per hour will be assessed to cover the cost of researching and processing an applicant's compliance status request. Requests received after this time may not be processed by the anticipated deadline date. Each request for a compliance status letter should consist of:

    - Written request from the owner and/or approved registered agent;
    - List of developments owned/managed, organized by the development's project identification number, development name, and location;
    - Deadline date or date request is needed;
    - Brief description of the type of information needed (copies of 8823's, general 'good status' letter, full compliance research, etc.)

    In addition, any compliance status request needed for submission to an unrelated third-party source (entity other than the owner) must be requested in writing from the development's owner(s) and/or authorized agent.

2. The Corporation will monitor all HTC developments in accordance with the applicable Qualified Allocation Plan (QAP) and final HTC Application. Any discrepancies and/or problems noted with said documents should be clarified before receipt of IRS form 8609. After issuance of IRS form 8609, the Corporation will monitor for compliance strictly by what is noted therein. To the same, the Corporation will treat each building associated with a HTC development as a single development. Said treatment will continue until such time that an owner makes a formal designation on IRS Form(s) 8609 of how the building(s) will be treated (i.e., multiple building project, etc.). Program compliance with be performed in conjunction with the same.

3. The Corporation will report all instances of noncompliance (corrected or not) identified prior to the Corporation's issuance of IRS form 8609 directly to the IRS's Washington, D.C. office.

4. The Corporation requires household members age 17 and older and emancipated minors to execute all HTC certification documentation. In the event a household member(s) is (are) unable to execute said documents (i.e., physically challenged), an authorized agent (i.e.,

power of attorney) may do so on his/her behalf. Authorization and/or an explanation describing the reason for the absent signature must be included in the resident file. For household members executing eligibility documents with an "X", said execution (signature) must be witnessed by a third party, generally someone other than management and/or owner and of legal age and sound mind.

5. The ORIGINAL HTC tenant file and the ORIGINAL support documentation must be available for review upon request. Failure to provide said documents will result in the issuance of IRS form 8823.

6. The Corporation will issue a preliminary audit review letter, in writing, within 45 days of the date of the initial inspection. Subsequent review notices will be issued within 4-6 weeks of the Corporation's receipt of corrective action documentation provided said documentation is remitted to the Corporation in accordance with GP&P #10.

7. The Corporation, at its discretion, may allow "same day correction of minor discrepancies" at the time of an onsite audit inspection. Corrections made in accordance with the same will NOT be deemed a noncompliance event and therefore no IRS form 8823 will be issued.

8. The Corporation will charge $55.00 per hour and an additional 15 cents per copy to research the compliance status of a development and/or to retrieve and provide copies of agency stored compliance correspondence. All research fees must be received and processed by the Corporation before the requested information will be released.

9. An owner/management agent of a "NEW" tax credit development is required to obtain training on the fundamentals of the HTC program within 45 days of the placed in service (PIS) date of the **first** building to which tax credits is attached. In support of the same, an owner must submit to the Corporation a written request for training in satisfaction of this requirement OR provide documentation evidencing compliance with this requirement (if training is/has been conducted by an approved organization). One representative from each new development will receive a complimentary seat at a HTC Fundamental Training hosted by the Corporation, when applicable.

10. The Corporation will report to the IRS all instances of noncompliance that is corrected within three years of the end of the original noncompliance correction period. The Corporation will not review nor issue a "corrected" 8823 for instances of noncompliance corrected after such time has elapsed.

11. Occupancy (Rent Roll) Reports submitted in satisfaction of the reporting requirement for the Annual Owner Certification or Quarterly Occupancy Reports must be submitted through the Corporation's Application Oriented Design/ Certification Online (COL) system. Owners/managers must request, in writing, access to the COL system 45 days prior to the

date in which the report is due. Requests received less than 45 days prior may not be granted. In this instance, an owner is required to submit the reports manually and pay a manual processing fee of $40 per unit.

12. As the Corporation is aware of overpayment of an invoice, refunds will be processed within 14 days. *NOTE: Before a refund for overpayment will be issued, the Corporation will first apply the overpayment to any outstanding fees associated with the development and/or ownership entity, starting with the oldest fee due.*

13. In order for the Corporation to acknowledge a change in the management agent associated with a HTC development, a written request must be obtained inclusive of the following:

    - MHC's Notice of GP/Management Change form;
    - Copy of new Management Agreement;
    - List of developments owned/managed, organized by the development's project identification number, development name, and location to which the request is applicable;
    - Effective date of the change;
    - Signature and date of the owner and/or approved registered agent authorizing the change

    NOTE: Prior to the issuance of IRS form(s) 8609, requests for a change in management agent must be forwarded to the Allocation Department for approval.

14. The Corporation will attempt to honor all 'Authorization to Release' requests in the manner requested (i.e., copies, original, etc.). An owner requesting copies of compliance correspondence be forwarded to a person(s) other than him/herself must complete the Corporation's *Authorization to Release* form formally authorizing the request.

    NOTE: In the event the Corporation agrees to forward copies of requested correspondence associated with the ownership entity to the authorized party, the owner is responsible for ensuring that all forms and documents related to compliance are submitted to the Corporation as required. The Corporation's acceptance of this authorization shall in no way be viewed as a waiver of an owner's responsibility under the applicable program's rules and regulations.

15. The Corporation will allow no more than one owner contact and one management contact name and address per development. To the same, the Corporation will only forward copies of compliance correspondence to <u>one</u> additional contact person as requested in writing by the owner. If at any time the contact person(s) changes, it is the sole responsibility of the owner to inform the Corporation in writing of such change, including support documentation where applicable.

16. MHC requires the use of a multipurpose fire extinguisher labeled ABC that is rechargeable and approved by an independent testing laboratory such as the Underwriters Laboratory (UL) and provides a tag for all fire extinguishers with the latest inspection date and year. The Class A label is a triangle symbol on the extinguisher. The Class B is a square symbol on the extinguisher. A Class C label is in a circle symbol on the extinguisher.

    A minimum of two (2) hard-wired smoke detectors with battery back-up is required per unit.

INTRODUCTION

Section 42 of the Internal Revenue Code (the 'Code') mandates that housing credit agencies adopt a plan to monitor developments for compliance with the requirements of Section 42 of the Code and the representations set forth in the approved tax credit application.

The Mississippi Home Corporation (the 'Corporation'), in an effort to fulfill its monitoring obligation under the Code, implemented a compliance monitoring program that went into effect on January 1, 1992, as amended herein. Under this program, the Corporation seeks to ensure that an owner of a housing tax credit (HTC) development follow the requirements as set forth in the Code and the applicable Qualified Allocation Plan (QAP). *NOTE: The Corporation reserves the right to retain an agent or other private contractor to perform and/or assist with certain compliance monitoring requirements. In this event, the agent or other private contractor may be delegated the functions of the Corporation to monitor compliance, except for the responsibility of filing IRS Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition.*

This Compliance Monitoring Plan (the 'Plan') is provided by the Corporation for use by owners and managers of developments in the state of Mississippi who has received an allocation of HTC's, to assist them in complying with the monitoring requirements of Section 42 of the Code ***(see Regulation #1***), associated rules and regulations, amendments, modifications as well as the monitoring requirements of the Corporation. Additional actions or documentation concerning occupancy and rent restrictions may be required by the Code, by the Internal Revenue Service (IRS) or by the Corporation in order to satisfy reporting and low-income use requirements.

This Plan is designed to convey Mississippi's interpretation of Section 42 of the Code, associated rules and regulations, amendments and modifications. It is not intended to be a legal interpretation of the Code. Any errors contained herein which directly conflicts with the Code and/or associated guidance will not be supported by the Corporation.

Because laws governing the HTC Program are frequently amended, occasional updates, revisions and/or modifications to this Plan may be necessary. ***Policy and procedures noted in this release of this Plan are effective March 1, 2012, unless noted otherwise herein.***

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CHAPTER 1 – HOUSING CREDIT PROGRAM FUNDAMENTALS

1.1 OVERVIEW

Congress adopted the low-income housing tax credit program as part of the Tax Reform Act of 1986 (Section 42 of the Internal Revenue Code) to encourage the construction and rehabilitation of rental housing for lower income households.

Tax credits offer a direct dollar-for-dollar federal income tax savings and benefit to owners of affordable rental housing developments (including acquisitions, rehabilitations, and new constructions) who are willing to set-aside a minimum portion of the development's units for households earning 60 percent or less of the gross area median income. The amount of the tax credit available to an owner is calculated based on the cost of the development and the number of low-income units. The amount awarded to any given owner cannot exceed the amount needed to make the development financially feasible. The dollar-for-dollar tax benefit of a development may be applied to an owner's tax liability each year for 10 years.

1.2 THE VALUE OF THE HOUSING CREDIT

The value of the housing credit to an owner of a tax credit development is determined by a number of factors, including but not limited to how much cost is involved in the construction of the development, the percentage of units/buildings set-aside for low-income use and an established credit percentage.

The housing tax credit serves as a direct benefit to the owner of the tax credit building/development. Owners who receive an allocation of tax credits often raise capital for their developments by selling 'interest' in the development through a process called syndication to limited partner investors, who are also considered owners of the development from a limited perspective.[1] The developer/owner (i.e., general partner) is the primary player in the day-to-day operation of the development. The tax benefits, including profits and losses, flow to the partners in proportion to their ownership interest in the limited partnership.

[1] *A limited partner investor generally owns 99 to 99.9% of the partnership interest in the development without actually acquiring management control.*

A. Applicable Fraction

The value of the housing credit to a development owner is directly tied to the building's applicable fraction. A building's applicable fraction, or required percentage of qualified units, is generally targeted at the time of an owner's application for tax credits, formally assigned at the time of final credit allocation (the issuance of IRS form *8609 The Low-Income Housing Allocation Certification*) and validated at the close of the first year of the credit period.[2] This validation of the applicable fraction marks the maximum units/percentage set-aside for low-income use for the building and must be acquired and/or maintained each year upon placing a building in service.[3]

The applicable fraction is calculated based on the lesser of the:

1. The number of low-income units (numerator) divided by the actual number of units in the building (denominator); or
2. The total square footage of low-income units (numerator) divided by the total square footage of the building, less any staff units, if applicable.

> *NOTE: When determining which units to include as low-income in the numerator and which to include in the denominator, EMPTY units (i.e., units never qualified) should NOT be included in the numerator; they should only be counted in the denominator. Include in the numerator any units reported as "vacant" at the end of the first year IF these units were occupied for at least 30 days AND were previously occupied by a qualified household.*

B. Eligible Basis

The value of the credit is also determined by the portion of the development's cost attributed to the construction and/or rehabilitation of the development, the eligible basis. For newly constructed developments, the eligible basis is the approved cost of construction at the end of the first year of the tax credit period (this allows developers to include in the eligible basis costs that are incurred after the building placed in service date). The eligible basis of substantially rehabbed developments is the sum of all rehabilitations cost aggregated over 24 months and approved cost of rehabilitation provided the development meet the minimum amount required by regulations. For developments acquired by acquisition, the eligible basis is the cost of acquiring the building/development. In all instances, the cost of land is excluded from the eligible basis.

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[2] *Credit period is the ten-year period in which an owner of a tax credit development is eligible for the dollar-for-dollar tax benefit.*

[3] *Placed in Service date is generally the date the building is first ready for occupancy. It is not the date the unit was first leased to a qualifying resident.*

Commercial Space

The eligible basis of a building(s) cannot include any parts of the development used for commercial purposes. Residential rental property may qualify for the credit even though a portion of the building, in which the residential rental units are located, is used for a commercial use (i.e., commercial office space). No portion of the cost of such nonresidential rental property may be included in eligible basis.

Common Area Space

In accordance with Section 42 of the IRC, a common area space is defined as an area of a development that is used by all owners or tenants. Examples of common areas are the clubhouse, pool, hallways and stairs of an apartment building, the elevators in an office building, as well as an approved employee residential unit provided said unit supports and/or is reserved for the benefit of all low-income rental units.

Residential rental property, for low-income housing credit purposes, includes residential rental units, facilities for use by the tenants, and other facilities reasonably required by the development. Under Treas. Reg. §1.103-8(b)(4), facilities that are functionally related and subordinate to residential rental developments are considered residential rental property. Treas. Reg. §1.103-8(b)(4)(iii) provides that facilities functionally related and subordinate to residential rental developments include facilities for use by the tenants, such as swimming pools and similar recreational facilities, parking areas, and other facilities reasonably required for the development (i.e., resident manager, maintenance personnel, or security officer units).[4]

> Rev. Rul. 92-61 holds that the adjusted basis of a unit occupied by a full-time resident manager is included in the eligible basis of a qualified low-income building under IRC §42(d)(1), but the unit is excluded from the applicable fraction under IRC §42(c)(1)(B) for purposes of determining the building's Qualified Basis. The unit is considered a facility reasonably required for the benefit of the development and the resident manager and/or maintenance personnel are not required to be income qualified. ***(For more information on this topic, refer to Chapter 6.)***

The eligible basis is directly tied to the housing credits that can be claimed by an owner. To this regard, as defined in IRC §42(d)) any change in the eligible basis of any building in the development (determined at the end of the first credit year), must be reported to the Corporation and the IRS, as deemed applicable. *Note: The eligible basis of a development is considered to have changed/reduced when space that originally qualified as residential rental property changes character or space that was originally designated for use by qualified tenants is no longer available to them. Typical noncompliance may involve converting common areas to commercial property, or charging fees for facilities (such as a swimming pool), the cost of which were included in the eligible basis.*

[4] *IRS 8823 Guide, updated October 2009.*

C. Qualified Basis

The qualified basis of a building contributes to the value of the housing credit in that it is used to calculate the amount of the tax credit. The calculation of a development's qualified basis is obtained by multiplying the applicable fraction by the development's eligible basis. Likewise, it represents the number of units occupied by housing credit qualified households on the last day of the taxable year in which the development placed in service or on the last day of the following taxable year.

First Year Credit Percentage

A building's qualified basis is initially established at the end of the first year of the credit period, the year in which the owner first begins to claim the HTC. In order to determine the first year credit percentage (i.e., amount of credits allowed), an owner must use a modified percentage to reflect the average portion of units in the building that were occupied by low-income households. To calculate the modified percentage as of the end of each FULL MONTH of a building's in service year, add each monthly percentage together and divide by 12.

Table 1: Determination of First Year Credit Percentage

Month	Occupied	Total Units	Occupied by Total	Monthly AF
January	**1**	**10**	**1/10**	**10%**
February	**3**	**10**	**3/10**	**30%**
March	**3**	**10**	**3/10**	**30%**
April	**4**	**10**	**4/10**	**40%**
May	**5**	**10**	**5/10**	**50%**
June	**7**	**10**	**7/10**	**70%**
July	**7**	**10**	**7/10**	**70%**
August	**7**	**10**	**7/10**	**70%**
September	**8**	**10**	**8/10**	**80%**
October	**9**	**10**	**9/10**	**90%**
November	**10**	**10**	**10/10**	**100%**
December	**10**	**10**	**10/10**	**100%**
	TOTAL of Monthly Applicable Fraction:			**740**
	TOTAL divided by 12:			**61.67%**

NOTE: The tax credit amount allowed on this building for the first year would be 61.67% based on the lease-up schedule.

1.3 THE CREDIT ALLOCATION

Tax credits are allocated annually to each state by the federal government based on a per capita formula.[5] HTC's are then awarded to developments which best meet the state's housing needs. The criterion for development selection is defined within the State's Qualified Allocation Plan

[5] *The per capita amount is determined by the latest official estimate of the state's population.*

(QAP).[6] Analytical procedures are used to determine the amount of HTC's to be awarded in order to make the development financially feasible.

An allocation of tax credits can occur in one of two ways: annual credit authority allocation or a tax-exempt bond allocation.

A. Annual Credit Authority (ACA) Allocation

Under the QAP, the Corporation allocates tax credits from its per capita annual credit authority (ACA). Each state housing finance agency (HFA) is granted an annual housing credit equivalent of $2.20 per capita, effective 2012, with a minimum allocation of $2.525,000. In any given calendar year, the aggregate tax credit amount available for allocation to qualified affordable housing developments in the state of Mississippi includes the state's ACA, plus any unused credit authority carried forward from the previous year and any credits available from the national pool.[7] This does not include credits that are available outside of the state cap for developments financed with tax-exempt revenue bonds subject to the state private activity bond allocation ceiling.

The allocable credit authority reflects the ceiling amount for assignment to all qualified developments in the state. Only the first year allocation amount is counted against the state's tax credit ceiling, although the owner is entitled to take the same annual credit amount nine additional times (assuming program compliance) during the credit period.

In the state of Mississippi, an owner proposing a HTC development meeting certain selection criteria are generally awarded credits, not to exceed twenty-five (25%) of the total credits reserved, or allocated in any one funding round.

Among the selection criterion that the state of Mississippi uses are:

- Development location
- Housing need characteristics
- Development characteristics
- Sponsor characteristics
- Location (Qualified Census Tract, participant in a concerted revitalization plan)
- Tenant populations with special housing needs
- Development utilization of the public housing waiting list in resident selection

An allocation of HTC's by way of an ACA is generally very competitive and contingent upon strict underwriting guidelines.

[6] *The Qualified Allocation Plan (QAP) outlines specific housing priorities for the state of Mississippi that are appropriate for local conditions.*

[7] *The national pool consist of a collection of unused and returned credits from each state's ACA that the IRS makes available to state housing credit agencies for additional credit allocation/authority, as applicable.*

B. Tax-Exempt Bond Allocation

Tax credits are also available non-competitively by way of a tax-exempt bond allocation.[8] Although a development financed with private activity tax-exempt bonds does not receive an allocation from the state's ACA, the development must be consistent with the Corporation's QAP plus other limitations for tax-exempt financing. Tax credits obtained through the use of tax-exempt bonds are not counted against the per capita state limit.

The Corporation monitors developments that received an allocation of credits by way of a tax-exempt bond allocation in accordance with the same procedures for ACA allocations.

1.4 BASIC PROGRAM REQUIREMENTS

Once an allocation of housing credits has been made, recipients of the credit (i.e., owners) must adhere to four basic program requirements: low-income occupancy, restricted rents, minimum compliance period and resale restrictions.

A. Low-Income Occupancy

As a condition to the housing credit, an owner of a tax credit development must agree to make a portion, a minimum set-aside, of units in the development available for occupancy by low-income families with incomes at or below 60% of the area median gross income (AMGI). This portion of units, which is generally selected by the owner at the time of application and as shown on IRS form 8609 *The Low-Income Housing Tax Credit Allocation Certification*, establishes the minimum low-income occupancy required by the development throughout the compliance and extended use periods.

B. Restricted Rents

In addition to the income restrictions mandated by the HTC program, an owner must agree to keep the rents of tax credit units affordable to low-to-moderate income households. The maximum rent allowable under the HTC program is established based on the area median income, the development's minimum set-aside, an allowance for tenant-paid utilities and any mandatory charges.

C. Compliance Period

Once an allocation of tax credits has been made and the development has been placed in service (PIS), an owner must comply with the program's minimum 15-year affordability period. Additionally, an owner receiving an allocation of credits in 1990 or a subsequent year must

[8] *A tax-exempt bond allocation is an allocation of credits to a development whereby more than 50% of the development's eligible basis is financed with private activity tax-exempt bonds.*

execute an extended use agreement for the development that establishes, at a minimum, an additional 15 year affordability period.[9]

D. Resale Requirements

According to IRS regulations, an owner of a tax credit development desiring to sell his/her development may do so provided she/he sale the development to a buyer that agrees to maintain the low-income occupancy requirement of the development.

1.5 THE PRINCIPAL PLAYERS & RESPONSIBILITIES

A. Owners and Managers

Owners and managers of tax credit developments are required to comply with the following requirements:

- Occupancy and rent restrictions
- Annual Reporting Obligations
- Provide safe, decent and affordable housing
- Pay monitoring & noncompliance fees, where applicable
- Keep abreast of program changes and revenue rulings
- Submit corrective action documentation in the event of noncompliance
- Comply with agency request for monitoring reviews

B. Residents

Occupants of a tax credit unit are responsible for providing information and documentation needed regarding the household's eligibility (i.e., income, assets, and full-time student status). Residents are expected to update household eligibility information at least once annually unless the development qualifies for an IRS Recertification Waiver.[10]

C. The Corporation

The Corporation is responsible for enforcing the rules and regulations of the HTC program by:

- Providing guidance and assistance to owners and managers on program requirements
- Monitoring developments for program compliance
- Reporting all applicable compliance violations to the IRS
- Collecting fees, where applicable

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[9] *The low-income use affordability period of development's allocated credits post 1989 is generally 30 years. Affordable housing provided beyond this requirement is elected by the owner of the development by way of the development's Land Use Restriction Agreement (LURA). Thus, the actual period in which a development is required to provide affordable housing differs, per development, based on the owner's election and obligation to the HFA.*

[10] *See the Housing Economic and Recovery Act of 2008.*

D. The Internal Revenue Service

The Internal Revenue Service (IRS) performs the following activities:

- Provides the Corporation with guidance of tax credit requirements
- Process owner's tax returns and accompanying documentation claiming tax credits for the development; and
- Recapture the tax credits from owners who do not properly adhere to the requirements of the program.

1.6 KEY PROGRAM DOCUMENTS

A. Section 42 of the IRC, IRS Revenue Notices and Rulings & Procedures

Periodically, the IRS publishes notices and revenue rulings that specify additional requirements under the HTC program. Owners should familiarize themselves with all notices and rulings that relate to the operation of a HTC development.

B. Land Use Restriction Agreement

All participants in the HTC program receiving an allocation of credits post 1989 are required to execute an extended use agreement, a deed restriction, extending the affordability period of the development for an additional 15 years beyond the initial compliance period. In signing the LURA, the owner agrees to the restrictions on the use of the development as set forth in the restrictive covenants.

C. State of Mississippi Qualified Allocation Plan

The state of Mississippi's Qualified Allocation Plan (QAP) specifies how the Corporation will allocate tax credits for any given year based on governing rules and regulations, as well as any housing preferences and priorities. The QAP outlines the state's selection criteria and any other program requirements.

D. State of Mississippi Compliance Monitoring Plan

The Compliance Monitoring Plan was designed to help owners of tax credit developments in the state of Mississippi meet their obligations that are outlined in the provisions of Section 42 of the IRC and of their respective LURAs. The Plan focuses on the responsibilities of owners once they are required to begin leasing tax credit units to low-income families.

CHAPTER 2 - FEDERAL COMPLIANCE REQUIREMENTS

2.1 OVERVIEW

Federally, in order for an owner to acquire and maintain his/her credit claiming rights, she/he must adhere to a number of program requirements, including low-income occupancy, restricted rents, and the eligibility criterion permitting the occupancy of a full-time student household. Additionally, an owner receiving an award of HTCs must adhere to all applicable IRS notices and rulings, as well as provisions of the development's extended use agreement.

2.2 LOW-INCOME OCCUPANCY

As a condition to the HTC award, an owner of a tax credit development must agree to make a portion, a minimum set-aside, of the units in the development available for occupancy by low-income families. This portion of units establishes the minimum low-income occupancy required of the development throughout the compliance and extended use periods. Once the minimum set-aside (MSA) election is made, the decision is irrevocable.

A. Minimum Low-Income Occupancy Set-Aside

The most fundamental requirement of the HTC program is that pertaining to the MSA. The MSA represents the smallest percentage of restricted units required of a development at all times in order for an owner to claim and continue to claim the housing tax credit. As a participant in the HTC program, an owner must choose from one of the following federal MSA elections:

1. **20/50 Set-Aside** – An owner's election of a 20/50 set-aside indicates that she/he agrees to ensure that a minimum of 20 percent or more of the residential units in the building are both rent restricted and occupied by individuals whose gross household income is 50 percent or less of the area median gross income adjusted for family size;

2. **40/60 Set-Aside** - An owner's election of a 40/60 set-aside indicates that she/he agrees to ensure that a minimum of 40 percent or more of the residential units in the building are both rent restricted and occupied by individuals whose gross household income is 60 percent or less of the area median gross income adjusted for family size; or

3. **25/60 Set-Aside** - An owner's election of a 25/60 set-aside indicates that she/he agrees to ensure that a minimum of 25 percent or more of the residential units in the building are both rent restricted and occupied by individuals whose gross household income is 60 percent or less of the area median gross income adjusted for family size.[11]

In addition to the noted, an owner, at his/her sole discretion, may elect to serve extremely low-income households by agreeing to reserve 15% of the low-income units in the development to households earning 40% or less of the AMGI.[12]

Once an owner reaches and maintains the required minimum set-aside,[13] she/he is eligible to claim the tax credit amount throughout the development's credit period.

Deep Rent Skewing Set-Aside

Under IRC §142(d)(4)(B)10, an owner can elect to provide housing to households with incomes of 40% or less of the AMGI, referred to as a deep rent skewed development. With this election, an owner is required to restrict occupancy of 15 percent or more of the low-income units in the development to households whose income is 40 percent or less of the AMGI. This special set aside is an elective and must be met in addition to the federal MSA (i.e. 20/50, 40/60 and 25/60) requirement. ***(See Chapter 6 of this Plan for more on this topic.)***

NOTE: Each building is considered a separate development under IRC §42(g)(3)(D) unless, before the close of the first calendar year in the development period, each building part of a multiple-building development is/was identified as such by checking the "yes" box on line 8b of Form 8609 and attaching the statement described in the instructions for line 8b. The MSA documented on Form 8609, line 10c, must be the same for all buildings in a multiple-building development.

B. Additional Low-Income Occupancy Requirements

In addition to the federal minimum set-aside election required for participation in the HTC program, an owner of a tax credit development (at his/her sole discretion) may elect to provide additional units for occupancy by low-to-moderate income households. This election, which is noted at the time of the final tax credit application, determines the amount of tax credits for which a development may qualify. An owner has the right to claim tax credits up to the amount allocated by the State Allocating Agency provided she/he has set-aside the additional units for low-income households and the extended use agreement[14] reflects the increased occupancy

[11] *The 25/60 minimum set-aside election is only available to owners with developments located in New York City.*
[12] *See Section 142(d)(4)(B)*
[13] *If a development fails the first year minimum set-aside requirement at the close of the first taxable year of the credit period, the development is permanently ineligible for the tax credit and prohibited from ever claiming the HTC.*
[14] *The extended use period represents the additional years beyond the initial 15 compliance period of which a development is required to operate and provide affordable housing to low-to-moderate income families.*

percentage (i.e., applicable fraction). NOTE: An owner's election to provide additional low-income occupancy is not a federal requirement; however, if an owner makes this election, she/he must adhere to the requirements in order to claim the maximum amount of credits permissible under the allocation and to avoid state noncompliance.

Below-Market HOME Loans and NAHASDA

HTC development's with buildings placed in service prior to July 31, 2008 and participating in HUD's HOME Investment Partnership program or the Native American Housing Assistance and Self-Determination Act, NAHASDA, are required to lease 40% of the units in the building/development to households with incomes at or below 50% of AMGI. In support of the same, the Corporation will monitor HTC buildings/developments meeting the above requirements to ensure compliance with the 40/50 HOME occupancy requirement, as well as the federal HTC MSA requirement and additional state occupancy requirements.

NOTE (1): The HOME occupancy requirement is treated as a separate set-aside from the HTC. Thus, failure to comply with this occupancy provision may result in a reduction of the applicable credit percentage for the development. The development may still qualify as a HTC development.

NOTE (2): For buildings placed in service after July 30, 2008, assistance under HOME and NAHASDA are not characterized as below market Federal loans and thus not subject to the 40/50 occupancy requirement for tax credit purposes.[15]

2.3 RESTRICTED UNIT RENTS

According to IRC 42(g)(2)(C), a unit qualifies as tax credit eligible when the gross rent does not exceed 30 percent of the imputed income limitation applicable to such unit. Generally, the rent limit for a particular unit is determined by the number of bedrooms in the unit and the applicable income limit for the development as it relates to an owner's MSA election.

The other factors that may affect the maximum rent of a qualifying household includes tenant-paid utilities, mandatory charges, state specific requirements such as owner-based rental assistance and the deep rent skew restriction, if applicable.

2.4 SUITABLE FOR LOW-INCOME OCCUPANCY

For purposes of computing the MSA, all low-income units must be physically maintained in a manner suitable for occupancy under IRC 42(I)(3)(b)(ii). In ensuring compliance with the development's physical condition standards, all low-income units must be deemed safe, decent and in good repair. ***(See Chapter 7 of this Plan for a complete discussion of the physical inspections procedures and requirements.)***

[15] *Section 3002(b) of the Housing Assistance Tax Act of 2008*

2.5 EXTENDED LOW-INCOME HOUSING COMMITMENT

Section 42 of the IRC provides that no credit will be allowed with respect to any building for the taxable year unless an extended low-income housing commitment (as defined in Section 42(h)(6)(B)) is in effect as of the end of the taxable year.[16] Additionally, Section 42 provides that the term "extended low-income housing commitment" mean any agreement between the owner and the housing credit agency that requires that the applicable fraction for the building for each taxable year in the extended use period to not be less than the applicable fraction specified in the agreement. Section 42 prohibits certain other actions as described in sub-clauses (1) and (II) of Section 42(h)(6)(E)(ii).

2.6 SPECIAL OCCUPANCY RESTRICTIONS

In addition to the above noted basic program requirements, HTC development owners must adhere to various other special occupancy restrictions as it relates to the operation of the development. These restrictions are:

A. Full-Time Student Household

A household comprised entirely of full-time students generally disqualifies the unit for tax credit purposes. A full-time student is defined by the Code as an individual who during each of five (5) calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an education organization.[17] Regulation further provides that the five calendar months need not be consecutive. The term "educational organization" includes elementary schools K-12, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. It does not include on job training. The only noted exemptions to this rule are students in pre-school and correspondence school.

A full-time student household can occupy a tax credit unit if the household meets and maintain compliance with at least one of the following IRS full-time student exceptions:

- The tenant(s) is(are) married and file (or entitled to file) a joint federal tax return;
- The tenant(s) are receiving Title IV of the Social Security Act – Temporary Assistance for Needy Families (TANF);
- The household consist of a single-parent(s) with children of which the single parent is not a dependent of an outside third-party; yet the children are a dependent of at least one of the parents, either the mother or the father, whether or not the absent parent will reside in the unit;

[16] *Section 42(h)(6)(A) and Section 42(h)(6)(B)(i)*

[17] *An education organization is one which normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried out. Five calendar months need not be consecutive.*

- All adult tenants are enrolled in a job training program under the Job Training Partnership Act (JTPA) or a similar federal, state, or local program; or
- The tenant(s) was previously under the care and placement of the state agency responsible for administering a plan under Part B or E of Title IV (*i.e., a former foster care participant.)*[18] *NOTE: Previous care must have been within the twelve-year period immediately preceding the effective date of the full-time student eligibility determination for the HTC program.*

Note: Certain full-time student requirements no longer apply commencing the first year of the development's extended use period. For more information on this topic, refer to Chapter 8.4.

B. Staff Units

Tax credit regulations allow certain units in a building awarded tax credits to be designated as a common area unit, a residential staff unit. A residential staff unit(s) designation is a unit that has been set-aside, usually in the development's final tax credit application, for occupancy by a full-time resident manager, maintenance person, and/or security officer and considered available for the general public. [19] To the same, a c*ommon area unit is a unit used for residential purposes, and does not include any unit(s) or space used as an office, storage, model apartment or any other non-residential purpose and is considered functionally necessary to the development.*

Common Area Staff Unit

In accordance with Revenue Ruling 92-61 and Revenue Ruling 2004-82, the guiding rules regarding employee units, a residential staff unit is considered a facility reasonably required **for the benefit of the development**. T he adjusted basis of a unit occupied by a full-time resident staff is included in the eligible basis of a qualified low-income building under Section 42(d)(1), but the unit is excluded from the applicable fraction under Section 42(c)(1)(B) for purposes of determining the building's qualified basis.

A staff member residing in a residential unit that was identified as a common area staff unit in the development's final tax credit application (or subsequently approved by the Corporation as a common area staff unit) is not required to meet tax credit eligibility requirements in order for the unit to be eligible under the HTC program. However, to ensure compliance with the HTC requirements, a staff member(s) occupying a common area staff unit must at the time of hire, status change or duty reassignment complete a *Common Area Staff Unit Status Affidavit to be* maintained in the development file(s) and made available to the Corporation for review upon request.

[18] *Foster care means substitute care for children placed away from parents or guardians and for whom the state agency has placement and care responsibility, including placement in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care facilities, etc.*

[19] *Full-time is defined as whatever is reasonably required at a particular development. It does not necessarily represent the number of hours worked onsite. Persons who are employed less than FT and persons who are employed at multiple projects at the development are not eligible to reside in a "common area" staff unit.*

Non-Common Area Staff Unit

A staff member residing in a residential rental unit that was not identified as a common area staff unit in the development's final tax credit application must meet all tax credit eligibility requirements in order for the unit to be eligible under the HTC program.

Procedures for Agency Approval of Common Area Staff Unit

Under special circumstances, a residential rental unit may be converted to a common area staff unit after submission of the final tax credit application. In this instance, the development owner must submit to the Corporation for approval a *Staff Unit Request* form (and support documentation) outlining the reason for a common area staff unit. The Corporation will review the unit(s) configuration and determine whether or not approval can be granted.

Requests to change the designation may be made at any time during the year, however, only one change in the common unit(s) designation will be considered during any six (6) month period for any one development. ***(For more information on this topic refer to Chapter 5.4(C)(3) of this Plan.)***

NOTE: If an owner opts to designate a common area unit as a low-income residential rental unit, a non-refundable processing fee of $500.00 per request will be assessed. Later conversion of a common area staff unit into a residential rental unit will not change the eligible basis.

C. Housing for the Elderly

Tax credit regulations also allow for housing specifically designated for elderly residents, individuals 55 years of age and older.[20] In order for a development to qualify as a housing community designed especially for the elderly, the development must adhere to the following:

- 100% of the units are reserved and/or occupied by elderly residents age 55 or older or by persons meeting Rural Housing Service (RHS) or the Department of Housing and Urban Development's (HUDs) definition of elderly;[21]
- Develop policies and procedures which demonstrate intent to provide housing to the fifty-five (55) or older age group, or for persons meeting the RHS or HUD definition of elderly;
- Significant facilities and services specifically designated to meet the physical or social needs of older persons or for persons meeting RHS or HUD definition of elderly. ***(Refer to Section 3.3B of this Plan for more on this topic.)***

[20] *The Fair Housing Act exempts certain types of elderly housing developments from the law of discrimination against families with children. Housing designated specifically for the elderly is considered one of the exemptions.*

[21] *RHS and HUD's definition of elderly is where the tenant or co-tenant is 62 years of age or older or handicapped/disabled so long as they are members of the elderly household.*

D. Transitional Housing for the Elderly (Assisted Living Facilities)

Assisted living facilities, facilities designated to help individuals who are unable to live safely on their own, are also eligible for a housing tax credit allocation.[22] These facilities are designed to provide assistance with daily living such a bathing, dressing, laundry, housekeeping, meals, and assistance with medication. They are not to be used as an alternative to skilled nursing facilities (i.e., hospitals, nursing homes, sanitariums, life care facilities, intermediate care facilities, etc.) but rather to provide a level of long-term care suitable for many seniors and people with disabilities.

Section 42 of the IRC allows tax credits on assisted living facilities if the facility is a residential rental property available to the general public.[23] Likewise, an assisted living facility may qualify for tax credits if non-housing related services are offered to residents AND the amount of skilled nursing, medical or psychiatric care is limited.

E. Small Owner-Occupied Buildings

An existing building with four rental units or less and with one additional unit occupied by the owner or a related person can qualify for tax credits if the building is rehabilitated under a development plan sponsored by a qualified nonprofit organization or by a state or local government agency. In this instance, more than 80 percent of the building can be eligible for tax credits.

F. The Next Available Unit Rule

In accordance with Section 42(g)(2)(D)(i), all households determined to be income eligible at move-in shall continue to be considered income eligible at recertification in the event the gross household income exceeds program limits. In exchange for this protection, the IRS requires an owner of a tax credit development to lease the next available unit of smaller or comparable size to an income eligible household when a previously qualified household's income exceeds current program limits by 140%. ***(For more information on this topic, refer to Section 4.3B of this Plan.)***

G. The Unit Vacancy Rule

According to Section 1.42-5 of Title 26 CFR Treasury Department Regulation, "if a low-income unit in the development became vacant during the year, reasonable attempts must be made to re-rent the unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any unit in the development were or will be rented to tenants not having a qualifying income." In complying with this rule, an owner must, upon the vacancy of a low-income household, rent the vacated low-income unit or any other unit of "comparable or smaller size" that may come available to an income- qualified household.

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[22] *IRC Reg. Ruling 98-47 Tax-exempt Ruling on Assisted Living*

[23] *A building unit or development is considered available for general public use when the development is available for occupancy by the general public in conformance with Treasury Regulation 1.42-9.*

2.7 PROGRAM PROHIBITIONS

Under the HTC program, certain key occupancy prohibitions occur as it relates to potential and existing residents. In order for an owner to maintain his/her credit claiming abilities, it is essential that she/he adhere to the following prohibitions:

A. Discrimination against Section 8 Households

Effective August 10, 1993, by way of the Omnibus Budget Reconciliation Act, Congress prohibits an owner of a housing tax credit development from refusing to lease a unit in the development to an applicant solely because the applicant holds a voucher or certificate issued under Section 8 of the United States Housing Act of 1937.[24] In support of the same, an owner must execute a LURA inclusive of this prohibition. ***(For more information on this topic, refer to Chapter 5 of this Plan.)***

B. Unlawful Evictions

Pursuant to Revenue Ruling 2004-82 ***(See Regulation #2),*** during the compliance and extended use periods, an owner may only evict residents occupying qualifying tax credit units for good cause. Generally, good cause means the serious or repeated violation of material terms of the lease with respect to federal public housing at 24 CFR Section 966.4(1)(2) or the failure or refusal of a household to vacate the premises when there is a defective condition or damage that is so substantial that it is economically infeasible to remedy the defect with the household in possession.

Non-renewal of a lease by the owner without good cause is also prohibited. All termination and non-renewal notices served upon residents must include a list of the specific violations(s) constituting "good cause" so as to allow the Corporation to monitor an owner's compliance with this requirement.

C. General Public Use

A HTC residential rental unit must be made available to the general public at all times. A residential unit is considered for use by the general public if the unit is rented in a manner consistent with housing policy governing discrimination and the requirements of Treasury Regulation 1.42-9. The general public use rules are violated any time the general public is denied access to a HTC building/development. If a unit is deemed not available to the general public, the unit is not considered a qualified low-income unit and is thus not eligible for the HTC.

[24] *See Section 42(h)(6)(B)(iv) of the IRC.*

Additionally, in order for a unit to be considered available to the general public, reasonable attempts[25] must be made to rent vacant units.

D. Short-Term Occupancy

HTC units must be rented or made available for rent on a non-transient basis. Generally, a unit is considered occupied on a non-transient basis if the initial lease term under the HTC program is for six (6) months or longer. The only exception to this rule is for Single-Room Occupancy (SRO) units that may be rented on a month-to-month basis.[26] A lease can be renewed on a month-to-month basis, but only after an initial lease term of a full six (6) months has expired.

E. Certain Mandatory Charges

According the IRS, a tax credit unit is considered residential rental property notwithstanding the fact that certain services (other than housing) are provided. The IRS cautions, however, that any charged to a low-income household for services that are not optional generally must be included in the gross rent calculation of the household.[27]

NOTE: If tenant facilities (e.g., parking, garages, swimming pools, etc.) were included in the eligible basis, they must be made available to all tenants on a comparable basis and a separate fee must not be charged for use.

2.8 ADMINISTRATIVE & REPORTING REQUIREMENTS

In exchange for the dollar-for-dollar HTC, an owner, throughout the development's compliance and extended use periods, is required to adhere to certain administrative and reporting requirements. An owner's adherence to these requirements affords the IRS the ability to track an owner's compliance with program rules and regulations.

A. Owner Reporting

In accordance with Section 1.42-5(c)(1), an owner must annually certify to the Corporation as to his/her continuing compliance with all program requirements. At minimum, an owner's certification is to include an update on the following:

[25] *A reasonable attempt is defined as "such measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent person under the particular circumstances; not measured by any absolute standard, but depending upon the relative facts of the special case." Black's Law Dictionary*

[26] *A single room occupancy unit is a unit with separate living areas and shared bathroom or cooking facilities or contains one facility but not both and generally provided as transitional housing for the homeless as allowed under Section 42(i)(3)(B)(iii) and (iv) of the IRC.*

[27] *A service is considered OPTIONAL when the service is not a condition of occupancy and there is a reasonable alternative. See IRS 8823 Guide and Treasury Regulation 1.42-11.*

- The elected minimum set-aside requirement;
- A household eligibility requirement;
- Rent restrictions;
- General public use provision and tenancy;
- Vacant unit and next available unit provisions;
- Next available unit rule, if applicable;
- Program prohibitions;
- Special occupancy provisions;
- State and local building code inspection requirements; and
- Non-discriminatory practices

B. Administrative Monitoring Reviews

State HFA's are responsible for monitoring HTC development's for compliance with requirements of the Code. In doing so, the Corporation periodically performs certain administrative monitoring reviews (i.e., desk audits, onsite file audits, physical condition inspections, etc.). At minimum, these reviews will include an inspection of at least 20 percent of the low-income units and of the income certifications and documentation at least once every three years.

Additionally, in conjunction with the agency monitoring oversight, the code allows state housing finance agencies (HFAs) to collect monitoring fees to be paid upfront or on an annual basis, as determined by the governing HFA to help cover the cost of monitoring.

C. Record-Keeping

A HTC owner must maintain all development records documenting compliance with program requirements. At a minimum, eligibility documentation must be maintained throughout the compliance period as well as six years after the tax filing dates for the last year of the compliance period (21 years).[28]

It is recommended that an owner establish a long-term method of retaining critical program initial eligibility documentation. Long-term retention of development records may be stored in a method other than paper format (i.e., scanned, microfilm, etc.). The IRS cautions, however, that the files be saved in a method easily retrievable in the future if ever needed.

[28] *First year records are critically important as they prove an owner's compliance with the development's initial MSA requirements (i.e., the development's first year eligible basis, qualified basis and applicable fractions).*

CHAPTER 3 - STATE COMPLIANCE REQUIREMENTS

3.1 OVERVIEW

State housing credit agencies are charged with the responsibility of monitoring for compliance the rules and regulations of the HTC program. With this responsibility, state credit agencies must ensure all applicable rules and regulations are carried out in accordance with federal guidelines and/or governing documents. Additionally, state monitoring agencies may adopt requirements that address certain state housing needs and priorities. These requirements are outlined in this chapter in accordance with the state's Qualified Allocation Plan (QAP).[29]

3.2 STATE MANDATED COMPLIANCE REQUIREMENTS

In the state of Mississippi, some requirements of the HTC program are mandated of all program participants. These state-mandated requirements generally deal with preserving the long-term affordability, the health and safety, and the financial health of the development.

A. Extended Affordability Period

An extended affordability period of at least 15 years is required of all developments awarded an allocation of credits post 1989. This extended affordability period, which commences after a development's initial 15-year compliance period and as mandated by way of Section 42, serves as an owner's commitment to maintain affordable housing for a specified period of years. Such a commitment also prohibits an owner from terminating the extended affordability period.

Generally, an owner determines the extended affordability period of his/her tax credit development in the final tax credit application and documents it in the development's Land Use Restriction Agreement (LURA).

B. Reserve Requirements

Additionally, upon the issuance of a tax credit allocation, the Corporation requires an owner to establish certain reserve accounts (i.e., replacement and operating) to which periodic contributions are required. At the end of the first year of the credit period, and on an annual

[29] *The QAP, or Qualified Allocation Plan, details the selection criteria and application requirements for housing tax credits and tax-exempt bonds for a particular state. It lists all deadlines, application fees, restrictions, standards, and requirements.*

basis thereafter, an owner must show evidence that an operating reserve account and a replacement reserve account have been established and maintained (i.e., funded) in accordance with the minimum (per unit) contribution requirement as outlined in the governing QAP for the development. An owner's failure to properly fund the reserve account(s) is considered a major state noncompliance event.

Replacement Reserves

Replacement reserves are monetary contributions used for capital improvements and system replacements. The cost of these capital improvements and system replacements should exceed $5,000 for developments with 24 units or less and exceed $10,000 for developments above 24 units. Replacement reserve requirements increase at a rate of four percent (4%) per year.[30] Usage of replacement reserves for expenditures other than capital improvements and/or system replacements is strongly prohibited. Generally, funding of the replacement reserve account commences on the date a building/development places in service (PIS); however, depending on when the permanent financing closed on the development, this date may differ.

Operating Reserves

Operating Reserves are funds set aside, generally on an annual basis, to be used to offset possible operating losses due to unexpectedly low rent collection or unusually high operating and maintenance costs. Operating reserves must be six months of the development's operating expenses. Calculation of operating reserves includes replacement reserves.

**Both the Replacement and Operating reserve accounts must be maintained in a FDIC-insured financial institution.*

C. American Recovery and Reinvestment Act Compliance

On February 17, 2009, the American Recovery and Reinvestment Act (ARRA) became law. This economic and stimulus plan was created to help address the declining tax credit equity in the marketplace. In its final version, ARRA included several appropriations for the HTC program. The new law provides gap funding to help stalled housing tax credit projects (Tax Credit Assistance Program) and allows allocating agencies to exchange a portion of its ACA for credit exchange grants (Section 1602 Exchange Program).

An owner of a HTC development receiving a cash grant or loan under the Section 1602 tax credit exchange program, or the Tax Credit Assistance Program (TCAP) must still meet the eligibility and compliance requirements (i.e., compliance with health and safety standards, income and rent restrictions, full-time student qualifications, etc.) of the HTC program at a minimum of 15 years. An owner's failure to adhere to program requirements constitutes a major noncompliance event subject to recapture, penalties and interest or, in the case of the Section 1602 Exchange Program, recapture, penalties, and interest in the full amount of the 1602 award

[30] *For the 1999 allocations, the replacement reserves are to increase at a rate of three (3%) per year.*

minus 6.67 percent of each full year of the building's 15-year compliance period where a Section 1602 recapture event has not occurred.

TCAP

The Corporation has been charged with ensuring that developments that have received funds from the TCAP Program (a federal housing grant program administered by the Department of Housing and Urban Development) are in compliance with not only Section 42 rules but Recovery Act guidelines. To the same, below is a list of additional compliance monitoring requirements covered by the Recovery Act:

1. Developments are required to have a current marketing plan and Leasing Procedure Manual to ensure that the development is marketed accordingly and to ensure that any vacancies will be filled with no delays.

2. Documentation evidencing that a preventative maintenance plan or system is in place and utilized, including annually providing information on a yearly basis to ensure that the development has energy efficiency and utility cost controls in place.

3. Inspection report(s) to be maintained on file to ensure compliance with local housing code and any and all other related codes in place.

4. Copies of any audit reports performed by any third party sources. Said reports should be submitted to the Corporation within 14-days of receipt.

5. The Corporation is required annually to conduct a visual inspection in addition to the 3 year on-site inspection it conducts to fulfill requirements of Section 42 of the Internal Revenue Code.

   The visual inspection will address these major areas: the site, building exterior, the building systems, the dwelling units, if necessary, the common areas, and health and safety considerations.

NOTE: Because of the unique nature of some of the provisions that cross agencies lines (HUD and Treasury), further guidance may be forthcoming on how tax credit developments that receive funding under these programs will be monitored. The Corporation reserves the right to modify this provision of the Plan as any new compliance monitoring requirements arises associated with the same.

3.3 OWNER- ELECTED OBLIGATIONS

For many developments, the owner has further elected to provide certain other housing enhancements (i.e., deeper income targeting, non-profit participation, renting to residents included on public waiting lists, or provide owner rental subsidy, etc.). These housing

enhancements, which generally come by way of state identified selection criteria,[31] must be maintained and well documented in the corresponding development files in accordance with the applicable QAP. The selection criteria associated with a development is based on the year of the QAP and the development's final HTC Application.

A. Additional Occupancy Restrictions

Although Section 42 requires an owner to elect a minimum occupancy percentage of which affordable rental units will be provided, an owner may also make a commitment to target more households than required or households at lower income levels than required by federal regulations.

1. Additional Low-Income Occupancy

   An owner of a HTC development may also make a commitment to serve more families than required by the IRS. Generally, this higher than required occupancy percentage occurs because of the difficulty found in most markets of mixing affordable income and market rate tenants. Another reason is the increase in the percentage of tax credits eligible to be utilized. The percentage of affordable units to total number of units is equal to the percentage of tax credits available for use in that period.

   Once an owner elects to serve more families than generally required, this election becomes the targeted low-income occupancy for the development throughout the compliance period. Compliance monitoring is conducted in accordance with the same.

2. Deeper Income Targeting

   An owner may also elect to serve households with gross annual incomes that are more restrictive. This restriction, commonly referred to by the Corporation as 'deeper targeting,' may apply to all or part of the affordable housing units.

   Deeper income targeted units, which serve a certain percentage of families at 50% or less of the AMGI, are considered 'floating' units whereby an owner is allowed to lease any HTC unit to a household meeting the deeper income targeting requirements.[32]

   Due to an owner's obligation to the Corporation to serve a certain number of very low-income families, regular monitoring of a household's gross annual income is essential. As such, the gross annual income of a household designated as meeting the 'deeper income targeting' requirement must always comply with the 50% of AMGI occupancy restriction, with an allowance for a slight income increase of up to 60% of the AMGI before replacement

[31] *Selection criterion identifies state specific housing needs and priorities.*

[32] *At the time of allocation, an owner is required to provide a list of fixed units anticipated to be reserved for households meeting the deeper income targeting requirements. This requirement was only to evidence to the Corporation's Allocation Division an owner's acknowledgement of his/her requirement. An owner is not required to fix deeper income targeted units.*

of the unit is required. Additionally, the rent of a deeper income targeted household must always be restricted to 50% of AMGI.

Generally, deeper income targeted occupancy requirements are outlined in a development's LURA. ***(For more information on this topic, refer to Chapter 4.3(B)(1) of this Plan.)***

3. Mixed- Income Developments

An owner may elect to serve households with gross annual incomes that are less restrictive. An owner may select to set aside a minimum percentage of its units for tenants with incomes above 60% of the AMGI. A development with such an election is commonly referred to by the Corporation as a "mixed- income development". Below is a list of record-keeping requirements specific to this election:

1. Depending on the applicable QAP for the development, the development may not have imposed income maximum limits; however, the election does create an income minimum for households designated above 60% of AMGI. As a result, designated households will need to have income certification and support documentation (i.e. income verification) maintained in tenant files.

2. As rents for the household is tied to the appropriate income maximum limit, if applicable, utility allowance should be utilized in determining the appropriate rents for the units.

3. As this election is a state-specific restriction on the income and rents rather than federally regulated low-income units, certain requirements tied to low-income units such as recertification and student status do not apply to households designated in this election.

B. Housing for the Elderly

An owner of a tax credit development may develop an affordable housing community specifically for the elderly. In doing so, the development must qualify as one of two elderly housing types: 55 and Older Elderly Housing or 62 and Older Elderly Housing.

55 and Older Elderly Housing

A 55 and older elderly tax credit housing community is one in which at least 80 percent of the units in the development are occupied by households whereby one resident is at least 55 years of age or older. NOTE: Developments awarded tax credits under the point selection criterion for elderly housing must have at least one resident 55 years of age or older in 100% of the low-income units.

62 and Older Elderly Housing

A 62 and older elderly tax credit housing community is one in which all units in the development are occupied by households whereby all residents are at least 62 years of age or older.

Services/Facilities for the Elderly

In addition to age requirement, multifamily developments that set-aside 100% of its units for the elderly population must also provide at least six (6) of the nine (9) services or facilities listed below:

- Congregate dining facilities
- Social and recreational programs
- Emergency or preventative health care programs
- Information and counseling
- Recreational activities
- Homemaker services
- Outside maintenance and referral services
- Transportation to facilitate access to social services
- An accessible physical environment

C. Assisted Living Facilities

In the state of Mississippi, in order to qualify as a tax credit eligible assisted living development, the development must adhere/provide/offer the following:

- Non-transient housing;
- Restricted income and rent;
- Basic Service Package which is typically offered for a fixed monthly fee;
- Optional Service Package[33] whereby the resident(s) is (are) allowed to choose to receive certain services (i.e., assistance with bathing, dressing, grooming, ambulation, eating, laundry, housekeeping, physical therapy, visiting the barber or stylist, shopping, and self-administered medication (including opening packaging, reading labels and checking dosages));
- Tenant selection process/criteria that ensure that residents are healthy enough to live independently; yet, requires minimal assistance with activities of daily living, nursing, medical or psychiatric services; *and*
- Individual sleeping quarter(s)/unit(s) that have a lockable door that is (are) separate and distinct from the other units in the unit/facility.

D. Extended Affordability Period

At an owner's election, the development may be subject to an additional low-income occupancy affordability period beyond the 30-year requirement of the IRS (i.e., a 15-year compliance period and a minimum 15-year extended use period). In such a case, an owner is expected to comply with all rules and regulations outlined in the development's LURA, final tax credit application and CMP for the entire affordability period. The actual term of the extended affordability period may vary from owner to owner.

[33] *For a service to be considered optional, a resident(s) must be allowed to take occupancy under the Basic Care Package ONLY whereby rejecting the Optional Service Package. A resident can be required to prove OPTIONAL services being provided by an alternative service provider.*

E. Tenant Community Services & Significant Amenities

Prior to 2011, a development owner may elect to offer/provide its residents community services and amenities not often seen in low-to-moderate income housing communities. [34]

1. Community Services

An owner electing to provide tenant community services to low-to-moderate income families must provide community services (which must be designed to serve all residents) in at least two (2) unrelated areas.[35] Additionally, the owner must annually evidence compliance by maintaining/providing, at minimum, a community service log book of all services offered during the year, a roster detailing the name and unit number of all attendee(s) (including the date, time and topic of any class held), development records, and pictures.[36]

Upon request, an owner must provide to the Corporation documentation of benchmark measurement tools (i.e., tenant feedback surveys, assessments, etc.) used to assess the overall success and/or benefit of the service(s) provided.

Term of Commitment

An owner must maintain development records documenting services to be provided as indicated in the final HTC application. Tenant community services must be provided for a minimum of ten (10) years beyond the later of the placed in service date of the last building in the development or the date of the first class/service. Additionally, an owner must maintain a formal executed contractual agreement between the applicant and service provider. The contract must detail the service to be provided and disclose the location and frequency of the services. At a minimum, at least two community service events must occur each quarter and each community service represented in the final HTC documents must be offered at least once per year at a time conducive to maximize tenant participation but may differ depending on obligations as outlined in the development's service contract, or governing QAP.

Failure to provide documentation of such is considered a noncompliance event with the Corporation and will be noted as such.

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[34] *Effective 2011, Community Services are considered a minimum requirement for consideration of a HTC Allocation award. Prior elections will be monitored in accordance with governing QAP and the guidelines herein.*

[35] *Unrelated service area is defined as services that are un-connected in scope or structure. Additionally, services should be broad based and well designed to adequately address the various needs of the housing population.*

[36] *In the event of a "no show," the owner should mark "NO SHOW" on the roster and maintain a copy for personal records and agency review, if requested. After two consecutive "No Show" occurrences related to a given service, the owner must provide an alternate service more beneficial to the current housing population. Prior approval from the Corporation is required before changing a community service obligation.*

COMMUNITY SERVICES:			
Personal Development		**Child Development**	
I	Computer Classes	I	After School Program
II	GED Training	II	Child Care Services
III	Job Training	III	Parenting Classes
IV	Foreign Language Courses		
Counseling Programs		**Community Awareness Events/Activities**	
I	Homebuyer Education	I	Fire Safety
II	Credit Counseling	II	Health Fair/Health/Nutrition
III	Personal Budget	III	Drug and Alcohol Prevention
IV	Mental Health Program	IV	Crime Watch

2. Significant Amenities

In accordance with the Corporation's QAP, an owner electing to provide significant amenities at his/her housing community must, at minimum, provide at least two (2) unrelated significant amenities not otherwise required by the entity providing financing or typically present in low-income rental housing. An owner electing to provide significant amenities to low-to-moderate income families who occupy a unit at his/her development must maintain/provide the amenities on a continuous basis throughout the compliance and extended use periods.

SIGNIFICANT AMENITIES:

- Furnished clubhouse or community building with designated tenant activities and meeting rooms;
- Full perimeter fencing (non-chain link) with controlled access gate (wrought iron or wood security fencing);
- Washer and dryer connections in individual units (must have capability to service side-by-side units or opposite wall units. Stackable units are acceptable for elderly and rehab developments.);
- Ceiling fans in living areas and bedrooms;
- Tenant Security (i.e., electronic locking system, individual alarm system, etc.);
- Fitness Center (minimum 5 pieces of equipment);
- Swimming Pool; Sprinkler water pad;
- Landscaped area including a gazebo with sitting area;
- Basketball, volleyball, or tennis courts;
- A playground area with a minimum of four (4) separate pieces of equipment;[37]
- Walking/ jogging /biking trail;
- Onsite business/ education center must have its own dedicated equipment separate and apart from the equipment used by the development manager's office staff;
- Laundry facilities;
- Washer and dryers provided in individual units;
- Tank less, heat pump, or solar water heaters;
- Two car garages with garage door openers (motorized) for single family units.

[37] *The Corporation will accept commercial grade multi-function single structures that provide a minimum of four (4) separate play activities.*

F. Housing for Persons on Public Housing Waiting List

An owner electing to offer housing to persons on the public housing (i.e., Section 8) waiting list must maintain documentation in the development file evidencing the occasional use of the public housing waiting list. At least annually, documentation from the local Public Housing Authority must be acquired evidencing occasional use.

G. Owner-Based Rental Assistance

Owner rental assistance (ORA) is a development-based rental subsidy given to a household by an owner. The intended purpose of the ORA is to serve as a direct rental benefit to the subsidized household's out-of-pocket rental amount thereby offsetting the household's net rent contribution.

In order to ensure the fair and equitable distribution of an owner's rental assistance/subsidy, an owner, when administering ORA payments, is required to adhere to the following criteria:

1. Maintain documentation proving assistance is/was being provided to a minimum of fifty–one percent (51%) of the development's units that are eligible under the tax credit program;

2. Provide rental assistance payments for a period not less than five (5) years commencing on the later of the development's placed in service date or the date of issuance of the first owner subsidy payment;[38]

3. Provide a minimum of fifty dollars ($50) per unit, per month in rental assistance whereby the tenant-paid rent is reduced by the amount of the ORA payment;

4. Establish and maintain throughout the rental assistance period comparable rental amounts for assisted and unassisted units of the same size, square footage and/or amenities. The contract rent for units of the same size, location, square footage and/or amenities must NOT differ between assisted or unassisted units.

5. Maintain documentation proving the establishment and continued maintenance of a rental assistance account. Note: Annual funding must be evident.

6. Establish a plan that identifies how households will be selected for housing assistance payments (including the maintenance of a waiting list) to be reviewed periodically by the Corporation. Additionally, included in this Plan, an owner, in determining eligibility as to who will receive owner's rental assistance, should give preference to a household with no "tenant-based" assistance whose gross income is at or below 50% of the AMGI, elderly residents and single-parent households.

(For more information on this topic, refer to Chapter 6.7(B)(2) of this Plan.)

[38] *An owner receiving an award of HTC's in 2001 and 2002 and electing to provide ORA must provide rental assistance payments for not less than 15 years commencing on the later of the development's PIS or the date of the first subsidy payment.*

H. Single-Family Lease Purchase Developments

Some owners elect to construct, certify, lease and manage small planned urban developments containing town homes, patio homes, and/or stand-alone single family units as affordable housing for persons who qualify under the requirements of Section 42, as amended, of the IRC. The goal of the program is to provide the opportunity for participating families to lease the units to be constructed and then purchase for ownership. Please refer to the Housing Tax Credit Single Family Lease Purchase Program summary available on MHC's website regarding the benefits and key components necessary to convert these developments from rental to owner-occupied.

In preparation for home ownership, at minimum, an owner of a single-family lease purchase development must conduct/provide the following:

- Significant amenities and supportive services *(to be carried out in accordance with the requirements as stated in Section 3.3E of this Chapter);*
- Participant interviews, monitoring and evaluation;
- Periodic assessment of credit worthiness (i.e., annual financial reports);
- Home Maintenance Training;
- Lease-purchase agreement;[39]and
- Lease-Purchase Orientation Manual to be provided to (reviewed with) prospective tenants prior to leasing. At minimum, the lease should address the following:
  - Lease Purchase Requirements, including the Lease-Purchase Agreement
  - Restrictive Covenant
  - Right of First Refusal Option
  - Purchase Provisions

Additionally, an owner is required to offer a community service activity on homebuyer education. In support of the same, at minimum, the homebuyer education community services must begin three (3) years prior to the expiration of the initial compliance period and include the following:

- Budget Counseling
- Credit Repair
- Foreclosure Prevention
- Home Maintenance Training
- Homeownership Readiness
- Computer skills to enhance homeownership readiness

Ownership Transfer Plan

[39] *A lease purchase agreement or lease addendum advising tenants of the available purchase option at the end of the fifteen (15) year lease period must be provided to qualifying residents at the time of initial occupancy and reiterated periodically (preferably once annually).*

An owner receiving an award of HTCs under this point selection criterion must have a Tenant Ownership Plan whereby acknowledging that each individual unit will maintain the affordability and compliance requirements contained in the tax credit LURA until the later of (i) the expiration of the initial 15-year compliance period or (ii) until the unit is sold to the tenant of such unit. Additionally, the plan must assure that all unsold units in the development will remain rental units subject to the restrictions set forth in the LURA until the end of the extended use period as defined therein. The plan must also describe how and when the right of first refusal may be exercised by the tenant and provide that a written purchase agreement will be used in each sale. Please refer to the Housing Tax Credit Homeownership Policy Guide available on MHC's website for additional information on the timing and terms of sales to residents and qualified low-income households at the end of the Initial Compliance Period.

Following a sale of a single-family unit to a tenant, the Corporation will provide a partial release of the governing tax credit LURA discharging the restrictions as to the unit that was conveyed. Once a unit is released from the governing LURA as provided in the preceding sentence, the restrictions of the tax credit regulatory agreement will no longer apply to the released unit and the Corporation's oversight and compliance monitoring obligation associated with the same will cease. Any resale, price or other restrictions applicable to a unit that the owner includes in the tenant ownership plan relating to the period following the initial sale of a unit to a tenant and release of the LURA will not be monitored or enforced by the Corporation. The Corporation will not release the LURA upon the conveyance of the development or units in the development to parties or entities, including entities eligible to receive right of first refusal pursuant to Section 42(i)(7), other than the tenants of units in the development. *Note: Upon request, an owner must furnish to the Corporation documentation evidencing compliance with this selection criterion.*

I. Non-Profit Participation

A development owner electing to provide housing in conjunction with a qualified non-profit organization[40] must ensure the non-profit organization materially participates in the development throughout the initial 15-year compliance period.[41]

In order to materially participate, the qualified nonprofit must be engaged in the activities of the development on a regular, continuous, and substantial basis. An example of material participation is if a non-profit Executive Director travels onsite at the time of an agency visit and is instrumental in the correction of any cited noncompliance.

[40] *A qualified non-profit organization may include corporate subsidiaries of nonprofit organizations as long as one or more nonprofits owns 100 percent of the stock of the corporation, but do not include nonprofits that are affiliated with or controlled by a for profit organization.*

[41] *Material participation of a non-profit must be involved to the intent noted in Section 469(h) of the IRC.*

3.4 COMPLIANCE TRAINING

A. Technical Assistance

The Corporation offers technical assistance on an as needed basis to participants of the HTC program. Technical assistance is available via one-on-one trainings, group trainings, and/or conferences. Generally, all technical assistance trainings are available free of charge to program participants, twice a month, by appointment and availability. The Corporation reserves the right to limit the number of technical assistance sessions provided/conducted per year.

> *NOTE: No group and/or conference technical assistance will be granted during the months of January, February, November and December.*

B. Compliance Briefing

In addition to the above noted technical assistance training, occasionally, the Corporation host compliance monitoring briefings. The goal of the briefings is to provide program participants with up-to-date information/training of HTC program requirements; as well as allow any party interested in developing or managing a HTC development to obtain a broader knowledge of the HTC program. At minimum, briefings provide information pertaining to the following:

- Federal regulations as it relates to determining household eligibility;
- Specific program rules implemented by the Corporation;
- Developing an effective household eligibility process to acquire the information needed to properly qualify a HTC household;
- Income and rent limits;
- Annual income and asset verifications;
- The Corporation's mandatory reporting forms/requirements;
- Other topics as deemed necessary by the Corporation

Briefings are open to the public. Seating is generally limited and available on a first come, first serve basis.

CHAPTER 4 - DETERMINING & DOCUMENTING HOUSEHOLD ELIGIBILITY

4.1 OVERVIEW

Determining the eligibility of a household for tax credit purposes is perhaps the most important fundamental requirement of the tax credit program. Before a unit can be claimed as a tax credit unit eligible for its intended dollar-for-dollar benefit to an owner, it must first be occupied by a qualifying household.

4.2 THE INITIAL CERTIFICATION

The first step in determining whether a household qualifies for occupancy of a low-income unit, is to gather and verify some basic information regarding the household's size and composition, gross annual income and assets, as well as full-time student status.

A. Rental Application

All applicants desiring to lease a tax credit unit must be required to complete a written rental application whereby providing certain household information critical in making an accurate determination of initial occupancy.[42] A good rental application is one that includes at least the following information:

- The legal name (as it will appear on the lease and *Tenant Income Certification* (TIC) form), sex, date of birth and relationship of each person to the head of household who will occupy the unit or is/will be considered a part of the household during the next 12 months.
- The employment history (consisting of the company name, name of individual authorized to provide employment information, address, telephone number and salary) of each adult household member expected to occupy that unit or is/will be considered a household member during the next 12 months. *NOTE: Date of termination is required on any changes in employment status from the time of initial application for residency*

[42] *If more applications for a tax credit unit is (are) received than available, a waiting list must be maintained. The Rental Application must be dated and time stamped to ensure proper placement of the waiting list.*

and/or recertification questionnaire to the time of the most recent certification/recertification.

- All sources and amounts of current and anticipated annual income expected during the next twelve months, including the current and/or estimated value of assets.
- The student status of each household member expected to occupy the unit or is/will considered a part of the household during the next 12 months. *NOTE: A full-time student household must meet one of the student exceptions provided by the IRS. (See Chapter 2 of this Plan.)*
- The signature of the applicant and the date the application was completed.

Household Composition Determination

Once a properly completed rental application has been acquired, an owner may then begin the approval process by assessing essential eligibility information provided therein: household composition, full-time student status, and gross annual income.

1. Household Size/Composition

   The actual household size of a prospective family is essential in accurately determining eligibility. The size of the household determines the maximum allowable income the household can make in order to be considered eligible for occupancy. If the gross income of a household (based on the verified household size) exceeds the maximum allowed under tax credit rules and regulations, the household is not eligible to reside in a tax credit unit.

   What Constitutes a Household?

   Any group of persons living together, other than ineligible full-time students, can constitute a household. The total gross income for all members of a household should be combined for purposes of determining the required income limits. ***(Refer to Chapter 5.5C for more information on this topic.)***

   Who Counts as a Household Member?

   A household or family includes the applicant, co-applicant, and all other persons who will make the dwelling their primary residence for all or part of the next 12-months. Also inclusive are temporary absent family members (e.g., students away at school, an unborn child, members of the armed forces away on temporary duty, children under joint custody that live at least 50 percent of the time with this household and can be documented through third-party written documentation (i.e., guardianship or custody papers, etc.)), and permanently absent family members.

   Non-Custodial Children as Household Members

   A household occupied by a non-custodial child, an individual under the age of 18 who is not emancipated, not residing in a unit with his or her parents or legal guardian, and not in the process of being adopted or for whom legal custody or guardianship is not in the

process of being obtained, must count said household member in accordance with HUD 4350.3 rules pertaining to foster children. [43]

In order to count a child(ren) who is under the age of 18 and not an emancipated minor as a household member for income-eligibility purposes, the HTC unit must be the child's permanent residence **and** another member of the household (as listed on the lease agreement) must meet one of the following criteria:

1. Have legal custody or guardianship of the child(ren) (as evidenced by court papers);
2. Have claimed the child(ren) as a dependent on the most recently filed tax return (as evidenced by the tax return) and anticipate claiming the child as a dependent for the present certification period; or
3. Adoption in progress (as evidenced by court papers).

It is not necessary for an owner/manager to document custody or guardianship of children who reside in the unit with a parent unless there is reason to believe that the child(ren) is(are) not eligible to be counted as a household member (i.e., child does not reside in unit at least 50% of the time).

Married Individuals Living Apart (Estranged)

A prospective resident(s) who is(are) married persons but does not plan to reside with his/her spouse must, in the absence of support documentation of the spouse's permanent absence, consider the spouse a temporarily absent family member. To the same, all income associated with said member must be included as part of the household's income unless documentation evidencing a permanent separation is acquired. Examples of sufficient evidentiary documentation include:

1. Divorce filing or legal separation documents
2. Documentation from an attorney or legal aid office indicating that the prospective resident/tenant filed, is pursuing or has inquired about a divorce or legal separation;
3. Copy of legal restraining order or documentation that prospective resident has experienced domestic violence
4. A statement from a person who provided counseling to the tenant in an official capacity as part of his or her occupation (i.e, attorney, therapist, marriage counselor, etc.) indicating the separation (in his or her opinion) is permanent; or
5. Legal or official documents (i.e., tax return) indicating separate residency.

[43] *Non-custodial children are a topic that is not specifically addressed the HUD Handbook 4350.3. In light of such, non-custodial children should be treated as a foster child, including any associated income.*

In either instance (spouse treated as temporarily absent or permanently absent), a notarized *Affidavit of Marital Separation Status* form must be acquired from the associated household member attesting to the same and maintained in the household's HTC eligibility file.

Who does NOT count as a household member?

Verified live-in aides, nurses or attendants, absent children (less than 18 years of age who will be in the unit less than 50% of the time), and verified foster children or foster adults do not count as a household member for purposes of determining HTC eligibility.

Live-In Aide

A live-in aide is a person who resides with one or more elderly, near elderly, or disabled person(s) (1) for the essential care and well being of the tenant, (2) not financially obligated to support the tenant, and (3) certify that he/she would not be living in the unit except to provide the necessary supportive services. In conjunction with the same, a live-in aide should not be counted as a household member for income eligibility purposes. While some family members may qualify as a live-in aide, a spouse (ex-spouse) can never qualify as he/she would not meet qualification guidelines.

Foster Child/Adult

Foster children/adults living in a tax credit unit are not considered a household member for purposes of determining income eligibility. However, in accordance with HUD Handbook 4350.3 Change 3, the earned and unearned income received by a foster adult and the unearned income received by a foster child must be included in the calculation of total household income. [44] This requirement applies although a foster child/adult is not considered members of the household for determining income eligibility.

> *NOTE: When applicable, the name and relationship of verified live-in aides and foster children and/or foster adults must be listed on the TIC form with support documentation in the file.*

2. Full-Time Student Status

Before making a determination that a household is eligible to reside in a tax credit unit (regardless of income eligibility), an owner must ascertain whether the prospective family is comprised entirely of full-time students. If the household IS comprised entirely of full-time students, the owner must determine if the household is eligible under tax credit student

[44] *Payment received by the family for the care of a foster child(ren)/adult are not counted. Rule applies only to payments made through official foster care relationships with local welfare agencies.*

eligibility guidelines. Initially, the best way to make this determination is to ask the household a series of questions pertaining to the overall student status:

- Do all occupants of the household meet the full-time student definition as noted by the IRS?
- Does the applicable educational institution deem the occupant a full-time student?
- Has/will all occupants attend(ed) school at least five (5) months out of the 12-month calendar year *(months need not be consecutive)*?

If the answer to EACH question above is "yes," the household should be noted as a full-time student household and a determination of the IRS' qualifying exception must be identified, along with written documentation supporting the exception. ***(For more information on this topic, refer to Chapter 2 of this Plan.)***

On the other hand, if the answer to any of the questions is "no", the household is not considered a full-time student household. Likewise, support documentation from the educational institution is NOT needed unless a household member(s) other than the head, co-head or the spouse, is eligible for the maximum $480.00 full-time students earned income calculation. In this instance, the owner should proceed to determine if the household is income eligible.

NOTE: Inquiry regarding a household's full-time student status must be documented annually in the tenant file of each qualifying household. Additionally, a household qualifying for occupancy based solely on the occupancy of a part-time student ***must*** *verify the part-time student status of the qualifying household member each semester until the earlier of the expiration of the student's enrollment or change in the household's full-time student status/qualifying exception.*

B. Income Support Documentation

Income support documentation must be acquired verifying the ANTICIPATED income and eligibility of a qualifying household.[45] In doing so, all income support documentation must be completed in accordance with the income verification guidelines as stated in Chapter 5 of this Plan and HUD's Occupancy Handbook 4350.3, Rev. 1, Change 3.

Using the income verifications acquired from all sources of income (including both actual and anticipated), an owner must calculate the total gross annual income for the household.[46] This amount is then compared to the applicable income limit for the household to determine income

[45] *Anticipated income is the amount of income a household can reasonably expect to receive over the next 12-months.*
[46] *It is the burden of the owner to perform adequate due diligence in obtaining verifiable income information.*

eligibility. If the verified total gross household income is at or below the current income limit, the household is considered income eligible and required to certify to the validity and accuracy of the information on the TIC form before occupancy can be granted. ***Refer to Chapter 5 for specifics regarding annual income determination.***

C. The Tenant Income Certification (TIC)

Once the occupancy, income, and student status information of a household has been obtained and verified, an owner and all adult household members, including 17 year old residents and emancipated minors, must certify to the accuracy of the information provided. According to Section 42 of the IRC, an owner must acquire a properly completed *Tenant Income Certification* (TIC) form at the time of initial move-in (initial tax credit eligibility date for acquisition/rehabilitation developments) and thereafter on an annual basis for each qualifying household, as required.[47] Appropriate parties must execute the TIC form no earlier than five (5) days before the move-in/initial tax credit eligibility date. In most cases, the effective date of the TIC should coincide with the move-in/initial eligibility date of the household.

Initial Eligibility for Acquisition/Rehabilitation Developments with Existing Residents

Qualifying residents for the HTC program at a development that has undergone acquisition/rehabilitation, a simple rehabilitation and/or received a subsequent award of HTCs can be challenging. In many instances, there is the presence of "existing residents" whose qualification must first be determined. As a result, all existing residents (as is the case of any new occupants), must be initially qualified for the tax credit program, excepts existing residents occupying a unit at a HTC development of which credits were previously awarded (i.e., previous allocation).

According to Rev. Procedure 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, even if the household's income exceeds the income limit at the beginning of the first year of the credit period, if the following two conditions relative to income eligibility are met:

- The household qualified the unit at the time the owner initially acquired the building or the date the household started occupying the unit, whichever is later; *and*
- Written documentation of the initial HTC eligibility is maintained. In order to determine the eligibility of existing residents with HTC regulations, a properly completed TIC form and all support documentation must be acquired in accordance with the following guidelines:

1. *Acquisition/Rehab Developments*

   The initial certification for households occupying a unit at the time of acquisition must be completed within 120 days of the development's acquisition placed in service (PIS)

[47] *The TIC form provided by the Corporation must be used to satisfy the certification requirement for all HTC households.*

date. The move-in date on the TIC should be no earlier than the acquisition PIS date. The effective date of the initial HTC eligibility certification is the date of acquisition since there is no move-in date. The income limits in effect at the time of the acquisition PIS date should be used when determining income eligibility.

If a household moves into a unit after the building is acquired but before the beginning of the first year of the credit period, the tenant certification is completed using the income limits in effect at the time of the certification and the effective date is the date the household moves into the unit.

2. *Rehabilitated Developments Only*
   The initial certification must be completed within 120 days of the development's rehab placed in serviced date. The move-in date on the TIC should be no earlier than the rehab PIS date. The effective date of the initial HTC eligibility certification may be any date the owner chooses on or after the PIS date; however, the date should not exceed the 120-day timeframe and must coincide with the initial eligibility date. NOTE: Verifications must be no older than 120 days from the effective date and all verifications must be completed and received prior to the effective date.

3. *Developments with Subsequent Allocations*
   A household determined to be income-qualified for purposes of the IRC §42 credit during the 15-year compliance period is considered concurrently an income-qualified household for purposes of the extended use agreement, regardless of the household's verified income at the time of the subsequent allocation. In this instance, no new initial certification is needed; household should continue to certify in accordance with its recertification cycle.

D. The Lease Agreement

Once a household has been determined income eligible and student qualified, occupancy may be officially extended through a formal lease agreement. An initial lease agreement with a period of at least six (6) months must be entered into with all tax credit eligible households in order to document and ensure non-transient housing.[48] An exception is granted to housing for the homeless and single-room occupancy (SRO) housing whereby a minimum lease term of at least one month is allowed.

The Corporation considers a lease to be valid if it is properly completed, contains all the necessary signatures, has a term effective from the date of move-in and/or the tax credit initial eligibility date, is at least six (6) months in length, and include the following provisions.

- Residents who intentionally misstate household size or income or otherwise attempt to mislead the owner as to the household's eligibility will be evicted;

[48] *Non-transient housing is considered housing whereby occupancy is not short and sporadic but for a term of at least six (6) months.*

- Failure to provide the required certifications, sources of income, and permission to verify income are grounds for eviction;
- Any changes in the household composition within the first six (6) months of occupancy must be reported to the owner. ***(Refer to Section 4.3A of this chapter for the Corporation's policy on additional household members);***
- The owner and/or owner's representative, a representative of the Corporation, and a representative of the IRS reserves the right to enter the unit to inspect the physical conditions of the unit; *and*
- A statement explaining the development is a participant in the HTC program and the tax credit units are under certain program regulations including income eligibility, full-time student status eligibility and annual recertification requirements.

> *NOTE: Lease agreements/addendums for an acquisition/rehabilitation and/or rehabilitation-only development must be for a term of six (6) months and commence on the effective date of the initial certification for the HTC program.*

4.3 THE RECERTIFICATION

According to Section 42 of the IRC, an owner of a tax credit development must ensure that each household occupying a qualified HTC unit have its eligibility re-examined annually in order to determine whether the income of the household remains within the applicable income limit. This re-examination, commonly referred to as a "recertification," does not determine continued income eligibility; however, it does serve as the foundation necessary to ensure compliance with other program requirements (i.e., NAUR, student status, etc.).

At recertification, the procedures required to determine ongoing compliance is virtually the same as determining a household's initial eligibility – perform a compliance check on the household's size, composition, income, assets, and student status.

A household's recertification must be completed no later than the anniversary date of the household's initial occupancy/eligibility. [49]

Because the process of acquiring recertification eligibility information (i.e., verification of income, assets, student status) is often a time consuming process, it is highly recommended that an owner initiate the recertification process 90-120 days prior to the expiration date of the existing TIC. An owner's failure to recertify a household within the appropriate timeframe may be considered a noncompliance event and reportable to the IRS. ***(See Section 4.4C of this***

[49] *The required recertification cycle for developments financed by RHS is no later than the twelve-month anniversary date of the most recent 2002 TIC form on file for RHS whereby a re-examination of a households continued eligibility does not exceed 12 months.*

Chapter for information regarding an IRS Recertification Waiver available to qualifying HTC developments.)

A. Change in Household Composition

Changes in the household composition of a previously qualified family are of grave importance when assessing a family's ongoing eligibility for the tax credit program as such changes can affect several essential program requirements (i.e., available unit rule, unit vacancy rule, unit transfers, etc.). Thus, to ensure ongoing compliance, changes should be handled in accordance with the following:

1. Additional Occupants

If a change in household composition has occurred resulting in the occupancy of an additional resident(s), an owner must determine the effective date of the household change and assess/process the change in accordance with the following:

a. Less than Six (6) Months of Occupancy

Generally speaking, a change in the number of persons occupying a tax credit unit does not impact the initial eligibility status of the unit as income eligibility after initial occupancy is no longer a factor; once income qualified, always income qualified. However, household composition changes that occur within the first six months of occupancy may affect the initial eligibility status of the household and thus require the re-examination of the household's income, along with the income of the new member(s), for initial eligibility.

In re-assessing the household's eligibility, the verified income of the new member must be added to that of the existing household to determine if the household remain initially income eligible. If the additional income when added to the household's gross income as listed on the move-in TIC exceeds the households qualifying income limit, the unit disqualifies as an eligible tax credit unit commencing on the effective date of the household composition change. The unit is considered an eligible tax credit unit once a qualifying household occupies the unit or the unit again meets the tax credit income eligibility requirements, provided the household still meet the program full-time student requirement.

b. After Six (6) Months of Occupancy

To the contrary, if the household composition change occur after the first six (6) months of occupancy and/or is being requested along with the scheduled recertification of the household, it must be handled in accordance with the following:

100% HTC Development

Household composition changes after the first six months of occupancy at a 100% HTC development causes no apparent impact on the compliance status of the unit provided

at least one adult member of the ORIGINAL household composition continues to reside in the unit.[50] However, the new member must undergo an income eligibility and student status assessment to determine future compliance of the household in the event all original occupants vacate the unit. *NOTE: If the assessment shows the new member(s) would independently income-qualify, the household would remain compliant should all original members vacate the unit; no future assessment is needed. If the assessment shows the new member(s) would not independently income-qualify, the future eligibility status of the unit is in jeopardy in the event all original household members vacate; future assessment would be required to determine compliance.*

Mixed-Income HTC Development

At a mixed-income HTC development, if the household composition change occurs after the first six (6) months of occupancy and/or is being requested along with the scheduled recertification of the household, the addition of the new household member to an existing low-income household requires the income certification for the new member of the household, including all applicable third-party verifications. The new member's income is added to the income disclosed on the most recent TIC. The household continues to be considered income qualified; however, if the combined income exceeds 140%, the owner must apply the next available unit rule ***(See Section 4.3(B)(1) of this Chapter).***

2. Reduction of Occupants

If any member of an existing, previously "qualified" household vacates within the first six (6) months of initial occupancy, the income of the remaining household member(s) must be assessed to determine if the household remains income eligible according to the income limits in effect at the time of the household's initial eligibility determination. If the household's income exceeds the income limit, the household is no longer considered an eligible tax credit unit. Certain exceptions to this rule may apply. For specific exceptions, contact the Corporation.

3. Vacancy of ORIGINAL Occupants

In the event ALL ORIGINAL residents vacates a unit thereby leaving the unit to be occupied by a resident(s) that was not a part of the original household, the remaining resident(s) must be IMMEDIATELY initially certified for the unit unless the remaining resident(s) was (were) income qualified at the time she/he first took occupancy of the unit. If the anticipated total gross household income of the remaining person(s) exceeds the current applicable income limits and the resident(s) wasn't individually certified upon initial occupancy, the unit is no longer considered a qualifying tax credit unit. If the anticipated gross household income of the remaining person(s) does NOT exceed the current applicable income limit for the

[50] *An original resident is a resident that took possession of the unit at the time the unit was initially qualified for tax credit purposes.*

household size, the unit must be certified as a new household whereby all initial eligibility procedures must be followed.

4. Full-Time Student Status

The full-time student status of a household must be examined annually for ongoing eligibility. According to the Code, if the student status of a household member(s) changes whereby all occupants are full-time students, the household must meet at least one of the student eligibility exceptions even though they were eligible at the time of original occupancy. If the household does not meet one of the IRS exceptions (see Chapter 2 of this Plan), the household is not considered program eligible and the unit is no longer considered a tax credit eligible unit. The NAUR does not apply to a full-time student household. ***(Refer to Section 42(i)(3)(D) of the Code for additional information on this prohibition.)***

> *NOTE: A certification done in conjunction with the noted requirement does NOT reset the recertification due date. The annual recertification is due in accordance with the standard recertification schedule.*

B. Change in Gross Household Income

Once a determination has been made as to the household composition for the next 12-months, the next step is to determine the household's anticipated annual income. In doing so, an owner/manager should adhere to the same data collection procedures of an initial certification unless the development is exempt from doing so by way of the IRS' recertification waiver ***(See Section 4.3C of this Chapter for eligibility criteria).***

1. Household Income Determined to be over the Current Income Limit

At recertification, if the total gross household income exceeds the latest available income limits based on the re-verified income, the following determination must be made:

Gross household income at or below 140% of current income limit

When a previously qualified household has a gross household income NOT greater than 140% of the current income limit at recertification, there is no apparent negative consequence on the household's continued eligibility or an owner's credit claiming ability. An owner may proceed with the (re)certification process.

Gross household income above 140% of current income limit (NAUR)

When a previously qualified household's income exceeds 140% of the applicable income limit, an owner must rent the next available unit, commonly known as next available unit rule (NAUR), of comparable or smaller size in the building to a qualifying household. The NAUR states that subsequent vacant unit(s) of comparable or smaller size in the building must be leased to eligible households until the low-income unit is no longer

needed to maintain a building's low-income occupancy requirements. If a comparable vacant unit is not rented to a qualified low-income household, the development owner would be leasing an unrestricted unit and thereby, the previous tax credit unit designation no longer applies for that building.

Deeper Income Targeted Units

A development required by state mandates to set-aside a certain percentage of units for households at or below a certain income threshold (i.e. 50% deeper targeted units) must always comply with the established set-aside requirement.

In the event a household occupying a deeper income targeted unit has income that increases above the specified allowable median income, the household should be moved up into the set-aside for which they now qualify. In the event that a comparable unit in the appropriate set-aside is not immediately available, the household may continue to be temporarily treated as qualifying for the set-aside. ***(For more information on this topic, refer to Chapter 3.3(A)(2)of this Plan.)***

NOTE: *While a household may conceivably qualifies as a deeper income household, no "140% rule" applies with respect to the deeper income targeting requirement.*

2. Household Determined to be in Noncompliance

An owner must immediately begin corrective action procedures when a household is determined to be in noncompliance with program requirements (i.e., failure to recertify, non-qualified full-time student, etc.) at the time of recertification. If the owner initiates an eviction proceeding in an attempt to adhere to program requirements (and in accordance with applicable local, state and federal laws) and the household vacates the unit, no recertification is necessary. If, however, for some reason, it is determined that the household will not vacate the unit as anticipated, a recertification will be necessary within 120 days of the determination.[51]

C. Annual Recertification Waiver

Under the Housing Economic and Recovery Act (HERA), HR 3221, effective July 30, 2008, an owner of a 100% HTC development is granted a waiver of the annual recertification obligation as required by the Code provided no residential unit(s) in the development is occupied by a household whose income initially exceeds the applicable income limit. [52]

[51] *Court documentation evidencing the steps taken to remove the noncompliant household must be maintained in the resident file.*

[52] *A 100% low-income development is one in which all residential units in the development (excluding common area) is reserved and/or set-aside for families earning at or below 60% of area median income AND recognized by the Corporation as 100% low-income through the issuance of an allocation of credits representative of the same.*

1. **Eligibility Criterion**

   A HTC development that set-aside 100% of its units for low-to-moderate income households, all of which are subject to the requirements of the HTC program, is automatically eligible for the annual recertification waiver as permitted by the IRS by way of H.R. 3221.[53]

2. **Record-Keeping**

   An owner of a development eligible for the automatic recertification waiver must adhere to the following record-keeping requirements:

   - Acquire and maintain a FULL CERTIFICATION for:
     - All households at the time of initial occupancy of a tax credit designated unit;
     - Changes in household composition whereby all ORIGINAL household members have vacated; *and*
     - All households occupying deeper income targeted units on an annual basis

   - Acquire and maintain in the household file a *Student and Rent Declaration* form **OR** the approved *HTC Tenant Income Certification (TIC)* form from all low-income residents, on an annual basis until the household vacates the unit.

   - Maintain all paperwork/reports deemed necessary for the Corporation to determine compliance with program and state-imposed requirements (e.g., rents, utility allowance documentation, full-time student eligibility, deeper income targeting, etc.).

   - Annually certify 100% low-income use to the Corporation.

> NOTE: *A development with a 100% Recertification Waiver must adhere to IRS Revenue Procedure 2003-82 Safe Harbor provisions that address the eligibility of residential rental units during or before the first year of the credit period.*

3. **Noncompliance**

   An owner of a HTC development that is exempt from performing annual recertification requirement as mandated by the Code is still responsible for the preparation and maintenance of certain compliance records and reports throughout the development's compliance and extended use periods. An owner's failure to adhere to said requirements

[53] *A 100% low-income credit development is required to annually recertify all residents until the earlier of written notification from the Corporation acknowledging the development's eligibility for the waiver or the effective date of this automatic eligibility effective March 1, 2010.*

may result in the issuance of IRS form 8823 *Report of Noncompliance* and major state noncompliance.[54]

An example of a reportable noncompliance event includes, but is not limited to the following:

- Failure to respond to agency requests for monitoring and/or compliance reports;
- Outstanding major federal/state noncompliance violations;
- Fraud (resident and/or owner/management)[55]
- Failure to adhere to the eligibility and/or record-keeping requirements of the annual recertification waiver; and
- Significant noncompliance and/or blatant disregard to program requirements

The Corporation will notify the IRS of all instances of noncompliance in accordance with current compliance policy.

4.5 INTERIM CERTIFICATION

The guidelines for the HTC program do not require qualifying households to report interim changes that occur between certifications. As a result, interim certifications are not subject to the review of the Corporation. However, for ongoing tax credit eligibility purposes, certain interim changes must be monitored and documented, where applicable. Interim changes that affect the monthly gross rent amount or full-time student status of a household must always be reflected in the resident file and all applicable compliance reports. Additionally, notation of the type of change (rental, student status), including the effective date and a description of the change, must be made to the governing TIC form in the "comments" section or the applicable section of the Student and Rent Declaration form. The completion of a new TIC is not needed to document this change.

4.6 UNIT TRANSFER

During the duration of a household's occupancy in a tax credit unit, circumstances may warrant the relocation of a household from one unit to another unit (i.e., unit transfer). In processing the unit transfer, according to tax credit guidelines, caution must be taken as an improper relocation may result in the loss of the housing credit.[56]

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[54] *An owner of a HTC development cited for major noncompliance may be deemed ineligible to participate in any other programs administered by the Corporation.*

[55] *Resident and/or management fraud is defined as the deliberate intent to provide eligibility information not reflective of the household's true eligibility status (i.e., misstate gross annual income, full-time student status, etc.). Fraudulent acts will be reported to the IRS in accordance with the requirements stated in the IRS' 8823 Guide, as amended October 2009.*

[56] *The IRS considers buildings that are not part of a multiple building development as 'separate developments.' (See IRS form 8609, line 8b). The Corporation will treat each building associated with the development as a single project until a formal declaration is made with the IRS.*

1. 100% HTC Development

At a 100% HTC development, when a current tax credit eligible household desires to move to a different unit, within the same building or a different building, the newly occupied unit adopts the status of the vacated unit.[57] There is no negative impact of the unit transfer, thus the transfer may be granted.

Evidence of the unit transfer must be documented in the resident file on the *Documentation of Unit Transfer* form provided by the Corporation with the effective date of the transfer clearly reflected.

NOTE: Developments operating under the IRS' recertification waiver (HERA, Section 3010) may allow unit transfers between buildings within the same 100% HTC development provided the owner does not know which, if any, of the units is over the current income limits.

2. Mixed–Income HTC Development

When a tax credit eligible household desires to move to a unit in a different building,[58] an assessment of the household's current gross annual income is required. In completing this assessment, an owner may rely on the most recent income certification provided the most recent certification does not exceed a year in duration. Accordingly, based on the information gathered from the gross household income determination, the unit transfer should be processed in accordance with the following:

*Gross household income **at or below 140%** of current income limit*

When a previously qualified household desires to move to another unit in the same building or between buildings and the gross household income is NOT greater than 140% of the current income limit, there is no apparent negative consequence of granting the unit transfer. In this instance, the vacated unit would assume the status of the newly occupied unit had immediately before it was occupied by the current resident.

*Gross household income **above 140%** of current income limit*

When the income of a previously qualified household exceeds 140% of the current income limit, granting a unit transfer to a unit in a different building would cause the newly occupied unit (i.e., household) to be treated as a non-qualifying unit.

[57] *Historically, a unit transfer/relocation that resulted in a household transferring from one unit to another unit in a different building was classified and treated as a move-out, move-in occurrence thus requiring the transferring household to again undergo an initial eligibility test.*

[58] *Mixed-income developments are developments whereby occupancy is targeted to both low-to-moderate income households and market households.*

NOTE: The IRS cautions performing unit transfers during the first year of the credit period as no unit can be counted more than once towards the development's MSA requirement. ***(See also page Chapter 4.3(B) for more information on this subject).***

CHAPTER 5 - INCOME & ASSET DETERMINATION AND RESPONSIBILITIES

5.1 OVERVIEW

One of the most essential requirements of the tax credit program is ensuring that the total gross household income of a prospective or existing family does not exceed the program's established income limitations.

Under the HTC program, annual income is defined as the amount of gross household income (before any taxes or deduction) anticipated being received during the 12-month period following the certification and/or recertification of eligibility. The income eligibility guidelines for the HTC program are found in Chapter 5 of HUD's Occupancy Handbook 4350.3, *The Occupancy Requirements for Subsidized Multifamily Housing.*

5.2 INCOME LIMITS

The income limits that apply for purposes of determining eligibility as a low-income household depend, in part, upon the developments placed in service (PIS) date, location, minimum set-aside election and the size of the household. The Department of Housing and Urban Development (HUD), which publishes income limit information for each state, by county or metropolitan statistical area, generates the income limits that apply to the HTC program. HUD's income limits reflect the median income level, the low-income (80%) level, the very low-income (50%) and the extremely low-income (30%). The HTC program uses HUD's very low-income median income limit for income determination purposes.

A. Determination Schedule

1. Prior to 2009

   The Corporation, upon receipt of HUD's income and rent limits, issued a single set of revised limits for HTC developments reflecting the 50 and 60 percent figures for the state of Mississippi. The limits remained in affect until a subsequent release was issued by HUD.

2. Subsequent to 2008

   In accordance with Section 3009 of the Housing Assistance Tax Act, the Corporation, commencing with FY 2009, began issuing three sets of income limits: Multifamily Tax Subsidy Project (MTSP) limits, HERA Special 50% and HERA Special 60%, and National Non-Metropolitan Limits reflecting the 50 and 60 percent AMGIs for the state of Mississippi.

   - ***Multifamily Tax Subsidy Projects Income Limits***

     For IRC §42 and 142(d) housing developments, HUD provides a separate table, Multi-Family Tax Subsidy Projects (MTSPs), which includes 50% and 60% income and rent limits. The MTSPs income limits are the main income limits table for most HTC developments, including developments financed with tax-exempt bonds. However, should a development meet certain requirements, the HERA special limits or the National Non-Metropolitan limits may be utilized instead of the MTSPs.

     Section 3009 of HERA modified the determination of the AMGI limits for purposes of tax-exempt bond and tax credit developments. HERA continues HUD's "hold harmless" practice that ensures AMGI will not decline for a development, even if the area median income declines. It also appears to provide for a minimum increase in median incomes in 2009 and beyond and resets the clock for some developments, using 2008 as base year. Any development that PIS prior to May 14, 2010 can use the greater of the 2009 or later income limits, regardless of which chart applies. ***For specifics regarding this modification, refer to the HERA of 2008.***

   - ***HERA Special Income Limits***

     In counties where the income limits were affected by HUD's Hold Harmless policy, HUD issued a second set of limits known as HERA Special 50% and HERA Special 60%.[59] Any development located in a HUD hold harmless impacted county and was placed in service on or before December 31, 2008 may utilize the HERA Special limits.

     Any development placed in service prior to January 1, 2009 can use the HERA Special limits, if applicable for the county.

   - ***National Non-Metropolitan Income Limits***

     The National Non-Metropolitan Income Limits may be utilized if the development qualifies due to:

     1. GO- Zone

        A development placed in service in 2006, 2007 or 2008 AND allocated credits by way of the GO (Gulf Opportunity) ZONE legislation are eligible to use the Non-

[59] *Effective May 14, 2010, HUD no longer holds the income limits of a development harmless from decreases. The IRS (as part of the HERA legislation), however, continues to hold the income limits of developments in affected counties harmless on a project basis.*

Metropolitan Income limits. IRC § 1400N(c)(4), Special Rule for Applying Income Tests, is applicable. ***(See GO Zone legislation of 2005)***

2. Rural Property

Effective July 30, 2008, the H.R. 3221 increased the income limits for certain HTC rural developments to the greater of Area Median Income Limit or the National Non-metropolitan Income Limit.[60] Said limits are applicable to a 'rural development' or 'rural area,'[61] including all future modifications/definitions, of which is considered to have a population consistent with the following:

A. Not in excess of 2,500 inhabitants, *or*
B. In excess of 2,500 but not in excess of 10,000 if it is rural in character, *or*
C. In excess of 10,000 but not in excess of 20,000, *and*
   1. *Is not contained within a standard metropolitan statistical area, and*
   2. *Has a serious lack of mortgage credit for lower and moderate–income families, as determined by the Secretary and the Secretary of Housing and Urban Development. For purposes of this subchapter, any area classified as 'rural or a 'rural area' prior to October 1, 1990, and determined not to be 'rural' or a 'rural area' as a result of data received from or after the 1990 or 2000 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2010, if such area has a population in excess of 10,000 but not in excess of 25,000, is rural in character, and has a serious lack of mortgage credit for lower and moderate-income families.*

An owner desiring to utilize the national non-metropolitan limits for a development located in a non-metropolitan county that includes an ineligible area must acquire written prior approval from the Corporation before the non-metropolitan limits can be implemented.[62]

NOTE: This provision is not applicable to tax credit developments financed with tax-exempt bonds nor does it apply to certain ineligible area(s) in the state of Mississippi, including counties that are a part of a metropolitan statistical area (MSA).

[60] *Section 520 of the Housing Act of 1949*

[61] *A rural development and/or rural area is considered* any open country, or any place, town, village, or city which is not a part of or associated with an urban area.

[62] *An ineligible rural area is one in which the census tracts are ineligible or partially ineligible due to the tracts being located in urbanized areas, as designated by the U.S. Census Bureau, or other tracts in cities of more than 40,000 population and adjoining unincorporated areas.*

Table 2: HTC Income Determination Chart

PIS Date	*Income Limit Chart**
On or before 12/31/2008	*National Non-Metro, if applicable* *MTSPs* *HERA Special, if applicable*
Between 1/1/2009 – 5/13/2010	*National Non-Metro, if applicable* *MTSPs*
On or after 5/14/2010	*National Non-Metro, if applicable* *MTSPs*

**When qualifying a household for HTC program eligibility, an owner may use the greater of all applicable income limits.*

B. Methodology

There are several steps involved in determining the income eligibility of a household. One of the key steps involves the correct determination of the income limit applicable to an interested household.

To determine the applicable income limit, the following methodology must be utilized:

Step 1 Determine the set of income limits applicable for development (i.e., MTSPs, HERA Special or National Non-Metro)

Use the greater of all applicable limits

Step 2 Identify the county in which the development is located

Step 3 Select the development's minimum set-aside (MSA) (i.e., 20/50 or 40/60)

Step 4 Select the household size (HHS).

Step 5 Find the point where the two numbers meet. This is the maximum income the household can have in order to be deemed income eligible.

EXAMPLE

The manager of CBA Apartments, a tax credit community in Lauderdale County that placed in service on 3/1/2009, has a three-person household with a verified income of $24,500 wanting to rent a two (2) bedroom tax credit unit. The owner agreed to rent 40 percent of the units at 60 percent (40/60) of the area median income. The owner does not pay the utilities at the development.

2010 MTSPs Income Limits, *effective May 14, 2010*

Lauderdale County	Percent of Median	1 Person	1.5 Persons	2 Person	3 Person
MFI	50%	$16,350.00	$17,500.00	$18,650.00	$21,000.00
$46,600	60%	$19,620.00	$21,000.00	$22,380.00	$25,200.00

HERA Special Income Limits, *effective May 14, 2010*

Lauderdale County	Percent of Median	1 Person	1.5 Persons	2 Person	3 Person
MFI	50%	$17,450.00	$18,675.00	$19,900.00	$22,400.00
$38,000	60%	$20,940.00	$22,410.00	$23,880.00	$26,880.00

Step 1

Step 4

National Non-Metro Income Limits, *effective May 14, 2010*

Lauderdale County	Percent of Median	1 Person	1.5 Persons	2 Person	3 Person
MFI	50%	$18,050.00	$19,350.00	$20,650.00	$23,200.00
$51,600	60%	$21,660.00	$23,220.00	$24,780.00	**$27,840.00**

Step 2

Step 3

Step 5

Question (1): What is the income limit for this household?
Answer (1): **$27,840.00**

Methodology:

Step 1 Determine the set of income limits allowable for development, *CBA applicable income limits are National Non-Metro Limits because they are the highest of all applicable limits. (Note: HERA Special not applicable in this instance due to the development's PIS.)*

Step 2 Identify the county = *Lauderdale County*

Step 3 Select the development's minimum set-aside, *CBA's MSA = 40/60*

Step 4 Select the household size/number of persons, *HHS = 3*

Step 5 Find the point where the two numbers meet= **$27,840.00**

This is the income limits, the maximum income the household can have (based on the household size) in order to reside in the unit.

C. Changes/Updates

HUD generally updates and publishes income and rent limits on an annual basis. In determining a household's income eligibility, an owner is to use the income limit in effect on the date the household income is certified. Upon HUD's release of new income limits, an owner of a HTC development is required to begin applying the new income limits by the later of the effective date provided by HUD for the new limits or 45 days after the new limits are published by HUD.

5.3 COMPONENTS OF ANNUAL INCOME

In calculating the gross annual income of a household, there are two components of annual income of particular interest to an owner: Regular Income and Asset income.

A. Regular Income

Regular income is the amount of income, monetary or not, that goes to or is received on behalf of the household from a source outside the family, including amounts anticipated to be received during the 12-month period following the (re)certification effective date. Regular income is considered income generated from traditional sources (i.e., gross wages and salaries, tips, bonuses and over-time), social security, retirement, welfare and other forms of public assistance and payments in lieu of earnings (e.g., unemployment compensation, workers' compensation, etc.).

In calculating the annual income of a household, the regular income of all adult household members including seventeen year old residents and emancipated minors must be determined and factored into the total gross income of the household.

B. Asset Income

Income that is normally generated from items of value that may be turned into cash (i.e., savings accounts, real estate, stocks, bonds and other forms of capital investment) is considered asset income. When determining the gross annual income of a household, asset income must also be considered and calculated, where applicable.

The actual amount of income generated from an asset depends on the cash value of the asset.

Cash Value

The cash value of an asset is the amount of income the household would receive or have the potential of receiving should the asset be converted to cash. When calculating the cash value, an owner must consider the fair market value of the asset minus any reasonable expense(s) that would be incurred in selling or converting the asset to cash (e.g., penalties for early withdrawal, broker and real estate commissions, legal fees settlement costs, etc.).

In accordance with IRS Revenue Procedure 94-65, effective October 11, 1994, an owner does not need to third-party verify the income from assets of a household as long as the cash value of the household's combined assets do not exceed $5,000. ***(See also 5.5B of this Chapter for more information on this subject).***

5.4 VERIFICATION OF ANNUAL INCOME

One of the key requirements of the HTC program is to ascertain the anticipated income of a household for eligibility determination purposes. In doing so, it is necessary to acquire the

verification(s) of a household's gross annual income at the time of initial move-in/eligibility and again at the time of the household's annual recertification, when applicable. Tax credit regulations require the verification of all regular sources of income, including asset income over $5,000 for all household members age 18 and older, including 17-year old residents and emancipated minors. This includes any non-employment income (e.g., TANF/AFDC, SSI, etc.), as well as any unearned income for the benefit of a minor (i.e., child support or asset income).

Verifications must include information acceptable to the Corporation and consistent with income determination procedures noted under Section 8 of the U.S. Housing Act of 1937, as amended.

A. Verification Requirements

When determining annual income, an owner must:

- Verify all regular sources of income and assets for household members age 18 and older, including the income and assets of all 17-year old household members and emancipated minors;
- Obtain written verification of income directly from the source (under NO circumstance should a resident(s) be allowed to deliver income verification documents to verifying officials);
- Retain all verification documentation for at least three years after an applicant is rejected; *and*
- Acquire a thoroughly completed verification inclusive of all relevant information pertaining to the household/resident's eligibility (i.e., blank fields should be completed and/or documented with notes/clarification memo).

Inaccurate information/verification may lead to an incorrect determination of a household's eligibility, which could result in leasing a unit(s) to an ineligible household.

B. Methods of Verification

HTC regulations require third-party verifications, when applicable, when determining the total "anticipated" gross household income. However, third-party verification may not always be obtainable. Thus, an owner when attempting to verify income may utilize one of the following retrieval methods deemed acceptable to the Corporation:

NOTE: *Before attempting to verify income, a Tenant Release and Consent form must be acquired from each household member age 18 and older, including 17 year-old residents and emancipated minors, granting an owner/management agent authorization to verify personal information. A Tenant Release and Consent form must be acquired at the time of application and thereafter on an annual basis as required.*

1. Third-Party Written

   Third-party written verification, the most preferred verification method, is defined as documentation of income received from an independent outside source (i.e., an applicant's employer, caregiver, etc.). Third-party verifications transmitted via mail, fax or hand delivery are acceptable to the Corporation if acquired in accordance with the verification retrieval procedures as outlined in this chapter.

   In the event a third-party verification is not available, an owner may acquire second-hand or an oral verification in order to satisfy the income verification requirement. In doing so, the following documentation must be included in a resident's file before utilizing an alternative verification method:

   - A copy of the date-stamped original request to the third-party entity/person; and
   - Written notes-to-file detailing all follow-up attempts, and reason for determination that verification is not viable.

2. Second-Hand

   Second-hand verifications are defined as verifications of income documented by check stubs, grant awards letters or tax returns. This method of verification, although acceptable to the Corporation, should be used as a last resort. Oftentimes second-hand verifications do not produce enough information in order to make an accurate determination of the household's income. Thus, when determining income from second-hand verifications, an owner, when applicable, must ensure the verification includes (at minimum) the employee's name, frequency of pay, and the signature and date of authorized personnel.

   Check Stubs

   Check stubs are the most common form of second-hand verification. When using a check stub to verify a household's annual income, the following information is required:

   - Six (6) consecutive check stubs issued within 120 days of the move-in or recertification date, if applicable;
   - Pay frequency, number of hours worked and rate of pay;
   - The resident's name, social security number and pay period; *and*
   - Year-to-date (YTD) earnings

   Tax Returns

   An owner, when attempting to verify the anticipated income of a household, may utilize the resident(s) tax return completed for the two year period immediately preceding the certification to make this determination, including copies of all applicable W-2 forms and evidence of filing.

   NOTE: When using tax returns to verify income, all income must be counted, including withholdings.

3. Verbal/Oral
   When a third-party written verification and/or second-hand verification are not possible, direct contact or oral verification with the source is acceptable to the Corporation. The conversation of the verbal/oral verification must be documented in the resident's file utilizing an agency approved *Documentation of Telephone Verification* form.[63] In addition to the oral verification, at least three consecutive check stubs issued within 120 days of the certification effective date should be obtained to support the information verified by phone. The file of the resident must be well documented detailing the attempts made to obtain the third-party written verification. Failure to follow the above noted requirements constitute an invalid verification and will be noted as such.

All income verifications must be date-stamped as they are received and processed prior to a prospective resident taking occupancy of a HTC unit or any required recertification.

NOTE: Absolutely no changes, corrections, and/or clarifications are to be made to any verification documents. Changes/corrections and/or clarifications should be documented on a Documentation of Telephone Verification or Memo. Additionally, the use of whiteout to make corrections is strictly prohibited!

C. Income Support Documentation – Special Sources/Circumstances

Income support documentation from certain sources is subject to the following verification procedures/requirements:

1. Social Security Verification
   Periodic payments received from Social Security must be included when determining annual income. This includes any payments received by adults on behalf of minor or by minors for their own care and support. Gross benefit amounts should be used to calculate annual income from Social Security benefits.

   The following sources are considered sufficient verification of Social Security benefits:

   - *Copy of Award or Benefit Statements.* This statement is generally issued when benefit commences or when a change in the benefit amount occurs (i.e., cost-of living increase). The Awards Benefit verification must be applicable for the certification period. Once received, it remains valid for one (1) year; or

[63] *An acceptable telephone verification form is one in which includes the name and title of the contact person, the name of the onsite management representative accepting the information and the time and date of the information being provided.*

- *Third-party Benefit Verification.* Third-party benefit verifications are generally acquired from the agency providing the benefits. The third-party benefit verification must be received and issued within 120-days of the certification (or recertification) effective date.

In the event the Social Security benefit statement and/or agency verification is not obtainable, an owner may attempt to acquire the verification by way of the following:

Telephone Request
The prospective and/or existing resident may call the regional office of the Social Security Administration at 1.800.772.1213 and request a written copy of the benefit amount. Benefit statements are generally mailed out within one day of receiving the request.

Written Request via Regular Mail
Resident/Manager may mail a written request of Social Security benefits to the Social Security Administration (postage paid, self-addressed envelope).

Written Request via the Internet
A Benefit Statement may be requested via the Social Security Administration's website at www.socialsecurity.gov/onlineservices/. Once this page has been accessed, click on the *If you get benefits link.* From this link click on *Request a Proof of Income Letter.*

2. Zero/Very-Low Income Household Verification
Households with a verified annual gross income of $2,500.00 or less must complete a *Certification of Daily Needs* form detailing how the household's basic needs is (will be) satisfied. The *Certification of Daily Needs* form must be completed in addition to an individualized *Certification of Zero Income* form, where applicable.

Under the HTC program, no minimum amount of income is necessary in qualifying applicants for residency. However, an owner has the authority to set minimum income requirements as long as such requirement does not conflict with the requirements of the HTC program and/or any Fair Housing Laws.

Note: Some applicants for housing may receive rental assistance from a federal or state agency that allows them to rent a tax credit unit even if they do not earn sufficient income. In this instance, an owner must adhere to the guidelines as stipulated in Section 5.9 of this Chapter.

3. Support Staff Verification
A verification of income for residential support staff must be acquired in accordance with standard verification procedures unless the staff member occupies a residential unit that was not treated as a low-income rental unit in the final HTC application (or subsequently approved by the Corporation) of which in this instance, no verification of income is required.

Rent Concessions for Staff Unit

If a staff member of a residential rental unit receives free rent or a rent discount, the full imputed value of the rent or discount must be counted as income. This applies whether or not living onsite is optional or mandatory for the employee.

In valuing the rent concession and determining how much should be included as income for employees living in a HTC (non-common area) unit(s), the amount should be the amount of rent that an HTC household living in the unit would pay rent plus the applicable utility allowance.

For employees residing in common area units, the value of the rent concession does not have to be counted as income since the employee can reside in the common areas unit without regard to income of the household. Note: Any staff paid utility payment is considered rent. The IRS (via its 8823 Guide) states that **if the owner is charging rent for a staff unit, it may be determined that the unit is not reasonably required by the development because the owner is not requiring the manager to occupy the unit as a condition of employment.**

Note: The amount of any rental concession or the lack thereof must be noted on the employment verification form or Common Area Staff Unit Status Affidavit, whichever is applicable.

4. Enterprise Income Verification (EIV)

The Enterprise Income Verification (EIV) system is a web-based system that contains tenant benefit and wage-related data for use by HUD's business partners. Specifically, the data is used by owners and management agents to assist them in verifying the employment and income of existing tenants at recertification to ensure that the right benefits are going to the right person(s).

HUD does not currently authorize HTC housing finance agencies to view the EIV's as the data in the EIV system contains personal information covered by the Privacy Act. Therefore, owners/managers authorized by HUD to use the EIV or any other income documentation must be able to provide income support documentation for tax credit auditing purposes. Additionally, where applicable, evidence of the EIV should be removed from HTC files presented to the Corporation for review.

5. Work Number Verification

When calculating income from earnings derived from the Work Number,[64] an owner must maintain all pages of the verification. Additionally, an owner must calculate income based on the greater of the year-to-date earnings, commencing no earlier than the first day of the first month of the certification year and the average income of the most current six pay

[64] *The Work Number is an agency that contracts with employers to provide employee information to housing providers and other benefit-providing entities.*

checks listed. Contradictory information should be clarified by obtaining a copy of the resident's actual check stub(s).

6. Partial Year Income

   In accordance with HUD Handbook 4350.3 Rev.1, "income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming circumstances will last a full 12 months," unless documentation can be provided evidencing the actual period of time the income will be received. In the event the resident cannot provide documentation that verifies income is for a limited and determinable period of time, the associated income should be considered to be available for an indefinite time period and annualized.

D. Term of Verification

In accordance with HUD Handbook 4350.3 REV 1, Change 2, all verifications of income are valid for 120 days prior to a resident's move-in and/or recertification date. If a household's eligibility has not been properly documented/certified within the allotted period (i.e., failure to obtain sufficient documentation verifying all applicable income), a new verification of income may be necessary to document the household's gross annual income. Oral follow-up verifications previously used to extend verification are no longer permissible or accepted.

5.5 CALCULATION OF ANNUAL INCOME

****AN OWNER IS ENCOURAGED TO REFER TO CHAPTER 5 OF THE HUD OCCUPANCY HANDBOOK FOR A COMPLETE LIST OF INCOME & ASSET INCLUSIONS AND EXCLUSIONS AS WELL AS FOR ASSISTANCE IN DETERMINING THE GROSS ANNUAL INCOME OF A HOUSEHOLD.****

A. Regular Income

An owner must calculate regular income by taking into account the total anticipated gross income of household members generated from the full amount of wages and salaries, before any payroll deductions, including overtime pay, commissions, fees, tips and bonuses and any other compensation for personal services rendered of all residents age 18 and older, including 17-year old residents and emancipated minors. Additionally, payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation and severance pay should also be included in a household's gross annual income calculation.

1. Methodology

   In calculating income, an owner must convert reported income to an annual figure, without adjustments for both a household's actual earnings and year-to-date (YTD) earnings. To convert periodic wages to any annual amount, multiply:

- Hourly wages by 2080 (based on a 40 hour/wk)
- Weekly wages by 52
- Bi-weekly wages by 26
- Semi-monthly wages by 24
- Monthly wages by 12

The greater of the YTD earning and the verified actual earnings must be used when calculating a household's gross annual income. To calculate a resident's YTD income, count the number of weeks from the date the YTD period starts to the end of the YTD period noted on the most current pay stub. Then take the total YTD wages and divide it by the number of weeks in the entire period. Take the resulting amount and multiply it by 52 in order to project the applicant/resident's income for a full year.

Range of Hours Worked

When determining annual income for earning other than full-time, an owner must multiply hourly wages by the number of hours the individual is expected to work per week x 52. If a range of hours is given, calculate the annual income using the higher end of the range. The lower spectrum of the range should NEVER be used in calculating income.

Less than Minimum Wage

Calculate annual income from hourly pay that is less than current minimum wage rate by taking the ***higher of*** the actual verified income from earnings, including tips, bonuses, raises, etc. and that of the minimum wage rate in effect at the time of the certification/recertification.[65] In the latter instance, there is no need to include the additional 20% mandatory tip calculation if the employer will not or can not verify tip income.

NOTE: If tip income is earned but not verifiable, an owner must acquire a *Certification of Tips* form from the prospective or existing household member. Tip income must be calculated in accordance with the amount verified by the member. ***(See section 5.5(A)(2) of this chapter for more on tip calculation requirement).***

2. Calculation Procedures – Special Income Types

   Bonus/Over-time/Tips

   When determining the gross income of a household, the calculation of reported bonuses, over-time and/or tips is required, regardless of whether the employer indicates that such income is not guaranteed. All amounts should be converted to annual amounts. When calculating earnings from a range of over-time hours worked, an owner must use the higher end of the range.

[65] *Federal minimum wage rate for covered nonexempt employees $7.25 per hour, effective July 24, 2009.*

Income from tips must also be determined for inclusion in gross income calculation. Individuals working in the food industry, personal service industry (i.e., such as hair stylists, or manicurists), and the gaming industry typically receive tips.

Effective March 1, 2005, if tip income is NOT separately listed on the *Verification of Employment* form, 20% of the verified gross annual income must be included in the income calculation as tips.

Anticipated Raise

When determining income from earnings, always include verified, anticipated raises/increases. If the employer indicates that a raise is anticipated AND provides the amount of the raise; yet does not indicate the effective date of the increase, calculate the anticipated raise for the entire 12-month/52 week period. If the employer indicates that a raise is anticipated AND provides the effective date as well as the amount of the raise, calculate the anticipated raise for the applicable period only.

Self-Employment

The *net* income from the operation of a business or profession is also included in a household's gross annual income calculation. When determining income from a business, include salaries paid to adult household members, and other cash or assets withdrawn by any family member – except if the withdrawal is the reimbursement of cash or asset the family invested in the business. Business income must be documented in the resident file using the *Self-Employment Affidavit* form provided by the Corporation.

Additionally, a business, which has been in operation for any period of time that would have provided an opportunity for filing a tax return, must provide a copy of the tax return (two years), Schedule C and evidence of filing, in addition to a *Self-Employment Affidavit* form. A business which has not filed a tax return due to its length of operation must complete a *Self-Employment Affidavit*, attaching support documentation (i.e. accountant's/business's quarterly report, business licenses, bank statements, etc.), where applicable.

Compute net income in accordance with the requirements outlined in HUD Handbook 4350.3 REV 1., Change 2.

Military

When calculating income for military personnel, an owner must consider and calculate, where applicable, the following entitlements:

- Base Pay
- BAQ (Basic Allowance Quarters)
- BAS (Basic Allowance for Subsistence
- VHA (Variable Housing Allowance)
- CA (Clothing Allowance)
- FDP (Foreign Duty Pay)
- Reserve Active Duty Pay
- Separation Pay
- Cost of Living Allowance
- Station Housing Allowance II
- Summer Camp Pay
- Special Duty Pay

The following sources of military income should NOT be included in the gross income calculation:

- One-time payments (i.e., re-enlistment bonus) – This is considered an asset; *and*
- Imminent danger pay (i.e., hostile fire pay)[66]

Additionally, in accordance with Section 3005(a) of the Housing Assistance Act of 2008, military basic housing allowance (BAH) is excluded from the gross income computation of a resident(s) if the development is located in any county or adjacent county in which a qualified military installation is located.[67] The new rule applies to certifications completed between July 30, 2008 and December 31, 2011.

Alimony/Child Support

Alimony and/or child support payments that is court ordered or otherwise supported by written agreement and reasonably anticipated by a prospective and/or existing resident must be included when determining income unless the recipient certifies:.

1. Scheduled payments are not being received and
2. Reasonable efforts have been made to collect on the all monies due, including filing with courts or agencies responsible for enforcing payments.

The owner may accept printouts from the court or agency responsible for enforcing payments or other evidence indicating the frequency and amount of support payments actually received.

<u>Alimony</u>

Acceptable verification of alimony payments include:

- *Separation/settlement agreement or a divorce decree stating the amount and type of support and payment schedule;*
- *A letter from the person paying support;*
- *Printouts from the court or agency responsible for enforcing the payments; or*
- *A statement of affidavit from the resident stating the frequency and value of the support (as a last resort only)*

<u>Child Support</u>

Child support payments should be calculated in accordance with the following:

1. *Court-Ordered Child Support - Obliged*

[66] *Imminent danger pay is defined as combat in a hostile file zone.*

[67] *A qualified military installation is one that has a military installation or facility with 1,000 or more members as of June 1, 2008. See the requirements of IRC 142(d)(2)(B)(iii)(1) for more information on this requirement.*

Calculate the full obliged child support amount unless it can be evidenced that payment has not been received and legal enforcement steps have been taken to acquire support. If evidence of legal steps is provided, calculate child support income by taking an average of the amount of child support received over the last 12 months.

MDHS clients: Calculate average amount of child support received over the last 12 months or since the inception of child support payments(s) commencement date if less than 12 months.

**Verification is required from MS Division of Child Support Enforcement (MDHS) or an attorney showing at least a 12-month history of non-payment.*

2. *Non-Court Ordered Child Support - Not Obliged*
When no documentation of child support, divorce, or separation is available, either because there was no marriage or for another reason, the owner may require the family to sign a certification stating the amount of child support received.

3. *Child Support Arrearage Payments*
If arrearage payments are included in the last 12 months historical figures (i.e. receipts total) and are expected to continue, calculate the annual child support income by taking the arrears portion in addition to the court ordered monthly amount.

If arrears payments are sporadic, use the average payments based on amounts received in the prior twelve months. However, if it is verified the arrearage payment will terminate or continue for a limited period (i.e. the arrear balance has been satisfied), calculate the annual child support income by taking the arrears payments for the period (months) in which the household is expected to receive the remaining arrearage payment only and the full-obliged child support amount.

Social Security
Periodic payments received from Social Security must be included when determining annual income. This includes any payments received by adults on behalf of minor or by minors for their own care and support. Gross benefit amounts should be used to calculate annual income from Social Security benefits.

Cash Contributions and Gifts
Income received on a regular basis as a contribution and/or gift from persons not residing in the unit are also included in a household's gross income calculation. This includes monies

received for rent and utility payments paid on behalf of a family and other cash or noncash contributions, excluding groceries.

B. Asset Income

In calculating the total anticipated income for a household, an owner must also consider the cash value of the income received from all assets and the amount of income generated or potentially generated from the asset(s).

1. *Assets Under $5,000*

   If the total cash value of all assets is $5,000 or less, an owner is to include the actual income received from the asset (i.e. monthly, quarterly or annual from interest checks, dividend checks, etc.) in its total gross household income calculation. Additionally, the household must complete a sworn self-affidavit certifying to the same, including a statement attesting no assets were disposed of (i.e., given away) for less than fair market value within the two year period immediately preceding the certification.

   EXAMPLE

   The Jones family has a certificate of deposit (CD) in the amount of $2,000 earning interest at a rate of 3%. The penalty for early withdrawal is $25.00.

   Question (1): What is the amount of income includable from this household's assets?
   Answer (1): **$60.00**

   Methodology (A) – Actual Income:
   Step 1: Determine the market value (MV) of the asset from all sources
   $2,000.00
   Step 2: Multiply the MV of all assets by the verified interest rate
   *$2,000.00 * .03 = $60.00 (This is the **actual income** generated from the assets)*
   Step 3: Since the MV of the asset is less than $5,000, add the ACTUAL INCOME generated from the asset to the annual income from regular sources. The product yields the household's anticipated gross annual income.

2. *Assets Greater than $5,000*

   If the cash value of all assets is greater than $5,000, an owner is required to include the greater of either: 1) the actual annual income received from these assets or 2) the imputed income.[68]

[68] *Imputed income is the percentage of value of the asset based upon the passbook savings rate as established by HUD, currently 2%.*

EXAMPLE

The Jones family has a certificate of deposit (CD) in the amount of $12,000 earning interest at a rate of 3%. The penalty for early withdrawal is $125.00.

Question (2): What is the amount of income includable from this household's assets?
Answer (2): **$360.00**

Methodology (A) – Actual Income:

Step 1: Determine the market value (MV) of the asset from all sources
$12,000.00

Step 2: Multiply the MV of all assets by the verified interest rate
*$12,000 * .03 = $360.00 (This is the **actual income** generated from the assets)*

Step 3: Add the GREATER of the actual income (methodology A, step 2) or the imputed income (methodology B, step 3) from the asset to annual income from regular sources. The product yields the household's anticipated gross annual income.

Actual income = $360.00; Imputed Income = $?

NOTE: Calculation of the imputed income is needed before a determination can be made as to which income amount is includable in the household's total gross income. (See methodology B below)

Methodology (B) –Imputed Income:

Step 1: Determine the market value of the asset from all sources
$12,000.00

Step 2: Subtract any expenses that would be incurred to convert the asset to cash *(penalties, fees, and settlement costs)*
*$12,000.00 -$125.00 = $11,875.00 (This is the **cash value (CV)** of the assets)*

Step 3: Multiply the CV of all assets by HUD's imputed passbook rate
*$11,875.00 * .02 = $237.50 (This is the **actual income** generated from the assets)*

Step 4: Add the GREATER of the actual income (methodology A) or the imputed income (methodology B) from the asset to annual income from regular sources. The product yields the household's anticipated gross annual income.

Actual income = $360.00; Imputed Income = $237.50

The higher of the two amounts is the actual income. Add the actual income to the verified regular income from all sources to get the total gross anticipated income for the household.

C. Special Occupants

An owner, when attempting to calculate the gross annual income of a household, must consider the relationship/status of certain occupants in order to determine the manner in which any associated income is to be calculated.

These special occupants are:

1. Permanently Absent Family Member

   When a family member is permanently absent from the household (e.g., spouse who is in a nursing home), the head of household can treat the permanent absent member(s) as a member of the household and count any associated income OR NOT consider the permanently absent family member as a part of the household and disregard any associated income.[69] The decision to count the income of a permanently absent family member is solely the decision of the head of household.

2. Temporarily Absent Family Member

   Generally, the income of a temporarily absent family member (i.e., spouse or head/co-head of household away working in another city) must be included in the annual income calculation of the household regardless of the monetary amount the absent member is actually contributing to the household. However, a temporary absent family member, excluding the head, co-head, or spouse, on active military duty must be removed as a household member (and any associated income) unless said person(s) leaves a spouse or dependent in the unit, which in this case, the person is considered a household member and a calculation of his/her income is required. ***(For more information on this topic, refer to Chapter 4 of this Plan.)***

3. Students

   The treatment of a student's income is dependent on the age of the student, the type of income and the status of the student within the household. It does not matter whether the student is living within the unit or is away at school.

   - If the full-time student is 18 years of age or older and is the head of household, spouse or co-head, all income is included.
   - If the full-time student is 18 years of age or older and a dependent of the head or co-head of the household (or student's tax filing shows that he/she is a dependent on the head or co-head of household's tax return), only the lesser of the actual earned income or $480 is included, along with unearned income and income from assets.

[69] *A permanently absent family member may not be named as the head of household, spouse or co-head of household.*

- If the full-time student is a minor (under the age of 18), then only unearned income and income from assets is included.

All forms of student financial assistance (i.e. grants, scholarships, educational entitlements, work-study programs, and financial aid packages) are excluded from income except for students receiving Section 8 assistance. For student's receiving Section 8, this requires the inclusion of all financial assistance in excess of tuition (except for student loans) of a student enrolled at an institution of higher learning regardless of the full-time or part-time student status. The only two exceptions to this requirement are:

- Students over the age of 23 with dependent children or
- Students living with his/her parents who are receiving Section 8 assistance.

4. Seventeen Year Old Resident

A household member age 17 at the time the HTC certification paperwork is completed/effective (including an emancipated minor) must provide anticipated income information for the 12-month period following the effective date of the certification. Additionally, documentation supporting any potential income must be acquired and included in the household's gross annual income calculation. The income calculation of the 17-year old resident must be adjusted to include only the income anticipated on or *after* she/he turn 18 years of age.

5.6 DIFFERENCES IN REPORTED INCOME

The income reported on third-party verification and/or received by a resident is not always accurate. In knowing this, an owner should give prospective and/or existing residents the opportunity to explain any significant differences between the amount reported on the application/recertification questionnaire and amounts reported on the third-party verification in order to determine the most accurate anticipated income of the household. The file should be documented to explain any differences.

An owner is expected to make reasonable judgment regarding the most reliable method for anticipating the income a household will receive over the next 12-months. In the event a household's income cannot be adequately determined using current information, the owner may include actual income received or earned within the 12-month period before the determination of annual income to determine program eligibility. NOTE: The prior year's income should not be used to estimate future income if sufficient documentation can be obtained documenting earning capabilities and/or income stream change.

An owner must keep accurate records/notes of the clarification received, including calculation methodology used to determine household eligibility. There is no need to submit such information to the Corporation at that time. However, the Corporation reserves the right to inspect the tenant files and/or interview a prospective/existing resident(s) to ensure that the proper verification procedures are (were) followed.

5.7 CHANGES IN INCOME

Once an initial income determination has been made for a HTC household, changes in income that occurs over the duration of the household's occupancy should be handled in accordance to the following:

A. Interim

The guidelines for the HTC program do not require qualifying households to report interim household income changes after a household has been initially qualified. However, in the event the gross annual income of a household changes as a result of an addition and/or reduction of household members, the household's income must be reassessed in accordance with policy as stated in Chapter 4.3A of this Plan.

B. Recertification

In accordance with Section 42 of the Code, an owner of a tax credit development must ensure that each resident of a qualified HTC unit have their total gross household income re-examined annually in order to monitor the household's income in relation to the current income limits, except developments eligible for the IRS Recertification Waiver. ***(For more information on recertification requirements refer to Chapter 4 of this Plan.)***

5.8 INCOME LIMITS FOR DEVELOPMENTS WITH MULTIPLE FUNDING SOURCES

Due to the complexity involved in putting together a tax credit development, it is not uncommon for an owner to obtain funding from various sources in order to make the deal work. In obtaining funding from multiple sources, an owner must also be aware of other income requirements and special restrictions that may affect the overall eligibility status of a household/HTC unit.[70]

When a development receives financing from another program or lender (i.e., HOME, RHS, Tax-exempt bonds, etc.,) that imposes different eligibility requirements (i.e., stricter tenant income

[70] *A tax credit development may be layered with other affordable housing programs such as HOME, RHS 515 which also have minimum income and rent requirements. When this happens, compliance with the rules and regulations of the HTC program is still required in order for the owner of the development to claim the housing credit.*

requirements, longer restrictions), the development must also comply with the rules and regulations of the HTC program. In doing so, an owner must be aware of the following significant program differences:

1. HOME

   The HOME program requires the participation of a percentage of units based on the number of units that are HOME Assisted units rather than the total number of units. The ratio is calculated based on the HOME funds received by the development and the total eligible development cost. Additionally, the HOME program requires 20% or less of the remaining units be leased to households with a gross income up to 80% of the AMGI. Tax credit developments on the other hand must qualify households in accordance with the MSA for the development which must be at or below 60% of the AMGI.

   The HOME program may require certain units to be designated possibly by a certain floor or a certain building; whereas the tax credit program requires a minimum percentage of units based on a building/development.

   NOTE: If the HOME program maximum income requirement is at 50% of the AMGI and the MSA requirement for the tax credit program is 60%, you cannot have 60% units in a 50% deal. Alternatively, you can have 40% or 50% units in a 60% deal.

2. RHS 515

   Under the RHS program,[71] a household's *adjusted income* must be at or below 80% of AMGI.[72] This RHS fundamental requirement could cause of an ineligible tax credit household since the tax credit program utilizes the anticipated gross annual income rather than the adjusted income used by the RHS program.

3. Tax-Exempt Bonds

   Tax-exempt bond financed developments are generally income restricted only. However, when paired with tax credits, the development becomes income and rent restricted as the tax credit program requires a restriction of both. In light of such, the maximum income levels must be adhered to whereby the gross annual income and rent of all tax credit households is at or below the applicable limits.

NOTE: When complying with the program requirements of multiple sources, the Corporation strongly suggests that the income limit for the HTC program be determined first, to ensure the household meets the tax credit household eligibility requirements.

[71] *RHS provides below market loans to development's meeting certain rural area definitions. In exchange, the development must adhere to RHS program requirements.*

[72] *Adjusted income is the income amount less certain allowable cost such as medical expenses and child care. The HTC program utilizes anticipated annual income without any adjustments.*

5.9 MINIMUM INCOME REQUIREMENT FOR PROSPECTIVE SECTION 8 RECIPIENTS

IRS Section 42(h)(6)(B)(iv) prohibits refusing to lease to a Section 8 voucher or certificate holder due solely to this association. To the same, leasing policies that discriminate or have the effect of excluding a large portion of Section 8 tenants are prohibited.

The Section 8 certification and voucher program provide for the monthly payment of a portion or all of the rent for its recipients. The incomes of a voucher and certificate holder must meet the HUD Section 8 guidelines in order to be eligible to participate in the Section 8 program. Likewise, an owners/manager of a HTC development may not establish minimum income occupancy requirements for Section 8 applicants as a condition for occupancy.[73] It is permissible, however, to require that a Section 8 holder show adequate income to pay the out-of-pocket portion of rent, such as three times (or other reasonable multiplier common in the rental housing industry) the amount of tenant-paid rent, not including the subsidy amount paid by Section 8.

NOTE: Residency may be denied of a Section 8 resident if he/she fails to meet any other consistently applied screening criteria (i.e., criminal background, eviction history, credit rating).

5.10 AREA MEDIAN GROSS INCOME (AMGI)

IRS Revenue Ruling 94-57 ***Changes in Area Median Gross Income (AMGI)*** provides guidance to development owners on the effect of changes in AMGI on initial tenant qualification and the next available unit rule. An owner must apply this revenue ruling regardless of when a development received a tax credit allocation. The ruling explains that the income limit used to initially qualify tenants in a tax credit unit fluctuates with changes in AMGI, which must be in effect at the time of initial occupancy as the qualifying income limit. Lowering of the applicable AMGI does not retroactively disqualify a tenant who initially qualified under a higher AMGI.

A reduction in AMGI decreases the income limit used to determine whether a development owner must rent any available unit to a new low-income tenant, and an increase in AMGI likewise increases the income limit used to determine whether a development owner must rent any available unit to a new low-income tenant. A building does not have one AMGI level.

Note: In accordance with HR 3221, once the AMGI is determined for a development that PIS prior to May 14, 2010, it cannot be decreased in future years, and is thus, held harmless (HUD's Hold Harmless provision). For more information on this provision, refer to section 5.2A of this Chapter.

[73] *Applicable to Section 8 recipients only and does not prohibit such restrictions for non-Section 8 tenants.*

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CHAPTER 6 - GROSS RENT DETERMINATION

6.1 OVERVIEW

According to Section 42 of the Code, the rent of a tax credit unit must also be restricted for an owner to be eligible to claim the tax credit. A unit is considered to be rent restricted when the gross rent for the household is restricted whereby it is deemed affordable to low-to-moderate income households. In doing so, participants of the HTC program must establish a gross rent, which is the tenant's rent contribution plus utility allowance and any mandatory charges, that does not exceed the program's maximum rent limits, which is 30 percent of the imputed income limitation. [74]

6.2 RENT LIMITS

In accordance with the Omnibus Budget Reconciliation Act of 1989, since 1990, the rent limits for a low-income unit is based on an imputed household size, which is determined by the number of bedrooms in the unit. In order to calculate the rent limit utilizing this method, the IRS established a basis for the number of people to occupy a unit. This basis established an "imputed occupancy" assumption for each unit size of 1.5 persons, 1.0 person for efficiency units. [75]

A. Methodology

Calculation of the rent limit for a particular household/unit is determined primarily by the number of bedrooms in the unit with an adjustment for the location of the development and the elected minimum set aside. Generally, to determine the rent limit for a prospective or recertifying household, an owner must utilize the following methodology:

Step 1 Determine the set of rent limits applicable for development (i.e., MTSPs, HERA Special or National Non-Metro)

Use the greater of all applicable limits

[74] *Developments allocated tax credits prior to 1990 determined the rent limit based on the size of the household occupying the unit with an adjustment for tenant-paid utilities and mandatory charges.*

[75] *The imputed occupancy assumption allows a development receiving tax credits post 1989 to identify the number of bedrooms a prospective household desires when determining rents and multiply it by an imputed occupancy of 1.5 persons to get the tax credit rent limit for the unit before adjustments for any tenant-paid utilities and/or mandatory charges.*

Step 2: Select the county in the state of Mississippi in which the development is located

Step 3: Select the development's MSA

Step 4: Find the imputed household size by multiplying the unit size by an imputed occupancy assumption of 1.5 persons, with the exception of an efficiency unit which is 1.0.

Step 5: Take the sum of the product found in step 3 and the corresponding MSA to determine the applicable rent limit for the household. (The point in which the imputed household size and the MSA meet is considered the ***tax credit rent limit*** for the unit/household.)

EXAMPLE

The manager of CBA Apartments, a tax credit community located in Lauderdale County placed in service 3/1/2009, has a three-person household with a verified income of $24,500 wanting to rent a two (2) bedroom tax credit unit. The owner agreed to rent 40 percent of the units at 60 percent (40/60) of the area median income. The owner does not pay the utilities at the development.

2010 MTSPs Rent Limits, *effective May 14, 2010*

Lauderdale County	Percent of Median	1 Person	1.5 Persons	2 Person	3 Person
MFI	50%	$408.00	$437.00	$466.00	$525.00
$46,600	60%	$490.00	$525.00	$559.00	$630.00

HERA Special Rent Limits, *effective May 14, 2010*

Lauderdale County	Percent of Median	1 Person	1.5 Persons	2 Person	3 Person
MFI	50%	$436.00	$466.00	$497.00	$560.00
46,600.00	60%	$523.00	$560.00	$597.00	$672.00

Step 1

National Non-Metro Rent Limits, *effective May 14, 2010*

Step 4

Lauderdale County	Percent of Median	1 Person	1.5 Persons	2 Person	3 Person
MFI	50%	$451.00	$483.00	$516.00	$580.00
$51,600	60%	$541.00	$580.00	$619.00	**$696.00**

Step 2

Step 3

Step 5

Question (1): What is the applicable **rent limit** for this unit size?
Answer (1): **$696.00**

Methodology:

Step 1 Determine the set of rent limits applicable for development (i.e., MTSPs, HERA Special or National Non-Metro) *(Note: HERA Special not applicable in this instance due to the development's PIS.)*

Use the greater of all applicable limits

Step 2 Determine the county in which the development is located
Development County = Lauderdale county

Step 3 Select the minimum set-aside for CBA Minimum set-aside
MSA = 40/60

Step 4 Determine the imputed household size. Multiply unit size by an imputed occupancy of 1.5
2 (bedroom unit) x 1.5 (imputed occupancy) = 3

Step 5 Take the sum of the product found in step 3 and the corresponding MSA to determine the applicable rent limit for the household.
3 (imputed occupancy) and MSA = 40/60, the point where the two meet = HTC rent limit = {$696.00}.

B. Determination Schedule

1. Prior to 2009

The Corporation, upon receipt of HUD's updated income and rent limits, issued a single set of revised limits for HTC developments reflecting the 50 and 60 percent figures for the state of Mississippi.

2. Subsequent to 2008

With the release of HUD's FY 2009 income and rent limits, the Corporation issues three sets of income and rent limits: Multifamily Tax Subsidy Projects (MTSP), HERA Special, and National Non-Metropolitan Limits. ***(Refer to Chapter 5 more information on these limits.)***

6.3 COMPONENTS OF GROSS RENT

In the HTC program, the gross rent of a unit includes components not generally included at a conventional market-rate development - the tenant's portion of the rent plus utility allowance, mandatory charges, fees and services.

A. Utility Allowance

According to Section 42(g)(2)(B), the maximum allowable gross rent must include the cost of utilities paid directly by the tenant, except for telephone, cable and internet services. When

applicable, the rent limit must be adjusted according to an utility allowance schedule whereby granting qualified residents a utility allowance estimate for qualified tenant-paid utilities. ***(Refer to Section 6.4 of this Chapter for more information on this topic.)***

B. Fees

1. Provision of Services

   HTC residential rental property may offer services other than housing. However, under Treas. Reg. 1.42-11(a)(3), the cost of services that are required, non-optional, as a condition of occupancy must be included in gross rent even if federal or state law required that services be offered to tenants by building owners.

   Examples of non-optional services include the mandatory implementation of:

   - Residential meal plan;
   - Renter's insurance;
   - Laundry facility;
   - Month-to-month lease fees
   - Garage/storage space

   Refundable/optional fees associated with renting a low-income unit (i.e., pet fees, laundry room fees, garage, storage fees, etc.) are not included in gross rent.[76] Fees such as security deposits and lease termination fees are one-time payments that are not considered in gross rent.

2. Development Facilities

   Additionally, no separate fees may be charged for facilities (i.e., pools, parking, fitness centers, staff units) if the costs of the facilities are included in eligible basis.

3. Governmental Assistance

   The gross rent should not include fees paid to the owner of a development by a governmental assistance program or by a 501(c)(3) nonprofit organization for supportive services which also provides rental assistance if the amount of assistance provided for rent cannot be separated from the amount provided for supportive services [Section 42(B)].[77]

   In the case of a SRO unit or transitional housing for the homeless, supportive services include any service provided to assist tenants in locating and retaining permanent housing [Section 42(g)(2)(B)(iii)].

[76] A service is optional when it is not a condition of occupancy and there is a reasonable alternative.

[77] *A supportive service includes any service provided under a planned program of services designated to enable residents of a residential rental development to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped.*

4. Application/Misc. Fees

   An owner may charge an application fee. However, the fee should reimburse the owner/development for costs associated with processing the tenant's application (i.e., cost of credit/background checks). The fee may not exceed processing costs.

   Fees for preparing a unit for occupancy (i.e. decorating fees) must not be charged. It is the responsibility of the owner to make units suitable for occupancy.

   Additionally, an eligible household cannot be charged a fee for the work involved in completing additional forms or documentation, such as the Tenant Income Certification, required to prove eligibility for the HTC program.

NOTE: The gross rent for a unit may be at or below the unit's rent limit. A gross rent amount that exceeds the rent limit is considered a noncompliance event reportable to the IRS.

6.4 UTILITY ALLOWANCE

According to Treasury Regulation 1.42-10, documentation of a development's utility allowance estimate must be acquired from an authorized utility provider (i.e., PHA, HUD, RHS, local Utility Company, licensed Engineer or Qualified Professional), by utilizing an approved utility estimate determination model (HUD or Energy Consumption), and/or based on actual consumption. An owner must update (or attempt to update) all utility allowance estimates on an annual basis. If at any time during the development's compliance period the update results in a change in the utility estimate currently in use, the new utility allowance estimate must be used to compute the gross rent of qualifying household's within 90 days of the change.

A. Source Providers

1. Public Housing Authority (PHA)

The Public Housing Authority (PHA) generates a utility allowance estimate based on average usage consumption data for a particular area. Unless a development is subject to the utility allowance guidelines as stated in IRS Reg. 1.42-10, the PHA is the appropriate utility allowance estimate source provider. The documentation obtained from the PHA should have all applicable figures provided and completed by the agency. Documentation whereby figures are completed by the owner/manager (i.e. typed in or handwritten figures) are deemed unaccepted.

A PHA must review its schedule of utility allowances each year, and must revise its allowance for a utility category if there has been a change of 10 percent or more since the last time the utility allowance was revised. The 90 day implementation period begins when the PHA makes the revised utility allowances available to the public.

2. **Department of Housing and Urban Development (HUD)**
   Buildings whose rents and utility allowances are reviewed by HUD annually must use the HUD approved utility allowances.[78] When there is a below-market HUD loan on a building, the applicable utility allowance for all rent restricted units in the building is the HUD utility allowance. On the other hand, the applicable allowance for any rent restricted unit occupied by residents receiving HUD Section 8 assistance (i.e., Housing Choice Voucher holder) is the PHA allowance. The utility allowance only applies to the unit in which a resident receives Section 8 assistance, and not to any other units in the building. In this instance, the appropriate documentation of the utility allowance would be the official Notification of Section 8 Gross Rent that includes the approved utility allowance from HUD.

3. **Rural Housing Services (RHS)**
   A Rural Housing Service (RHS) approved utility allowance must be used at a development that is RHS assisted, including any units occupied by households receiving Section 8 rental assistance payments. Additionally, if a unit receives RHS rental assistance, then the entire building becomes subject to RHS approved utility allowance. Appropriate documentation of a RHS utility allowance estimate is the official Notice of Approved Rent and/or Utility Allowance Change from RHS.

4. **Local Utility Company***
   Alternatively, an owner (or tenant) may obtain utility cost estimates from the appropriate local utility company in the area the development is located. The owner must furnish the Corporation with a copy of the utility company's estimated utility costs for units of similar size, construction and geographic area to the low-income development. If the utility service is deregulated, the estimate may be obtained from just one of the multiple utility companies offering the same utility service to the building. The local utility estimate is not available to buildings/tenants subject to RHS or HUD jurisdiction.

   The utility allowance is considered "obtained" when the building owner receives, in writing, information from the utility company providing the estimated per unit cost of the utility. Receipt of the information from the utility company begins the 90-day period after which the new utility allowance must be used to compute gross rents.

5. **HUD Utility Schedule Model***
   A building owner may calculate a utility estimate using the HUD Utility Schedule Model. Utility rates used for the HUD Utility Schedule Model must be no older than the rates in place 60 days prior to the beginning of the 90-day period before new rates have to become effective. HUD's Utility Schedule Model can be found on the HTC page at http://www.huduser.org/portal/resources/utilmodel.html or successor URL. ***(See Appendix B for specific instructions)***

[78] *HUD has an allowance for 'single-family' residences and another allowance for 'multifamily' developments. It is the responsibility of an owner of a HTC development owner to assure the correct utility allowance is utilized.*

The date entered as the "Form Date" on the "Location" spreadsheet of the Utility Schedule Model and reflected on the Form 52667, Allowances for Tenant-Furnished Utilities and Other Services, begins the 90-day period after which the new utility allowance must be used to compute gross rents.

6. **Energy Consumption Model***

A building owner may calculate a utility allowance estimate using an energy and water and sewage consumption and analysis model, referred to as the Energy Consumption Model. At a minimum, the energy consumption model must take into account specific factors including but not limited to unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. The utility consumption estimates must be calculated by an approved properly licensed engineer or a qualified professional that has jurisdiction over the building. The building owner and qualified professional must not be related parties.

The utility rates used for the energy consumption model must be no older than the rates in place 60 days prior to the beginning of the 90-day period. In the case of newly constructed or renovated buildings with less than 12-months of consumption data, the qualified professional may use consumption data for the 12-month period of units of similar size and construction in the geographical area in which the building containing the units is located.

The 90-day period begins 60 days after the end of the last month of the 12 month period for which data was used to compute the estimate.

7. **Actual Use Method***

The Corporation will review actual utility company usage data and rates of the building for which the utility allowance is requested. An owner may propose utility allowances for each building in a development to the Corporation based on average actual usage data and rates for the building(s). In the case of newly constructed or renovated buildings with less than twelve months of consumption data, the owner may use twelve-month consumption data from buildings of similar size and construction in the geographic area of the building(s).

**An owner must acquire written approval from the Corporation before the utility allowance from this source may be implemented at a development site. Additionally, the Corporation will assess a $150.00 fee per development, per request to review and approve utility allowance request.*

NOTE (1): Copies of the new estimates acquired from a local utility company or an approved determination model must be provided to the Corporation and made available to all tenants in the building at the beginning of the 90-day period before they can be used for determining the gross rent of a rent restricted unit.

NOTE (2): At the beginning of building's operation, an owner is exempt from reviewing the utility allowances or implementing a new utility allowance estimate(s) until the building has achieved 90% occupancy for a period of 90 consecutive days or the end of the first year of the credit period, whichever is earlier.

B. Sub-Metering/Ratio Utility Billing

Notice 2009-44 clarifies that, for purposes of Treasury Regulation §1.42-109a, utility costs paid by a tenant based on actual consumption in a sub-metered rent-restricted unit are treated as paid directly by the tenant, and not by or through the owner of the building. For tenants in rent-restricted units other than RHS-assisted buildings, buildings with RHS tenant assistance, HUD-regulated buildings and rent-restricted units in other buildings occupied by tenants receiving HUD rental assistance, the following rules apply:

a. The utility rates charged to tenants in each sub-metered rent-restricted unit must be limited to the utility company rates incurred by the building owner(s).

b. If the building owner charges the tenant a reasonable fee for the administrative costs of sub-metering, then the fee will not be considered gross rent under IRC §42(g)(2). The fee must not exceed an aggregate amount per unit of five dollars per month unless State law provides otherwise; and

c. If the costs for sewerage are based on the tenants' actual water consumption determined with a sub-metering system and the sewerage costs are on a combined water and sewerage bill, then the tenants' sewerage costs are treated as paid directly by the tenants for purposes of the utility allowances regulations.

Notice 2009-44 is effective for utility allowances subject to the effective date in Treasury Regulation §1.42-12(a)(4). Consistent with Treasury Regulation §1.42-12(a)(4), a building owner may rely on Notice 2009-44 for any utility allowances effective no earlier than the first day of the building owner's taxable year beginning on or after July 29, 2008.

6.5 CHANGES IN RENT

The gross rent of a household occupying a HTC unit may fluctuate up and down as the county median income limit and/or utility allowance fluctuates year to year. When this happens, special care must be taken to ensure the proper rental amount is being charged.

A. Income Limits

The rent and income limits for the HTC program are directly tied to each other. Generally, HUD releases income limits each year based on the updated calculation of area median incomes. Due to the correlation of the rent limits to the income limits, any update/change to the income limits directly impacts the applicable rent limit for a unit. As a result of these changes, the maximum allowable rents for a low-income unit may need adjusting. Rental adjustments must be handled in accordance with the following:

1. Decrease in AMGI

A decrease in the AMGI to which a development is located yields a reduction in the maximum allowable rent that may be charged. If this reduction of AMGI yields a rental rate that exceeds the new HTC rent limit, the owner must reduce the gross rent of all affected units to conform to the new schedule, regardless of the rent change date stated in the lease, no later than the effective date of the limits as provided by HUD or within 45 days of HUD's publication date.

Through the Omnibus Budget Reconciliation Act of 1989, Congress established a "rent floor" by providing that the maximum permissible rent for any unit may not fall below the initial rent when the unit was first occupied. Thus, if the median income in the area falls, the rents do not need to be reduced below original levels.

Under IRS Revenue Procedure 94-57 *Maximum Rent and Maximum Rent Floor,* effective for developments receiving initial allocations or determination letters after September 23, 1994, the rent floor is established on the date of allocation.[79] However, an owner may establish the rent floor for a development at the PIS date provided the owner has informed the Corporation of the designation prior to placing a building/development in service.

If the owner does not make the election by a building's PIS date, the IRS will treat the rent floor as taking effect on the date of allocation. For those developments receiving an initial allocation or determination letter prior to September 23, 1994, an owner had the option of establishing the rent floor for a building using either the allocation date or the PIS date. Additionally, these development owners were not required to notify the IRS of this election.

[79] *For a development with a rent floor established at the issuance of the carryover allocation and where the income limits are lower at placed in service than at the establishment of the rent floor, the initial maximum rents for the development will be the rent floor. However, the initial income limits used to determine resident eligibility will be those in effect at placed in service. This situation will continue until such time as the income limits for the current year are at least equal to those used to calculate the rent floor.*

New rental rate limit must always be applied to HTC units occupied after the effective date of the revision. In this instance, the old limits become obsolete.

2. **Increase in AMGI**
   To the same, annual changes in the area median income may allow an owner to increase the maximum allowable rent that may be charged for the occupancy of a low-income unit. An owner, when processing a rental increase must only implement a rental increase at the time of lease renewal or when the tenant is recertified, unless the lease agreement denotes otherwise. ***Refer to Section 6.9 of this Chapter for more information on this topic***.

3. **Over-Income**
   The rent for a unit occupied by a household determined over the income limits at recertification is still subject to the rent restrictions of the HTC program if the unit is to remain in compliance, ***except where permitted (refer to Section 6.6A of this Chapter for information on this topic)***.

B. Utility Allowance

Just as changes in the income limit directly affects the maximum rental rate that can be charged of a HTC unit, so does fluctuations in the utility allowance applicable to a unit. If a decrease in the income limit for a unit results in a lower maximum rent, an owner must review the rental rates charged of all applicable units and adjust accordingly, if applicable, to ensure compliance with the new rent limit.

Any change in the applicable utility allowance for a unit must be reflected within 90 days after the date of the change. Utility allowance adjustments which lower the allowance and thus have the effect of increasing the maximum net rents are effective for all move-ins and may be used for existing tenants subject to lease provisions.

6.6 RENTS FOR UNITS WITH OVER-INCOME HOUSEHOLDS

Once a household has been determined initially income eligible, future changes in the household's gross income resulting in an annual income amount over the current income limit applicable to the household do not automatically disqualify the HTC unit. However, to preserve the low-income status of the unit, an owner must handle the over-income situation in accordance with the following development types:

A. Mixed-Income Development

At a mixed income development, once a household has been determined over-income, that is, the gross annual income exceeds the applicable income limit by 140%, 170% for deep rent skewed development's, the gross rent for the household/unit(s) must remain rent restricted until a tax credit unit of comparable or smaller size is rented. Upon renting of the next available

unit, an owner may then remove the unit from its HTC unit calculation and set the rent at any desired 'unrestricted' market rate amount.

B. 100% HTC Development

At a 100% low-income development, if the gross annual income of a low-income unit exceeds the limit by 140%, the gross rent of the household/unit can never exceed the maximum allowable tax credit rent. Although the gross annual income exceeds the tax credit limit, the tax credit program allows the over-income household to remain in the unit and the unit would still be eligible for tax credit purposes. ***(For more information on this topic, refer to Chapter 2 of this Plan.)***

6.7 RENTS FOR UNITS WITH RENTAL SUBSIDY

Generally, the gross rent for a tax credit unit does not include any payments made to the owner by another government agency or nonprofit organizations, such as Section 8 rental assistance, RHS 515 rental assistance, or any other comparable rental assistance program. **(See Section 2(O)(2)(B)(i) of the IRC).** Thus, an owner, when establishing the gross rent for a rental assisted unit, should generally disregard any rental assistance payment(s). However, in doing so, an owner must also ensure compliance with other rules/restrictions that may apply per rental assistance/subsidy type.

A. Tenant-Based Rental Assistance

Tenant-based rental assistance (TBRA) is financial assistance offered to help individual households in an effort to better afford housing costs (i.e., rent, utilities, etc.) associated with market-rate units. Although TBRA provides rental assistance to qualifying households, under the HTC program said assistance does not affect the gross rent for the unit, only the payments made directly by the tenant. In this instance, rental payments made by Section 8 voucher holder may exceed the HTC rent limit as long as the owner receives a Section 8 assistance payment on behalf of the resident. If no subsidy is provided, the tenant may not pay more than the HTC rent limit.

Section 8 Rental Assistance Payments

For tenants receiving Section 8 rental assistance, a copy of the Housing Assistance Payment (HAP) Contract and the current HAP Amendment from the Section 8 agency must be maintained in the household's tax credit eligibility file in order to verify the amount of the Section 8 rental assistance.

B. Development-Based Rental Assistance

The gross rent of a household residing at a tax credit development receiving and/or providing development-based rental assistance (i.e., rental assistance payments made on the behalf of needy families directly to the development owner through a federal or owner-generated subsidy) is generally not affected by the rental assistance "subsidy" payment. However, the

manner in which the subsidy payment is to be applied depends on the type of assistance provided: Project-based Section 8, RHS or Owner-subsidized.

1. Section 8/RHS

   Under most development-based rental assistance programs, a household generally pays 30% of their monthly adjusted income in rent. In turn, the development owner has a contract under which the applicable federal agency pays the owner the difference between the contract rent and the household's portion of the rent. Although HUD/RHS makes rental payments to the owner on the behalf of the household, in this instance, it is not treated as a part of the household's gross rent calculation.

   Additionally, a portion of the rent paid by a Section 8 tenant can exceed the tax credit rent limit as long as the owner receives a Section 8 assistance payment on behalf of the resident. If no subsidy is provided, the tenant may not pay more than the maximum rent allowable by the tax credit program.

   NOTE: According to HUD Final Rule 24 CFR Part 983, a development with project-based (PBV) rental assistance may have a maximum gross rent amount in excess of HTC rent limits. HUD urges, however, PHAs to subsidize a reasonable market rent for a unit assisted through a PBV contract.[80]

2. Owner Rental Assistance

   Owner rental assistance (ORA) is a development based rental subsidy provided by an owner, if elected, to assist a certain percentage of low-income households.[81] The intended purpose of the ORA is to serve as a direct rental benefit to the subsidized household's out of pocket rental amount thereby offsetting the household's net tenant contribution.

   Eligibility Criterion

   When assigning/reassigning ORA, preference must first be given to an elderly, a single-parent or a non-subsidized household(s). Once ORA has been applied/assigned in accordance with the aforementioned preferences, any deficit ORA assignments may be satisfied in accordance with an owner's written plan pertaining to the same.[82]

   Note: A household's whose net rent contribution (before application of the ORA) is less than $50 should not be assigned ORA.

   How to Apply the ORA

   To apply ORA, an owner must first establish the contract rent for the unit, which should be comparable to rents charged to similar units of the same size, location, square footage and

[80] *On December 19, 2007, this rule was revoked by HUD thereby again allowing the rents to be established following standard procedures for the tenant-based voucher program.*

[81] *Owner provided rental assistance is considered a floating subsidy transferable unit to unit.*

[82] *The ending term of an owner's ORA requirement may be extended should the Corporation determine ORA was not applied and/or maintained in accordance with underwriting guidelines.*

amenities. Once the contract rent has been determined, the owner should apply all rental credits (i.e., Section 8, Housing Choice Voucher) with the exception of the ORA. This will generate the household's obligated contributions. From the household's obligated contribution, the ORA should be subtracted.

ORA Reassignment

At the time of recertification, a subsidized household's income needs to be re-examined for continued eligibility. Effective March 1, 2007, in order to remove/reassign ORA for a subsidized household, the household's gross income must be at or above 60% of AMGI. When this happens, the ORA must be pulled and reassigned to the next qualifying household on the waiting list.

ORA Revocation

ORA may be discontinued and/or revoked for an assisted household/unit under two (2) conditions:

- The ORA contract period has expired. An owner must provide assistance through the end of the subsidized families certification period unless a lease addendum exists specifying the ORA expiration date; or

- Household is deemed in noncompliance for failure to comply with request for certification in a timely manner (i.e., failure to comply with requests for certification in a timely manner, failure to respond to 90, 60, 30 day recertification renewal notices). ORA can be removed from a subsidized household if the household fail to provide the necessary paperwork within 10 business days of the recertification or Rent and Student Declaration due date. ***NOTE: A household must not be required to return the ORA as a penalty for nonconformance to governing rules/regulations. If the household returns the ORA, the unit will not be considered a unit assisted with ORA, commencing on the date of the earliest returned payment.***

  (For more information on this topic, refer to Chapter 3.3G.)

6.8 RENT DETERMINATION - SPECIAL CIRCUMSTANCES

A. Staff Units

The rental value of the housing provided to a full-time resident manager required to live onsite as a condition of employment is considered to be wages. In this situation, however, these wages are not taxable income and are not subject to employment taxes. [83]

If rent is charged for a residential staff unit, the unit may disqualify as a common area unit. Additionally, any reduction in rent in exchange for services must be considered as income to the household. ***(For more information on this topic, refer to Chapter 5.4(C)(3).)***

[83] IRC §§ 119(a)(2) and 3121(a)(19)

B. Deep Rent Skewing

Additionally, if the development qualifies as a deep rent skewed development, the gross rent with respect to each low-income unit in the development must not exceed 30 percent of the applicable income limit that applies to the individuals occupying the unit. Likewise, the gross rent with respect to each low-income unit in the development must not exceed half of the average gross rent with respect to units of comparable size that are not occupied by individuals who meet the applicable income limit.

C. Below-Market HOME Loans and NAHASDA

A building placed in service before July 31, 2008, receiving assistance under the HOME or NAHASDA programs and subject to the 40-50 rule (i.e., 40% of the units in the building/development are leased to households with incomes at or below 50% of AMGI) is not required to restrict the rents at or below the 50% AMGI level, unless the development has a 20/50 federal MSA obligation.

NOTE (2): For buildings placed in service after July 30, 2008, assistance under HOME and NAHASDA are not characterized as below market Federal loans and IRC §42(i)(2)(E) was removed from the Code under section 3002(b) of the Housing Assistance Tax Act of 2008.

6.9 RENTAL OVERAGE

Generally, a unit qualifies as a HTC unit when the gross rent does not exceed 30 percent of the imputed income limitation applicable to such unit under IRC §42(g)(2)(C).[84] Thus, when the gross rent exceeds the HTC rent limit, a rental overage occurs. In accordance with Section 42 of the Code, a rental overage is considered a noncompliance event thus disqualifying the unit for tax credit purposes. However, in some instances (i.e., unit with project-based assistance) the rental overage does not negatively affect the low-income status of the unit.

A. Permissible

Customarily, HTC units are occupied by households receiving rental assistance from a governmental agency such as Section 8 or RHS Section 515 whereby the maximum rental rate charged exceeds the amount permissible under the HTC program. In this instance, according to Section 42(g)(2)(E) of the Code, such an overage is allowable upon recertification of a household provided the rent increase is mandated under the provisions of the Section 8 or RHS 515 rental assistance programs.[85] Additionally, the rental overage must be handled in accordance with the following, where applicable:

[84] IRC §42(g)(2)(A)

[85] *Typically, an increase occurs if a household's income increases significantly, more than 30 percent, of the household's adjusted monthly income. In order for a household to have a rent amount in excess of HTC rent amount, the household must be previously qualified as tax credit eligible.*

Section 8 Project-Based Developments:
The increase is allowable if the mandatory payment for tenants in Section 8 housing exceeds the rent limit of the HTC program, and if the Section 8 payment decreases as the tenant payment increases.

RHS Section 515 Developments:
Developments allocated credits before 1991, the rental overage is not allowed to be paid by the household. The owner must pay the difference in the rental overage amount. Developments allocated credits after 1991, rental overage can be collected in so long as the overage is repaid to RHS.

B. Non-Permissible

When the gross rent exceeds 30 percent of the imputed income limitation applicable to such unit and the overage is not permissible under See IRC §42(g)(2)(B)(i) or the General Explanation of the Tax Reform Act of 1986, a non-permissible rental overage has occurred. Thus, the unit is deemed out of compliance. If a unit is deemed out of compliance with the applicable rent limit, the unit ceases to be a low-income unit commencing on the date of the first overage payment and continuing to the remainder of owner's tax year in which the correction occurs.

To cure a rental overage violation, the rent charged must no longer exceed program limitations. Additionally, applicable to HTC developments in the State of Mississippi, an owner of a development with rental overage must reimburse the household in the amount of the rental overage by either:

1. Refunding the household the amount of the overage in the form of check, money order or cashier's check; *or*
2. Refunding the tenant the amount of the overage by decreasing subsequent rental amounts to equal to the amount of the overage. NOTE: The correction date of the noncompliance will be no earlier than the first day of the year immediately following the year of the noncompliance.

Should an owner choose to provide a rental credit, the noncompliance will not be considered corrected until the credit has been fully utilized by the tenant or the end of the calendar year, whichever is later. Should reimbursement not be feasible due to the unknown whereabouts of the former tenant, the development should submit the total of the rental overage to the Corporation for disbursements to the assistance of low-income families. ***Refer to Section 6.5(A)(2) of this Chapter for information on this topic***.

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CHAPTER 7 - COMPLIANCE REPORTING AND ADMINISTRATIVE RESPONSIBILITIES

7.1 O VERVIEW

An owner of a tax credit building is required to keep records for each qualifying low-income household in the development as well as make these records available for monitoring to the Corporation upon request. Thus, proper record keeping is crucial to the success in maintaining compliance. According to Section 42 of the Code, an owner, in support of the same, has certain administrative responsibilities to prove and preserve his/her credit claiming ability. Among these responsibilities is an owner's adherence to any and all reporting requirements, monitoring reviews, fees, etc.

7.2 DEVELOPMENT RECORDS

During the 15-year compliance and extended use periods, it is the responsibility of an owner to maintain (by building) certain types of records evidencing compliance with program record-keeping requirements. In accordance with Treas. Reg. 1.42-5(b), the records associated with a household's eligibility must be retained for at least six years after the due date (with extensions) for filing the owner's federal income tax return for that year.

A. Tenant Files

The tenant files of qualifying households are perhaps the most critical piece of documentation evidencing an owner's compliance with program rules and regulations. The purpose of the tenant file documentation is for state monitoring agencies and the IRS to assess the compliance level of all occupants of HTC units.

Thus, in support of the same, an owner, at minimum, is required to obtain and maintain the following tenant file documentation:

- Rental Application/Recertification Questionnaire
- Tenant Release and Consent Form
- Income/Asset Verifications, or applicable verification of non-employment or zero-income
- Child Support Affidavit

- Tenant Income Certification (TIC) or Student Income and Rent Declaration, where applicable
- Inquiry/Verification of full-time student status
- Initial dwelling Lease/HTC Lease Addendum
- Utility allowance documentation (to support all UA figures listed in file), *if applicable*
- Social Security Card/Picture I.D. Card/Drivers License (all residents)
- Notes to file, *if applicable*

See **Appendix C** *for a complete list of mandatory certification forms.*

B. Unit Listing

- Listing of each unit number
- Listing of number of bedrooms
- Listing of tenant names
- Floor space of units
- Move-in date for occupied units
- Move-out date for vacant units
- Number of household members in each unit
- Household income for each unit
- Rent paid by household
- Utility Allowance
- Unit Status (low-income or unrestricted)

C. Development Files

An owner of a HTC development must maintain all program administrative records documenting an owner's compliance with the eligible basis and qualified basis of each building as well as all applicable point selection criterions[86] for the first year of the credit period, as well as six years after the tax filing date for the last year of the compliance period or extended use period, if applicable. Additionally, an HTC development owner is required to maintain documentation in support of any applicable financial and/or underwriting requirements. ***(See Table 3 below for a listing of the Point Selection Criteria for the state of Mississippi.)***

An owner's development files must also include the following, which must be maintained and made available to the Corporation upon request: Resident Selection Plan, Affirmative Fair Housing Plans, Lead-Based paint Certifications, Common Unit/Staff unit Status Affidavit.

D. Long-Term Storage

The IRS requires the records for the first year of the credit period to be retained for at least six years beyond the due date (with extensions) of an owner's filing of his/her federal income tax return for the last year of the compliance period of the building, at minimum 21 years. To ensure long-term retention of compliance records, an owner may use a storage method other than paper format (i.e., scanned, microfilm, etc.). The IRS notes, however, that storage methods other than hardcopy (paper) must satisfy the requirements as outlined in Rev. Proc. 97-22.

[86] *A point references the numerical value given to certain criterion based on state identified needs as generally stipulated in the state's QAP.*

Table 3: State of Mississippi Point Selection Criterions

Criteria	96	97	98	99	00-01	02	03	04-08	09	10	11	12
Rent at least 20% of units @ 50% of AMI	*X*						X					
Rent at least 20% of units @ 50% of AMI for 40 years or more							X	X	X	X	X	X
Rent 100% of units @ 50% of AMI for 40 years or more	X											
Rent 100% of units @ 50% of AMI		X	X									
Rent 75% of units @ 50% of AMI		X	X									
Rent 50% to 74% of units @ 50% of AMI		X	X									
Extend Use for 40 years or more		X	X	X	X	X		X	X	X	X	X
Rent at least 40% of units @ 50% of AMI for 40 years or longer				X	X	X						
Rent 20 to 39% of units @ 50% of AMI for 40 years or longer				X	X	X						
Significant Community Services or Amenities	X	X	X	X	X	X	X	X	X	X	X	
Significant Participation by local Tax-Exempt Organization or unit of Government	X	X										
Public Housing Waiting List	X	X	X	X	X	X	X	X				
100% LI Use	X	X	X	X	X	X	X	X	X			
Development-Based Rental Assistance	X	X	X	X	X	X	X	X	X	X	X	X
Tenant-based Rental Assistance	X	X	X	X	X	X	X	X	X	X	X	
Elderly Development Designation	X	X	X	X	X	X	X	X	X	X	X	X
Replacement and/or Operating Reserves						X	X	X	X			
Single-family leased purchase developments	X	X	X	X	X	X	X	X	X	X	X	X
Mixed-Income Development	X	X	X	X	X	X	X	X	X	X	X	X
Additional Amenities	X	X	X	X	X	X	X	X	X	X	X	X
Additional Single-Family	X	X	X	X	X	X	X	X	X			
Quality Enhancements											X	

Source: State of Mississippi's Qualified Allocation Plans (years 1996-2012)

7.3 REPORTING REQUIREMENTS

Once a development has placed at least one building in service, the owner must start submitting certain compliance reports to the Corporation. At a minimal, these reports document a development's low-income occupancy by providing specifics as it relates to a qualifying household's eligibility (i.e., income, rents and full-time student status). The Corporation performs a review of compliance report(s) to assess an owner's compliance with tax credit requirements.

A. Quarterly Occupancy Report

1. Reporting Requirements

During lease-up, an owner of a development/building(s) receiving an allocation of HTCs is required to submit to the Corporation for review a **Quarterly Occupancy Report (QOR)** detailing lease-up activity of the development. The QOR commences on the 15th day of the month after the quarter in which the first building places in service and continues quarterly thereafter *until the fifteenth day of the month immediately following the quarter in which the development met its initial targeted applicable fraction* (provided the development is in compliance and has resolved all compliance matters during this period).

Upon meeting these requirements, the Corporation will convert the development to annual reporting. NOTE: Quarterly reporting is to continue until the Corporation releases written correspondence detailing the status of the development based on the last required QOR.

2. Report Components

At a minimum, the QOR consists of the following:

- Part A – HTC Quarterly Occupancy Lease Up Summary Report;
- Part B – HTC Quarterly Occupancy (Rent Roll) Report (per building); and
- Utility allowance support documentation (to support all UA figures listed in file), *if applicable*
- Community Service Affidavit, *if applicable*

Reporting Period	Due Date
January – March	April 15th
April – June	July 15th
July – September	October 15th
October – Dec.	January 31st

B. Annual Owner Certification Report

1. Reporting Requirements

According to Treasury Regulation 1.42-5, during the compliance period, an owner of HTC development is required to submit, on an annual basis, information pertaining to the development's compliance status. This information, which is gathered via an owner's Annual Owner Certification (AOC) Report, includes data relating to the status of each tax credit building in the development, including the eligibility information of each qualifying tax credit unit. The AOC Report is due to the Corporation *on or before* January 31st of each calendar year for the preceding calendar year.

An AOC Report is required of an owner of a development that received an award of HTCs, excluding those development(s) that have not *met its initial targeted applicable fraction* as of 12/31 of the reporting year.

2. Report Components

The AOC Report consists of four components:

PART A: Owner's Certification of Continuing Program Compliance (OCCPC) Report;
PART B: Supplemental Certification of HTC Compliance Report;
PART C: HTC Annual Occupancy (Rent Roll) Report
PART D: Tax Forms (for developments receiving 8609s in certification year only)

Part A: Owner's Certification of Continuing Program Compliance Report
An owner of a HTC development must certify, under a penalty of perjury that the development/building/low-income unit adhere to all applicable federally mandated program requirements.

Among these requirements are:

- meets the minimum set-aside election test (the 20/50 test, the 40/60 test or the 25/60 Test, under sections 42(g)(4) and the 15/40 test);
- received an annual low income certification and documentation for each low income tenant;
- rent restricted;
- available for use by the general public on a non-transient basis (an original lease term of a full six months or longer) and each building is suitable for occupancy;
- reasonable attempts will be made to rent any vacant low income units and no comparably sized or smaller units will be rented to non-low income households while the vacancy exists;
- utilize the next available comparable or smaller unit to low-income households if the income of a previously qualified low-income increases sufficiently above the applicable income limit;

- allowed no change in eligible basis and ensure all tenant facilities included in eligible basis are available to all tenants without charge;
- the state or local unit responsible for making building code inspection did not issue a report of a violation for the development. If the governmental unit issued a report of a violation, the owner is required to attach a copy of the report of the violation to the annual certification submitted to the Corporation. An owner must state on the certification whether the violation has been corrected. Retention of the original violation report is not required once the Corporation reviews the violation and completes its inspection, unless the violation remains uncorrected;
- not refused to lease a unit in the development to a Section 8 applicant because the applicant holds a Section 8 voucher or certificate;
- not evict or otherwise have a resident's lease terminated for other than good cause; and
- no finding of discrimination under the Fair Housing Act has occurred for the development (a finding of discrimination includes an adverse final decision by HUD, an adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgment from a federal court).

Part B: Supplemental Certification of HTC Compliance Report

Effective January 1, 2007, the Corporation began requiring all program participants to certify to compliance with certain state specific (as outlined in the development's final HTC application) requirements. This certification is acquired by the *Supplemental Certification of HTC Compliance* (SCHTCC) Report. Where applicable, support documentation (i.e. Notice of Physical Damage), must be maintained and submitted to the Corporation for review along with the SCHTCC Report.

Part C: HTC Annual Occupancy (Rent Roll) Report

Under the record keeping and record retention provisions of 26 CFR Section 1.42-5, an owner of a HTC development is required to retain certain information for each qualified tax credit building. This includes specific data on each low-income unit (occupied or unoccupied) in the development. The HTC Annual Occupancy (Rent Roll) Report grants an owner the ability to identify, at a minimum, unit specific eligibility information (such as household composition, move-in/move-out date, rental amount, utility allowance estimate, and total gross household income). It also grants the Corporation the opportunity to monitor the minimum set-aside and applicable fraction of each building in the development from initial rent-up through the end of the compliance period.

HTC development owners are required to electronically submit the HTC Occupancy Report for each tax credit building in its development utilizing the Corporation's Certification Online (COL) system or, with approval, in hard-copy format utilizing the HTC Annual Occupancy (Rent Roll) Report.

Part D: Tax Forms

Owners of a tax credit development which received its IRS Forms 8609 *Low Income Housing Tax Credit Allocation Certification* during the certification year must submit copies of certain program required tax forms as required by federal regulations: 8609 *Low Income Housing Tax Credit Allocation Certification, 8609A Annual Statement of HTC, and Multiple Building Project Listing, if applicable*. Generally, the 8609 form(s), with part II completed by the owner, must be submitted at the time of an owner's AOC Report.[87]

C. Development Financial Analysis Report

1. Reporting Requirements

Effective January 1, 2007, an owner of a tax credit development is required to annually provide to the Corporation a *Development Financial Analysis Report (DFAR)* detailing the financial health of the development, as well as an owner's compliance with certain underwriting requirements (i.e., replacement and/or operating reserve). The DFAR provides the Corporation with a way to monitor the ongoing financial feasibility of a HTC development through the assessment of the development's fifteen (15) year average net cash flow (i.e., debt service coverage ratio).[88] The DFAR is due to the Corporation *on or before* June 30th of each calendar year for the preceding calendar year.

A DFAR is a financial report required of all owners that received an award of HTCs, excluding an owner of a development(s) that has not been in operation for a full calendar year. The first DFAR is due to the Corporation on or before June 30th of the year immediately following the first full calendar year of a development's operation and continues annually thereafter until the *later of* the expiration of the development's 15-year compliance period or the term of the loan to the senior lender.[89]

2. Report Components

The annual DFAR consists of the following five parts:

Part A: Operating Statement Summary Report

The Operating Summary Report collects data relative to the income and expenses of the development. It is intended to capture operational activity related to the development's performance, as well as monitor the development's fifteen (15) year net cash flow.

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[87] *An owner submitting an Application for Extension with the IRS for the ownership entity must provide a copy of the filed extension request along with the first AOC Report.*

[88] *The debt service coverage ratio (DSCR) is the ratio of cash available for debt servicing to interest, principal and mortgage payments. The acceptable range for the DSCR for HTC developments in the state of Mississippi is 1:1.15 to 1:1.30.*

[89] *Upon satisfaction of the DFAR reporting obligation, one additional DFAR covering the last reporting period is due to the Corporation. This report must be submitted on the date prescribed and in accordance with the reporting requirements applicable at said time.*

Part B: Report of Replacement Reserves

Since 1999, the establishment and maintenance of a replacement reserve account has been a requirement of all HTC developments in the state of Mississippi. The Report of Replacement Reserves grants the Corporation an opportunity to assess an owner's compliance with this program requirement, including all applicable use restrictions (i.e., capital improvements and system replacements). In support of the same, an owner of a HTC allocation from the state of Mississippi is required to make annual contributions to a replacement reserve account for the term of the loan to the senior lender.[90]

Initial funding must be satisfied in accordance with the applicable minimum contribution requirements, per development type, increasing at rate required in the development's governing QAP. ***(See Table 4 below for a listing of the Replacement Reserve Funding requirement)***

Table 4: Replacement Reserves Chart of Minimum Contributions

Criteria	1999	2000-2004	2005	2006-2012
Rehabilitation	$300.00	$250.00	$300.00	$300.00
New Construction	$200.00	$200.00		
New Construction – Elderly			$250.00	$250.00
New Construction – Family			$250.00	$300.00

Part C: Report of Operating Reserves

The Report of Operating Reserves grants the Corporation an opportunity to assess an owner's compliance with the operating reserve requirement.

Effective 2009, all HTC developments are required to establish an operating reserve account in the equivalent of six months of the development's first year operating expenses and maintain the required funding throughout the development's initial 15-year compliance period.[91] The initial funding amount of the operating reserve account, six months of the first year operating expenses, must be maintained, at a minimum, until the third year of the credit period following issuance of IRS Form(s) 8609. Thereafter, funds may be drawn down and replaced with a Letter of Credit, agreed to by the syndicator in writing, to be maintained and kept valid.

An owner must annually evidence to the Corporation compliance with this funding requirement.

[90] *Term of the loan to the senior lender is generally the actual length of time for which the money is loaned from the senior lender (i.e., 15, 30, 50 years).*

[91] *HTC allocations made prior to 2009 are required to initially establish an operating reserve account; however, are considered exempt from the long-term account funding obligation.*

Part D: Report of Owner Rental Subsidy

In satisfaction of the Owner Rental Subsidy reserve account requirement, participating owners must report annually to the Corporation compliance with the requirements as stipulated in the underwriting documents. In so doing, an owner must provide information relative to the activities of the owner rental assistance account, including all deposits and withdrawals, and the number of units served throughout the reporting period.

NOTE: Documentation evidencing compliance with this reporting component must be maintained throughout the obligatory period. Satisfactory documentation is considered a bank statement that evidences the establishment, funding and activity of an owner rental subsidy reserve account OR rental records clearly depicting the owner rental credit given in accordance with governing QAP. An owner's failure to provide and/or maintain the required number of ORA units could result in an extended ORA commitment period.

Part E: Statement of Certification

An owner of a HTC development must certify, under penalty of perjury, that the information provided accurately reflects the financial status of the development throughout the reporting period.

D. Electronic Report Submission Requirements

An owner's submission of his/her AOC Report, QOR and DFAR must be transmitted electronically, where applicable, to the Corporation using the applicable online system (i.e., Applied Oriented Design/Certification On-Line or Development Financial Analysis Report system).

AOD/COL:

The AOD/COL system is an electronic reporting program that interfaces with the Corporation's internal multifamily compliance tracking system, AOD/MF, thereby allowing an owner/manager the ability to log onto the Corporation's secured internet site and enter specific development and unit occupancy information, as well as generate, print and submit certain owner reports. All other components of the Report must be prepared and remitted to the Corporation in hard-copy format on or before the prescribed deadline date.

DFAR:

The DFAR is a web-based report database used to track the financial activity of a HTC development. The DFAR database may be accessed through the Corporation's website at www.mshomecorp.com.

NOTE: Depending on extenuating circumstances, the Corporation may approve an owner submission of the OCCPC and Occupancy Reports in hard-copy format. Minimal fees may apply.

7.4 COMPLIANCE REVIEWS

Beyond requiring periodic owner certifications, the Corporation will conduct an on-site inspection of all buildings in each low-income housing development at least once every three (3) years. This inspection will be performed of at least twenty percent (20%) of a development's low-income units, including the review of the low-income certification of each qualifying household, the documentation supporting such certification, and the rent record for these units. In addition, the Corporation will conduct on-site inspections for all buildings in a development. For developments PIS after January 1, 2001, an inspection will be performed by the end of the second calendar year following the year the last building in the development is PIS.

A. Tenant File Review

In order to meet its monitoring obligations to the IRS, the Corporation is required to inspect each HTC development at least once every three years. These periodic inspections may include a tenant file review to be conducted either externally (on-site audit), internally (desk audit), or both.

1. Desk Audit Procedures (24 Units or less)

   The Corporation, at its discretion, may inspect developments with 24 units or less utilizing the desk audit (internal) procedure. Developments audited utilizing this method will be given a specified period of time to prepare and submit to the Corporation a *legible photo copy* of all inspection items requested. Ample notification will be given to owners to grant time to prepare the requested documents.

2. On-site Audit Procedures

   Developments audited utilizing this method will be notified in writing, typically two weeks prior to the scheduled onsite inspection, of the date and time of the onsite inspection. Along with this notification will be an *On-site Audit Acknowledgment Form* that must be returned to the Corporation confirming receipt of the inspection. An *On-site Audit Acknowledgment* form not returned to the Corporation by the noted deadline date will result in an inspection of the development as outlined in the original correspondence.

   In the event staff proceed with the noted inspection and/or is unable to perform an inspection as scheduled (no show, no records, etc.), the owner will be responsible for reimbursing the Corporation for any cost associated with the inspection ***(See Chapter 11 of this Plan).***

B. Physical Condition Inspection

The Corporation has the right to perform an on-site physical inspection of any tax credit housing development at least through the end of the development's compliance and extended use periods. This inspection provision exists in addition to any review of low-income certifications,

supporting documents, and rent records. Generally, the inspection allows the Corporation to determine if a tax credit unit is suitable for occupancy. Inspection standards to be used are intended to ensure that the housing is decent, safe, sanitary, and in good repair. Irrespective of the physical inspection standards selected by the Corporation, a low-income housing development under Section 42 must continue to satisfy local health, safety and building codes.

The Corporation will consider a building exempt from the physical inspection requirement if the development is financed by RHS and RHS has entered into a Memorandum of Understanding (MOU) or other similar arrangement with the Corporation under which RHS agrees to notify the Corporation of the inspection results. [92] ***NOTE: THE CORPORATION RESERVES THE RIGHT TO CONDUCT PHYSICAL INSPECTIONS REGARDLESS OF ITS MOU WITH THE RHS.***

1. Physical Inspection Standards
   An owner of HTC development must maintain housing in accordance with HUD's Uniform Physical Condition Standards (UPCS) as set forth below:

Site:	The Site components such as fencing, retaining walls, grounds, lighting, mailboxes, development signs, parking lots, driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walkways or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulation of trash, vermin or rodent infestation or fire hazards.
Building Exterior:	Each building on the site must be structurally sound, secure, habitable and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls and windows, where applicable, must be free of health and safety hazards, operable and in good repair.
Building Systems:	Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable and in good repair.
Dwelling Units:	Each dwelling unit within a building must be structurally sound, habitable and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom call-for-aid (if applicable), ceiling doors, electrical systems, floors, hot water heater, HVAC systems, kitchen, lighting outlets/switches, patios/porch/balcony, smoke detectors, stairs, walls and windows) must be free of health and safety hazards, functionally adequate, operable and in good repair. Where applicable, the dwelling unit must have hot and cold running water including an adequate source of potable water (for example, Single-Room Occupancy (SRO) units need not contain water facilities). If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy and adequate for personal hygiene and the disposal of human waste. The dwelling unit must include, at a minimum, two hard wired smoke detectors with a battery backup in proper working condition on each level of the unit and/ or adjacent to all bedrooms and a

[92] *Development is financed by RHS under the Section 515 program and RHS inspects the building/development in accordance with CFR, Part 1930 (c).*

	multichemical, rechargeable fire extinguisher that must be inspected & tagged yearly by a certified individual or company.
Common Areas:	The common areas must be structurally sound, secure and functions adequately for the purpose intended. The basement/garage/carport, restrooms, closets utility/mechanical/community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony and trash collection areas, if applicable, must be free of health and safety hazards, operable and in good repair. All common area ceilings, doors, floors, HVAC, lighting outlets, switches, smoke detectors, stairs, walls and windows to the extent applicable, must be free of health and safety hazards, operable and in good repair. These standards for common areas apply in particular to congregate housing, independent group homes, residences and single room occupancy units in which the individual dwelling units (sleeping areas) do not contain kitchen and/or bathroom facilities. Common areas such as the office or laundry room must include hard wired smoke detector(s) with a battery backup in proper working condition on each level of the structure and/ a multichemical, rechargeable fire extinguisher that must be inspected & tagged yearly by a certified individual or company. All emergency lights in hallways should function as intended. Exit signs should be visible and illuminated. These two items should be tested regularly.
Health and Safety:	All areas and components of the housing must be free of health and safety hazards. These areas include but are not limited to air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation and lead based paint. For example, the buildings must have fire exits that are not blocked and have handrails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold and odor(s) (e.g. propane, natural gas, methane gas) or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certification of such.
Compliance with State and Local Codes:	The physical condition standards in this section do not supersede or preempt State and local codes for building and maintenance with which housing tax credit developments must comply. Tax credit developments must continue to adhere to these codes.

Source: ***24 CFR 5.703.***

2. Physical Inspection Procedures

The Corporation will notify an owner of a tax credit development in advance of an upcoming on-site physical inspection through official written correspondence. Along with this notification will be a *Building Physical Inspection Audit Acknowledgment Form* that must be returned to the Corporation confirming receipt of the inspection. Failure to return the *Building Inspection Audit Acknowledgment* form to the Corporation as required by the

noted deadline date will result in an inspection of the development as outlined in the original correspondence.

All buildings and residential units within the development should be readily accessible. Additionally, an owner is required to notify all resident's in writing of the scheduled inspection. Maintenance personnel and a management representative should be present during the inspection.
Noncompliance fees will be assessed against the development for reimbursement of expenses incurred to conduct all follow-up inspections, if applicable. In the event the staff proceeds with the noted inspection and is unable to perform the inspection as scheduled (no show, no records, etc.), the owner will be responsible for reimbursing the Corporation for any cost associated with the inspection *(**See Chapter 11 of this Plan**).*

Critical Health & Safety Violations

All buildings and residential units within the development identified by the Corporation as having a critical health and/or safety violation must be corrected within 72 hours of the *Notice of Critical Health & Safety Violations* letter. Critical violations that are not corrected within seventy-two (72) hours will be fined $100 per day, commencing on the first day after the first 24 hour period expires. Note: An owner is required to notify the Corporation upon completion of any critical and/or safety violation.

7.5 MONITORING COSTS

Under current monitoring regulations and guidance, the Corporation will charge monitoring fees to all HTC developments. The Corporation may require additional monitoring fees if subsequent guidance or regulations warrant changes to the Corporation's monitoring procedures. An upfront monitoring fee of 2.5% of the total credit amount over the ten-year credit period based on the first year's credit amount allocated is generally assessed at the time of application. ***(See Chapter 8.5 for more information on this topic.)***

7.6 LEGAL AND PROFESSIONAL COST

If the Corporation incurs legal fees or other expenses in enforcing its rights and/or remedies of an owner's obligation under Section 42 of the IRC and/or the associated LURA for the HTC program, the owner shall reimburse the Corporation for those fees and other expenses within ten (10) days of receipt of written demand thereof.

7.7 LIABILITY

Compliance with requirements of Section 42 is the responsibility of the owner of the development for which the tax credit is allowable. The Corporation's obligation to monitor for compliance with the requirements of Section 42 does not make the Corporation or the State of Mississippi liable for an owner's noncompliance. Neither the Corporation nor the State of Mississippi shall be held liable for any expenses or losses incurred by the owner for failure to adhere to the LURA, the requirements of Section 42 or the monitoring procedures established by the Corporation for Mississippi's Tax Credit Program.

Information provided in this Plan is designed to convey Mississippi's interpretation of Section 42 of the Internal Revenue Code (IRC), associated rules and regulations, amendments and modifications. It is not intended to be a legal interpretation of the IRC. Any errors contained herein which directly conflicts with Section 42 of the IRC and/or associated guidance will not be supported by the Corporation.

CHAPTER 8 – POST YEAR 15 COMPLIANCE MONITORING PROCEDURES

8.1 OVERVIEW

According to Section 42 of the Internal Revenue Code, buildings are eligible for the credit only if there is a minimum long-term commitment to low-income housing.[93] This commitment, commonly referred to as the Declaration of Land Use Restriction Agreement (LURA), is required of developments receiving an allocation of tax credits in 1990 and later. Specific requirements mandated in the LURA include an owner's adherence to the development's applicable fraction, income limitations, building disposition requirements, and prohibitions against certain discriminatory practices.

Section 1.42-5 contains the regulations for agencies' compliance monitoring during the compliance period. There is no language in the Code that specifies whether or not agencies are subject to these regulations after the compliance period. The tax benefit to the owner is exhausted and the IRS can no longer recapture or disallow credits. Because of this fact, the Corporation has established policy regarding how HTC developments will be monitored during the extended affordability period and the consequences of noncompliance.

8.2 EXTENDED USE PERIOD

The extended use period (EUP) is defined as the beginning of the first day in the compliance period immediately following the last day of the year of the development's initial 15-year compliance period. The EUP ends on the later of the date specified by the Corporation in the development's extended low-income housing commitment, or the date which is 15 years after the close of the compliance period.[94]

[93] *IRC 42(h)(6)*
[94] *Section 42(h)(6)(D)*

8.3 STATE REQUIREMENTS

The Corporation, by way of a development's LURA, requires an owner of a tax credit development situated in the state of Mississippi to adhere to the following requirements during the development's EUP:

1. Maintain the applicable fraction by leasing units to individuals or families whose income is 50% or 60% or less of the area median gross income (including adjustments for family size) as determined in accordance with Section 42 of the IRC;
2. Maintain the Section 42 rent and income restrictions for the period of time prescribed in the LURA and final HTC application;
3. Lease, rent or make available to members of the general public (or otherwise qualify for occupancy of the units under the applicable election specified in Section 42(g)) all units subject to the credit;
4. Not refuse to lease to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder;
5. Ensure each low-income unit is suitable for occupancy and will be used other than on a transient basis;
6. Reassess whether a household meets the requirement(s) of the program at least annually, if applicable; *and*
7. Adhere to other restrictions as required under the specific year's QAP and final HTC application to which any selection criteria points were awarded.

8.4 MONITORING PROCEDURES

During a development's EUP, the Corporation has the right to audit a development(s) tenant records and physical condition for compliance in accordance with certain Section 42 requirements, as well as the applicable LURA for the development. In doing so, the Corporation will monitor a development consistent with its standard compliance monitoring procedures, subject to the following modifications:

- A maximum review of at least 10% of the low-income units, rather than the normal 20%, during onsite tenant file reviews and physical inspections once every three years. Review never to exceed 12 units in any development;
- A review of only the number of tax credit units as a percentage of residential units will be examined to determine a building's applicable fraction;
- An automatic waiver of the recertification requirement for any previously qualified household;

- Revise NAUR to provide that if a household's income goes over 140% of the applicable AMI, a currently vacant unit or the next unit in the building must be rented to a qualifying household (the 'comparable or smaller' requirement will be removed). This would essentially be a one-to-one unit replacement; and
- Revise full-time student rule to no longer require minor children in grades K-12 be treated as full-time students or tax return support documentation for households occupied by parent/child(ren) and/or guardian/child(ren).

8.5 EUP MONITORING COSTS

Beginning with the first year of the EUP, an owner of a tax credit development will be assessed a $20.00 per low-income unit fee to cover staff costs to monitor the development during the EUP, excluding developments financed by RHS. RHS financed developments will pay an annual administrative fee of $10.00 per low-come unit. This reduced administrative fee will remain in effect in so long as a valid Memorandum of Understanding (MOU) exists between the Corporation and RHS AND RHS provides the Corporation with the latest Supervisory Visit for the development. Owners are still subject to all other fees as outlined in Chapter 11 of this Plan.

8.6 REPORTING REQUIREMENTS

At least once annually, an owner of a tax credit development is required to submit certain reports to the Corporation documenting compliance with program rules and regulations, including a development's LURA. All reports and forms are to be completed in accordance with report obligations as outlined in Chapter 7 of this Plan.

8.7 ENFORCEMENT

The Corporation and any interested party have the right to enforce specific requirements expressed in an owner's final tax credit Application, LURA, Compliance Monitoring Plan through the appropriate legal apparatus.

8.8 DISPOSITION

During the extended use period, an owner desiring to dispose of his/her interest in a HTC development must adhere to the requirements as outlined in Chapter 9 of this Plan.

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CHAPTER 9 - PROPERTY DISPOSITION & TRANSFERS

9.1 OVERVIEW

Recapture of the accelerated portion of the HTC[95] is not only caused by noncompliance with program rules and regulations, but may also be caused by either the sale or disposition of a HTC building/development or the sale of an ownership interest in such a building.

IRC Section 42(h)(6)(D) requires a development owner to commit to the low-income housing program for a minimum of 30 years. The commitment is documented as a restrictive covenant against the development and is recorded as a deed restriction governed by state law. When a building or development is removed from the HTC program before the end of the extended use period, state agencies have discretionary authority to release the extended use agreement and remove the deed restrictions or to enforce compliance Because of the intended long-term affordability of the development, it Is critically important that an owner wishing to dispose of his/her interest in a tax credit development do so in accordance with applicable federal and state requirements.

9.2 FEDERAL REQUIREMENTS

A building disposition is defined as the outright sale or disposal of ownership interest in a building/development that has been awarded an allocation of tax credits of which IRS form 8609 *Low-Income Housing Credit & Certification* has been issued. According to Section 708 (b)(1)(B) of the IRC, a partnership is considered 'terminated' if there is a sale or exchange of 50 percent or more of the partnerships interest within a 12-month period. To the same, the disposition of a tax credit building is a recapture event.[96]

According to the IRS, the disposition of a HTC building (or interest therein) can result in the recapture of the housing tax credit equal to 1/3 of the allowable credit for each year, plus interest, if the building is disposed of through year 11 of the compliance period. The amount of

[95] *The accelerated portion of the HTC is the amount of credit an owner receives during the 10-year credit period that would normally be generated in years 11-15 of the compliance period. The accelerated portion of the credit serves as a benefit to an owner whereby allowing the credit over a shorter period of time.*
[96] *A recapture is the reduction of the allowable credit as penalties for noncompliance.*

recapture reduces if the disposition occurs after year 11 of the development's compliance period.

According to legislative history, an owner of a HTC development of which she/he disposed of could avoid recapture of the accelerated portion of the credit by posting a surety bond[97] (or U.S. Treasury Direct Account (TDA)) equal to the amount specified on Form 8693 *Low-Income Housing Credit Disposition Bond*. Once filed, the bond was to remain in effect until 58 months after the end of the 15-year compliance period.

Effective July 30, 2008, under Revenue Procedure 2008-60, Congress eliminated the requirement mandating that a HTC development owner post a surety bond selling his/her interests in the development.[98] In the place of the recapture bonds is an extended period for the statute of limitations, three years following a recapture event. The recapture bond repeal is effective if the affected owner[99] elects implementation of the new provisions and it can be reasonably expected that the building will continue to operate as a qualified low-income building.

IRS Form 8693 Low-Income Housing Credit Bond

An owner must use IRS Form 8693 in posting a surety bond and to establish a TDA. The IRS must approve Form 8693 before it will take effect. Revenue Procedure 2008-60 does not apply to any owner who opted to satisfy the bond posting exception to recapture by setting up a TDA, and who received a Form 8693 that was approved by the IRS before January 1, 2008, but who did not fund the TDA within the period for funding the TDA prescribed by Revenue Procedure 99-11.

Additionally, the IRS requires an owner who seeks to make the election to no longer maintain a surety bond to submit a letter to the IRS containing the following information:

1. The owner's name, address, and taxpayer identification number
2. A statement affirming that the owner reasonably expects that the building will continue to operate as a qualified low-income building (within the meaning of Section 42) for the remainder of the building's compliance period;
3. A declaration stating: "Under penalties of perjury, I declare that I have examined this letter and the representations made therein, and to the best of my knowledge and belief, they are true, correct, and complete"; *and*
4. Attach to the letter a copy of the form 8693 that was approved by the IRS for the building, signature page only, and mail the letter to: Internal Revenue Service; Box 331; Attn.: HTC Unit DP 607 South; Philadelphia Campus; Bensalem, PA 19020.

[97] *A surety bond is a bond posted with the Treasury Department to avoid recapture of previously claimed credits after a change of ownership in a HTC development.*

[98] *The new law is effective for new dispositions after July 30, 2008 and applies retroactively to past dispositions.*

[99] *Those who were maintaining a surety bond or TDA is satisfaction of the low-income housing tax credit recapture disposition requirement prior to July 30, 2008.*

9.3 STATE REQUIREMENTS

Since a building disposition generally triggers a recapture of HTC's, the Corporation requires that changes of any ownership entity, including the general partner, partner(s) and/or the managing member of a limited liability company, be approved in advance of desired disposition/transfer. Thus, an owner electing to sell his/her interest in a HTC development must submit a written request to the Corporation at least 30 days before the proposed effective date of the disposition. Said notification will grant the Corporation the opportunity to ensure the validity of the new owner as it relates to the development's LURA and the proper conveyance of obligations/commitments regarding the affordable use of the development.

In addition to any federal requirements, an owner must adhere to the following state requirements:

- As a condition precedent to a sale, transfer or exchange, obtain and deliver to the Corporation the written agreement of any buyer or other party acquiring the development or any interest therein that such acquisition is subject to this agreement, Section 42, and applicable regulations. NOTE: This provision shall not act to waive any other restriction on sale, transfer or exchange of the development of any low-income portion of the development. Even if such buyer or other person acquiring the development or any interest therein fails or refuses to provide such written agreement, such acquisition (and all subsequent acquisitions that occur during the term of this Agreement) shall be subject to this Agreement, Section 42 and the applicable regulations;
- Notify the Corporation in writing at least thirty (30) days in advance of any sale, transfer or exchange of the entire development or any low-income portion of the development. Within thirty (30) days of the closing of such sale, transfer or exchange, the owner shall provide to the Corporation a complete copy of all the closing documents (with evidence of recording satisfactory to the Corporation on all recorded documents); *and*
- In accordance with Section 42(h)(6)(b)(iii) of the IRC, an owner shall not dispose to any person any portion of the building to which such Agreement[100] applied unless all of the building to which such Agreement applies is disposed of to such person. Likewise, the owner shall not demolish any part of the development or substantially subtract from any real or personal property of the development or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Agreement unless required by law. If the development, or any part thereof, is damaged or destroyed or shall be condemned or acquired for public use, the owner must use its best efforts to repair and restore the development to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the development in accordance with the terms of this Agreement.

[100] *Refers to the Land Use Restriction Agreement or Extended Use Agreement of which is recorded against the development.*

A. Types of Transfers Needing Agency Approval

The specific type of dispositions/transfers of which warrants the Corporation's approval is:

- A change in the ownership interest of the land, development, or building; *and*
- Partial changes in certain ownership interest

B. Agency Approval of Disposition/Transfers

The Corporation will consent to a proposed development disposition or transfer only if it is determined that:

- The Transferee and/or any Related Party are not in arrears on the payment of any fees due to the Corporation or in default under the LURA for any development;
- The Transferee and/or any Related Party has not engaged in or allowed instances of noncompliance with the provisions of any LURA, the Tax Credit Program, or Section 42 of the Code;
- The development is in compliance with all programs offer by the Corporation;
- The Transferee *and* the Transferee's property management representative have attended, within the past year or will attend within the next 90 days, a tax credit Compliance Training/Quarterly Briefing hosted by the Corporation; *and*
- The Owner has satisfied all other reasonable requirements communicated to the Owner by the Corporation.

If removal and replacement of Partner/Member do not occur simultaneously

The Corporation will accept, at its sole discretion, written notice of the removal of a General Partner in a Partnership, Managing and Administrative Members in a Limited Liability Company or Partners in a Partnership and the payment of the $875.00 transfer fee, in lieu of the requirements stated herein.

If the removal and replacement of such entity do not occur simultaneously, the replacement of the entity and the submission of the documentation listed elsewhere in this chapter must occur within six months of the removal or an additional $875.00 transfer fee will be assessed.

Any Development Transfer or Assignment made without the Corporation's prior written consent or otherwise in violation of the requirements or provisions of the LURA, or the tax credit program will be:

1. Ineffective to relieve or release the Transferor, the Land, the Property, and/or any Building from the obligations and provisions of Section 42, the Regulatory Agreement, and/or the tax credit Program;

2. Considered an event of default under the final HTC Application, the Regulatory Agreement, and the tax credit Program, allowing the Corporation to exercise any or all available remedies; and

3. Considered an event of noncompliance that may result in the cancellation or invalidation of the Reservation and/or Allocation of Credit for the development and/or any building. The indemnity and hold-harmless provisions of the LURA or any other Tax Credit Program agreement by the Owner and/or a successor in interest will survive the ending of such parties' interest in the development and will continue to be a personal obligation of such party.

9.4 BUILDING DISPOSITION

According to the IRS, there are four categories of which a building disposition can occur: Sale, Foreclosure, Destruction or Other.[101]

A. Sale

The disposition of a tax credit building by way of a sale is considered to have taken place in the event of the following:

- Fee title sale of building;[102] *or*
- Termination of partnership

B. Foreclosure

A HTC building disposed of by way of foreclosure is one whereby a lender has sought legal remedy to terminate the borrower's interest in a development after the loan which was used to finance the development was defaulted upon.

According to Section 42(E)(i)(I), "the extended use period for a building shall terminate on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure)[103] unless the secretary determines that such acquisition is part of an arrangement with the taxpayer for a purpose of which is to terminate such period." If the Corporation has cause to believe that an owner or related entity attempted to avoid the low-income requirements of the LURA through foreclosure and again holds an interest in the development, appropriate steps may be taken to re-activate and/or enforce the development's LURA requirements.

[101] *See IRS 8823 Guide*
[102] *A Fee Title Sale is a sale whereby the fee title passes from the seller to a new buyer.*
[103] *A Deed in Lieu of foreclosure occurs when a development owner voluntarily conveys the development to the mortgage holder to avoid foreclosure proceeding, this is also considered a form of foreclosure.*

The re-activation provision is intended to prevent an owner from escaping the LURA's occupancy requirement while retaining effective control and use of the development. This provision does not apply when a bona fide foreclosure has occurred and an owner later reacquires an interest on a reasonable commercial basis. ***(See Section 9.4 of this chapter for specific regarding an owner's reporting and record-keeping obligations).***

C. Destruction

Destruction of a HTC development occurs when a building's physical structure is affected in its entirety. When destruction occurs, it is considered permanent and the building(s) is not expected to operate as a tax credit development again.

D. Other

A building disposed under the 'other category' is one in which the building is disposed of by way of a method not specifically noted above.

9.5 DOCUMENTATION OF BUILDING DISPOSITION

In order for the Corporation to begin consideration of an owner's request for consent of a building disposition or transfer, an owner must submit certain documentation for review. The specific documentation need in order to process the transfer vary by disposition type.

A. Sale of Development

Upon the sale of a HTC development, an owner must promptly forward to the Corporation the following documents:

DOCUMENT NAME	DESCRIPTION
Cover Letter	A brief letter explaining the nature of the transfer, including any pertinent closing dates.
Official Request for Agency Approval of Sale of Development	Official request for agency approval of building sale/transfer
Proposed Management Contract	Management's resume' to include all developments currently listed in its portfolio.
Purchase and Sale Agreement (FINAL COPY)	A written contract signed by the buyer and seller stating the terms and conditions under which the development will be sold.
Proposed Ownership Entity documentation	Ownership information related to the entity proposing to buy the development, including tax identification number, organization structure, etc.
Development Team Composition form	A form detailing the members of the partnership, including tax identification numbers and contact information

B. Partnership Changes

In the event of a partnership change, an owner must promptly forward to the Corporation the following documents as it relates to the type of change made:

1. **General Partnership**
   - Partnership Agreement
   - Partnership Resolution pertaining to purchase, assumption of regulatory Agreement, and signature authority
   - Development Team Composition & Information Report
   - Processing/Transfer fee

2. **Limited Partnerships**
   - Partnership Agreement
   - Certificate of Limited Partnership with Secretary of State filing stamp from jurisdiction of formation
   - Partnership Resolution pertaining to purchase, assumption of Regulatory Agreement, and signature authority
   - Development Team Composition & Information Report
   - Entity documents for the general partner as required hereby depending on the entity type. (For example, if the general partner is a corporation, provide Articles and Bylaws of Corporation.)
   - Certificate of Existence/Authorization from the jurisdiction of formation (must be current; issued within 30 days)
   - Processing/Transfer fee

3. **Corporate**
   - Articles of Incorporation (with Secretary of State filing stamp from jurisdiction of formation)
   - Bylaws
   - Corporate Resolution pertaining to purchase, assumption of Regulatory Agreement, and signature authority
   - Certificate of Existence/Authorization from the jurisdiction of formation (must be current; issued within 30 days)

4. **Limited Liability Company**
   - Operating Agreement (or Limited Liability Agreement)
   - Certificate of Formation with Secretary of State filing stamp from jurisdiction of formation
   - Certificate of Existence/Authorization from the jurisdiction of formation (must be current; issued within 30 days)
   - Development Team Composition & Information Report
   - Resolution pertaining to purchase, assumption of Regulatory Agreement, and signature authority
   - Processing/Transfer fee

5. **Non-Profit Entity**
   If the development received tax credits from the Qualified Nonprofit Set-Aside category, the transferee (new Owner) must provide documentation demonstrating she/he are a bona fide 501(c)(3) qualified nonprofit and that one of their principle purposes is to provide low-income housing.

6. **General Partner or Managing Member**
   - Written cover letter explaining the transfer as noted above.
   - Schematic showing Ownership before and after proposed transfer.
   - Complete GP/Managing Member Change form.
   - Processing/Transfer fee
   - Documentation of Financial Solvency for new partner(s).

C. Foreclosure

When a building/development is no longer in compliance or participating in the HTC program as a result of foreclosure, the new ownership entity must IMMEDIATELY provide the Corporation a statement of certification attesting to the future HTC plans for the development (i.e., opt-out under the foreclosure provision or continue to maintain the development in accordance with HTC guidelines).

An owner electing to exit the program under the IRS' foreclosure provision must provide the Corporation with a copy of the following documents:

- Evidence of the foreclosure sale and/or anticipated date of sale;
- Occupancy Report as of the date of sale listing all residents and the current rental rate; *and*
- A complete *Notice of Property Transfer* Form identifying the name, address and telephone number of owner and/ or owner contact.

Additionally, in an effort to ensure certain tenant rights are not violated as a result of the foreclosure, the new owner must ensure compliance with the following federal prohibitions/requirements before the Corporation will consider the formal termination of the development's LURA:[104]

- No eviction or termination of tenancy of an existing tenant of any low-income unit before the close of the three (3) year period following the termination of the extended use agreement for reasons other than Good Cause; *and*
- No increase in the gross rent of any unit occupied by an existing tenant before the close of the three (3) year period following the termination of the extended use agreement, not otherwise permitted under Section 42.

[104] *See* IRC *Section 42(h)(6)(D)*

Upon the successful fulfillment of the above noted requirements, the Corporation will release the development from the extended use requirements.

Future Use of Available Tax Credits

Upon the foreclosure of a tax credit development, the rights to the annual low-income housing tax credit ceases should it be determined the development will no longer participate in the HTC program.

Administrative Requirement(s)

An owner of a HTC development that has undergone foreclosure and has(is) opted(ing) to no longer participate in the HTC program is required to submit, for the three (3) year period immediately following the date of the foreclosure sale, information pertaining to the occupants and the applicable rental rate charged. This information, which must be reported to the Corporation via an Annual Owner Certification (AOC) Post-Foreclosure Report, is due to the Corporation on or before January 31st of each calendar year (or on another date prescribed by the Corporation) for the preceding year.

> *NOTE (1): The first Occupancy Report is due to the Corporation within 30 days of the foreclosure sale identifying households occupying qualified low-to-moderate income units as of the date of the foreclosure sale, including the rental rate charged.*

> *NOTE (2): An owner opting to continue participation in the HTC program must continue business as usual thus complying with all program rules and regulations.*

9.6 DISPOSITION DURING EUP

During the extended use period, an owner of a HTC development desiring to relinquish his/her ownership right in the HTC program may do so in either one or two ways: Disposition via Regular Sale or Disposition via Qualified Contract. In either case, the owner must notify the Corporation (utilizing the *Notice of Property Transfer* form within 60 days of the scheduled disposition).

A. Regular Sale

A development owner who wishes to terminate his/her participation in the HTC program post year-15 (and before expiration of the EUP), yet retain the low-income use of the development, can only do so by finding a buyer that agrees to abide by the terms of the development's LURA.

B. Qualified Contract

An owner of a HTC development who wishes to terminate the low-income use provision of the development after 15 years (and before expiration of the EUP), and convert the development to market rate housing or other uses can only do so after first making the development available for purchase by parties who agree to maintain the development's low-income use.

Development owners must first provide the Corporation with a one year period to find a buyer willing to purchase the development for continued low-income use at a specified formula price as set forth in Section 42(h)(6)(E)(i)(II). This request can be submitted anytime after the end of the 14th year of the compliance period unless the owner agreed to extend the affordability period as specified in the development's LURA. [105] ***(See MHC website for Preliminary Application)***

1. Qualified Contract Price

   The Qualified Contract Price (QCP) or the pre-determined selling price of the development is derived at using a formula price that is equal to:

   - the remaining debt on the development;
   - the amount of initial investor equity increased by cost-of-living increases of up to 5 percent a year;
   - additional capital contributions; *less*
   - cash distributions to the owners. If the low-income portion or applicable fraction is less than 100 percent, then the formula price is multiplied by the applicable fraction.
   - Adjusted investor equity is the amount of cash invested in the development, adjusted by the percentage change in the cost-of-living or Consumer Price Index (CPI) up to a maximum of five (5) percent per year. There must have been an obligation to invest the amount at the beginning of the credit period. The cash that is invested in the development is counted to the extent that it is reflected in the basis of the development.

   Each year the total amount invested as of the end of the year increases by the appropriate CPI increase factor. Increases in the CPI in excess of five (5) percent a year is never reflected in the adjusted investor equity amount. The CPI for any year is the average of 12 monthly indexes ending in August of each calendar year. The CPI adjustment is measured from the first year that tax credits are taken.

   In a mixed-income building with some market rate units, the extended low-income use provision and the right to purchase at a formula price applies only to the low-income portion of the development. A buyer cannot offer to purchase a portion of a building with

[105] *In most LURA's executed in the state of Mississippi, an owner waives his/her right to the qualified contract provision.*

tax credits. Additionally, the purchase price would have to reflect the fair market value of the non-low-income housing units.

If a buyer for the development is found, the requirements of the extended use agreement apply for the remaining of the extended use period.

These provisions apply to developments receiving an allocation of credits after 1989 or automatically receiving credits as a result of tax exempt financing issued after 1989.

2. Supporting Documentation
An owner desiring to terminate the low-income use requirements of the development must forward to the Corporation certain support documentation necessary to determine the qualified contract price as required under IRS Code Section 42(h)(6)(F). These documents include:

- first year 8609s;
- annual partnership tax returns for all years of operation since the start of the compliance period ("all years");
- annual property financial statements for all years;
- loan documents for all secured debt during the compliance period; and
- partnership agreement (original, current and all interim amendments)

An owner expected to take advantage of the qualified contract option have a corresponding duty to maintain the records necessary to allow computation of the qualified contract price. The Corporation will deem the development ineligible for consideration if this responsibility is not fulfilled. Likewise, no review will be considered and/or processed until receipt of all supporting documentation.

3. Marketing Procedures
Upon receipt of an owner's written request to "op-out" the HTC program, the Corporation will review the owner's request (as well as the development's overall compliance status) and establish (along with the owner) an appropriate QCP. Once the QCP and all other information have been received, the Corporation will employ various marketing efforts to assist in the disposal of the development. Such marketing efforts may include, but is not limited to, preparing and distributing public notification (i.e., agency website, newspaper, flyer, etc.), and/or sending notification to the Federal Home Loan Bank (FHLB) and any other affiliates.

In order to facilitate the selling process, an owner must agree to:

- List the development for sale with a broker/realtor that works with affordable multifamily housing developments;

- Provide the Corporation, its agents and/or prospective buyers access to the development; *and*

- Provide and/or release information regarding the development to the Corporation and/or assigned mortgager that will assist in the disposal of the development.

If the Corporation fails to find a buyer before the expiration of the one-year period (or such longer period as the owner may agree to in writing), the development will remain subject to the requirements set forth in Section 42(h)(6)(E)(ii); that is, for a three-year period commencing on the termination of the extended use period. The owner may not evict or terminate the residency (other than for good cause) of an existing tenant of any low-income unit or increase the gross rent with respect to any low-income unit except as permitted under Section 42 of the Code, as well as the requirements of the regulatory agreement.

9.7 DISPOSITION FEE

The fee for the Corporation to process a building disposition will be as assessed as follows:

FEE AMOUNT	TRANSFER TYPE	DESCRIPTION
$3,000.00	Qualified Contract Sale	For complete ownership changes and/or sale of development of owner's requesting to exit program through qualified contract provision of the respective LURA. (Fee amount to include research time, copy fees, staff time, etc.)
$1,750.00	Regular Sale	For complete ownership changes and/or sale of development to a new individual, partnership, or limited liability company
$875.00	Partnership Changes	For changes in General Partner(s) in a limited Partnership, Members or Managing members in a Limited Liability Company or changes in the partners of a partnership

NOTE: An owner should consult their legal counsel and/or tax advisor about the effect of a Building/Development Transfer or Assignment.

CHAPTER 10 - FAIR HOUSING

10.1 OVERVIEW

State Housing Finance Agencies who administer the HTC program have been advised to include language as part of their QAP that addresses Fair Housing requirements. All tax credit developments, as well as other housing in the United States, is covered by the U.S. Department of Housing and Urban Development's (HUD) Fair Housing legislation.

This chapter will provide an overview of fair housing policies and procedures thereby outlining some basic requirements of an owner concerning reasonable modification/accommodations, accessibility, as well as fair housing laws.

10.2 PURPOSE

In 1988, Congress passed the Fair Housing Amendments Act as a supplement to Title VIII of the Civil Rights Act of 1968, commonly known as The Federal Fair Housing Act. The Amendments expand coverage of Title VIII to prohibit discriminatory housing practices based on disability and familial status. The Fair Housing Act establishes design and construction requirements for multifamily housing built for first occupancy after March 13, 1991. The law provides that failure to design and construct certain multifamily dwellings to include certain features of accessible design will be regressed as unlawful discrimination.

Under the Fair Housing Act, it is illegal to discriminate in the sale, rental, financing, advertising or operation of housing. It is also illegal to discriminate in residential lending decisions and to make discriminatory statements in advertising. The law covers both private providers and housing providers who receive financial assistance from HUD.

10.3 GENERAL PROVISIONS

The Fair Housing Act covers most types of housing. The broad objective of the Fair Housing Act is to prohibit discrimination in housing because of a person's race, color, national origin, religion, sex, familial status, or disability.

The Fair Housing Act includes two important provisions: (1) a provision making it un-lawful to refuse to make reasonable accommodations in rules, policies, practices, and services when

necessary to allow the resident with a disability equal opportunity to use the development and its amenities; and (2) a provision making it unlawful to refuse to permit residents with disabilities to make reasonable modifications to their dwelling unit or the public common use area, at the resident's cost.

In some circumstances it exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker and housing operated by organizations and private clubs that limit occupancy to members.

A. Reasonable Accommodations

In buildings with a 'no pets' rule, the rule must be waived for a person with a visual impairment who uses a service dog, or for other persons who uses a service dog or service animals.

In buildings that provide parking spaces for residents on a "first come, first served" basis, reserved parking space must be provided, if requested, by a resident with a disability who may need it.

B. Reasonable Modifications

When a resident wishes to modify a dwelling unit under the reasonable modification provisions of the Fair Housing Act, the resident may do so. The landlords or manager may require that the modifications be completed in a professional manner under the applicable building codes, and may also require that the resident agree to restore the interior of the dwelling to the condition that existed before the modification, with reasonable wear and tear excepted.

A development owner may not require that modifications be restored that would be unreasonable (i.e., modifications that no way affect the next resident's enjoyment of the premises). For example, if a resident who uses a wheelchair finds that the bathroom door in the dwelling unit is too narrow to allow his or her wheelchair to pass, the development owner must give permission for the door to be widened, at the resident's expense. The development owner may not require the doorway be narrowed at the end of the resident's tenancy because the wider doorway will not interfere with the next resident's use of the dwelling.

Residents may also make modifications to the public and common use spaces. For instance, in an existing development it would be considered reasonable for a resident who uses a wheelchair to have a ramp built to gain access to an onsite laundry facility. If a resident cannot afford such a modification, the resident may ask a friend to do his or her laundry in the laundry room, and the development owner must waive any rule that prohibits nonresidents from gaining access to the laundry room.

10.4 ACCESSIBILITY GUIDELINES

The seven technical accessibility requirements for covered buildings based on the Fair Housing Act of 1968, as amended, are:

- Accessible entrance on an accessible route
- Accessible Public and Common Areas
- Usable Doors
- Accessible Routes into and through the Dwelling Unit
- Accessible Light Switches, Electrical Outlets, and Environmental Controls
- Usable Kitchens and Bathrooms

10.5 LAWS THAT MANDATE ACCESSIBILITY

Certain dwellings, as well as certain public and common use areas, may be covered by several of the laws listed below to ensure nondiscrimination against people with disabilities. The law covers both the design of the building environment and in the manner that programs are conducted.

A. Section 504 of the Rehabilitation Act (1973)

Under Section 504 of the Rehabilitation Act of 1973, as amended, no otherwise qualified individual with a disability may be discriminated against in any program or activity receiving federal financial assistance. The purpose of Section 504 is to eliminate discriminatory behavior towards people with disabilities and to provide physical accessibility, thus ensuring that people with disabilities will have the same opportunities in federally funded programs as do people without disabilities.

Program accessibility may be achieved by modifying an existing facility or by moving the program to an accessible location, or by making other accommodations, including construction of new buildings. HUD's final regulation for Section 504 may be found at 24 CFR, Part 8. Generally, the Uniform Federal Accessibility Standards (UFAS) is the design standards for providing physical accessibility, although other standards that provide equivalent or greater accessibility may be used.

B. The Fair Housing Act of 1968, as Amended

The Fair Housing Act provides equal opportunities for people in the housing market regardless of disability, race, color, sex, religion, familial status or national origin, regardless of whether the housing is publicly funded or not. This includes the sale, rental, and financing of housing, as well as the physical design of newly constructed multifamily housing.

C. The Americans with Disabilities Act (1990)

The Americans with Disabilities Act (ADA) is a broad civil rights law that guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunications. Title II of the ADA applies to all programs, services, and activities provided or made available by public entities. With respect to housing, this includes, for example, public housing provided for state colleges and universities.

D. State and Local Codes

All states and many cities and counties have developed their own building codes for accessibility, usually based in whole or in part on the specifications contained in the major national standards such as ANSI (American National Standards for Buildings and Facilities) and UFAS. Many states also have nondiscrimination and fair housing laws similar to the Fair Housing Act and the Americans and Disabilities Act.

When local codes differ from the national standards, either in scope or in technical specification, the general rule is that the more stringent requirement should be followed.

10.6 FAIR HOUSING ENFORCEMENT

HUD is the federal enforcement agency for compliance with the Fair Housing Act. Designers and builders were guided by the requirements of the ANSI A117.1-1986, American National Standards for Buildings and Facilities-Providing Accessibility and Usability for Physically Handicapped People, until March 6, 1991. The Fair Housing Accessibility Guidelines were published on March 6, 1991 (56 Federal Register 9472-9515, 24 CFR Chapter I, Subchapter A, Appendix II and III). The Guidelines are not mandatory, but are intended to provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Act.

The Guidelines published on March 6, 1991, remain unchanged. However, on June 28, 1994, HUD published a supplemental notice to the Guidelines, "Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines." This supplemental notice reproduces questions that have been most frequently asked by members of the public and HUD's answers to those questions.

Under the Fair Housing Act, HUD is not required to review or approve building plans in order to issue a certification of compliance with the Fair Housing Act. The burden of compliance rests with the person(s) who design and construct covered multifamily dwellings. HUD or an individual who thinks he or she may have been discriminated against may file a complaint against the building owner, the Architect, the contractor, and any other person(s) involved in the design and construction of the building.

Source: Some of the information contained herein was acknowledged from the Fair Housing Act Design Manual, April, 1998, as amended.

CHAPTER 11 - NONCOMPLIANCE: PROCEDURES & CONSEQUENCES

11.1 OVERVIEW

Noncompliance is defined as an owner's failure to meet and maintain the requirements provided in Section 42 of the IRC, including related Regulations and IRS guidance, the Corporation's Compliance Monitoring Plan, the development's Qualified Allocation Plan (QAP) and Declaration of Land Use Restriction Agreement (LURA). Under Treasury Regulation 1.42-5(a), state housing finance agencies are required to report any noncompliance of which it is aware. Agencies are to report noncompliance without regard to whether the identified outstanding noncompliance is subsequently corrected.

11.2 CATEGORIES OF NONCOMPLIANCE

A. Major Noncompliance

Major noncompliance can be defined as any compliance violations that have a significant impact on the minimum set-aside, eligible basis, applicable fraction, habitability, and affordability of the development. There are two main categories of major noncompliance - federal and state. The severity of the noncompliance varies by noncompliance category.

1. Federal

Major noncompliance items represent a violation of the requirements of Section 42 and/or related Regulations and the IRS guidance for any year during the development's compliance period. Occurrences of noncompliance under this category may negatively affect an owner's credit claiming ability and the ability of the development to generate tax credits.

Examples of major federal noncompliance include, but are not limited to:

- Leasing to tenants whose initial gross household income exceeds the applicable maximum HTC income limit;
- Rents charged to tenants that exceed the maximum limit;
- Failure to follow the Next Available Unit Rule (NAUR);
- Severe health and safety violation generally affecting more than one (1) unit (i.e., structural problems, severe water damage, blockage of fire exits, fire hazards, pest

infestations, elevators functioning improperly, smoke detectors or sprinklers not functioning, inoperable fire extinguishers, etc.);

- Down units (not suitable for occupancy for an extended period of time - generally more than 90- days): and
- Improper disposition and/or sale of development

2. State

Major state noncompliance occurs when there is a violation of the development's allocation documents and/or the extended use agreement. These violations are generally specific to state –imposed requirements, but can stem from provisions of the IRC.[106]

Examples of major STATE noncompliance include, but are not limited to the following:

- Numerous instances of administrative noncompliance (i.e., failing to execute the procedures and policies stated in the state of Mississippi's Compliance Manual);
- Improper disposition and/or sale of development; and
- Violation of any provision of the development's final HTC Application/LURA/QAP (i.e., deeper targeting, owner rental subsidy, replacement reserves, etc.); and
- Delinquent on loan payments (i.e. Mississippi Affordable Housing Development fund, Allocation and/or Compliance fees)

NOTE: Open issues of any major noncompliance findings related to an owner, developer, general partner, or management entity participating in the HTC program may disqualify all related parties from participating in any other programs offered by the Corporation until such instances of noncompliance have been resolved. An owner cited for a major instance of noncompliance must be free of the noncompliance event prior to the last full calendar quarter plus thirty (30) days prior to the close of the application cycle.

B. Minor Noncompliance

Minor instances of noncompliance can be defined as non-major, less severe program violations. Examples of minor noncompliance include, but are not limited to the following:

- Isolated instances of administrative noncompliance (i.e., failing to execute the policies and procedures stated in the state of Mississippi's Compliance Manual); and
- Violations that require correction but do not impair essential services and safeguards for tenants.

[106] *Although state enforced through the development's LURA, certain provisions of the IRC, such as the prohibition against Section 8 discrimination and the LURA requirement, are direct requirements of the IRS.*

11.3 CORRECTION OF NONCOMPLIANCE

A. Notice to Owner

State agencies gather information to determine an owner's compliance with the requirements of Section 42 of the IRC. In doing so, a determination of noncompliance may occur. Most instances of noncompliance are correctable with the IRS upon the satisfactory receipt of documentation evidencing compliance with program rules and regulations. In accordance with the same, the Corporation is required to advise an owner of all instances of noncompliance found with program requirements and issue a correction period of up to 90 days.

B. Correction Period

The correction period begins on the date the Corporation provides written notification to the owner and/or owner's authorized agent of any noted deficiencies. The Corporation generally provides a correction period of 30 days; however depending on the severity of the noncompliance issue(s), if deemed necessary, the Corporation may grant an extension of up to six months to correct instances of noncompliance. An owner may request an extension of the correction period. All requests must be in writing and received by the Corporation no later than the last day of the correction period identified in the Corporation's notification of deficiencies. Additionally, a request for an extension must include the reason for the extension and corrective action efforts taken as of the date of the request.

C. Notice to the IRS

In accordance with Treasury Regulation 1.42-5(a), the Corporation is required to notify the IRS of an owner's noncompliance with program rules and regulations by way of Form 8823 *Low Income Housing Credit Agencies Report of Noncompliance or Building Disposition* no later than 45 days after the end of the correction period, including all agency-approved extensions. ***(See Appendix C)***

The Corporation will notify the IRS of an owner's noncompliance no later than 45 days after the end of the time allowed for correction by filing Form 8823.[107] Corrections of noncompliance made by an owner prior to the Corporation's notification of an upcoming monitoring review and/or inspection may not be reported to the IRS as an instance of noncompliance.

The Corporation will review all corrective action documents submitted by an owner up to three years beyond the end of the correction period. However, the Corporation will not review nor submit to the IRS a "corrected 8823" for instances of noncompliance submitted for correction beyond three years of the allotted correction period.

[107] *As a standard practice, the Corporation issues notices of noncompliance to the IRS indicating the status of the development at the end of the initial correction period. A subsequent review of corrective action documentation may be warranted to bring development back into compliance. These reviews will have no bearing on the initial 8823 filing*

Compliance with the requirements of the HTC program is on a building by building basis. Likewise, any instances of noncompliance will be reported and corrected in accordance with the same

11.4 COMMON VIOLATIONS

Some of the most common compliance violations made by owners participating in the HTC program are:

A. Ineligible Households

Household Income above Income Limit upon Initial Occupancy, *IRS 8823 line 11a.* For a unit to be qualified as a low-income unit, documentation of the household's initial eligibility must be on file with the owner. An owner who fails to acquire an initial tenant income certification and/or leases a low-income unit to a household whose income initially exceeds the applicable tax credit limit should not claim credits on that unit. The unit remains an ineligible unit as long as the household continues to have income that exceeds the applicable income limits and/or lacks the documentation needed to support a household's eligibility for purposes of claiming the low-income housing credit under Section 42 of the IRC.

B. Failure to Certify/Recertify Household

Owner Failed to Correctly Complete or Document Tenant's Annual Income Recertification, *IRS 8823 line 11b. A*n owner was required to recertify each low-income household at least once annually in accordance with program requirements. Failure to obtain updated household information, including full-time student status, by the anniversary date of the effective date of the original tenant certification is deemed a noncompliance event.[108]

C. Rental Overage

Gross Rent(s) Exceed Tax Credit Limits, *IRS 8823 line 11g*. A unit qualifies as an HTC unit when the gross rent does not exceed 30 percent of the imputed limitation applicable to such unit under the guidelines of the IRC. When an owner and/or management agent leases a unit with a gross rent exceeding the applicable tax credit rent, the rent charge is classified as a "rental overage" and a direct violation of program guidance.[109]

D. Inadequate Utility Allowance

Owner did not Properly Calculate Utility Allowance, *IRS 8823 line 11m.* A violation under this type generally occurs when an allowance for the cost of any applicable tenant-paid utilities is/was not given and/or properly calculated. A low-income housing development is deemed in compliance when the appropriate utility allowance is used, the utility allowance is properly

[108] *Effective July 30, 2008 by way of the Housing Economic & Recovery Act of 2008, some developments are exempt from the recertification requirement.*

[109] *Excluding units receiving rental assistance payments through certain other affordable housing programs (i.e., RHS/Section8) whereby certain exceptions apply.*

calculated, and rents are reduced for a utility allowance when utilities are paid directly by the tenant.

E. Transient Housing

Low-Income Units used on a Transient Basis, *IRS 8823, line 11o.* Under the tax credit program, an original lease term must be for a full six months or longer. Violations of this type signifies units whereby the initial lease agreement had a term less than required or the owner failed to obtain an initial lease agreement with the family.

11.5 UNCORRECTABLE VIOLATIONS

A. Minimum Set-Aside Violations

Project Failed to Meet Minimum Set-Side Requirement, *IRS 8823, line 11f.* An Owner's failure to satisfy the minimum set-aside requirement (20/50, 40/60) by the deadline date for the first year of the credit period results in the permanent loss of the entire credit.[110]

B. Out of Program/Out of Compliance

Project is no longer in compliance or participating in the Section 42 program, *IRS 8823, line 11f.* Any owner/developer who fails to respond to the Corporation's request for a monitoring review (i.e., onsite audit, desk audit, or physical inspection, AOC Report or special request for certain information) for three consecutive years will be deemed out of program and out of compliance for egregious noncompliance.

11.6 CONSEQUENCE OF NONCOMPLIANCE

According to federal regulations, an owner of a tax credit development must correct any instance of noncompliance which occurs with the set-aside requirement of the development or with a reduction in qualified basis within a reasonable period of time after the noncompliance has been noted. An owner's failure to correct an instance of noncompliance may result in consequences that range in scope from severe to minor and technical in nature. The consequence of noncompliance varies depending on the source of the noncompliance: federal or state.

A. Federal

Consequences of **federal noncompliance** may include:

- The Issuance of IRS **form 8823** *Report of Noncompliance or Building Disposition* by the Corporation;

[110] *A violation of key program or allocation requirements before or after the issuance of IRS form 8609 that occurs within 180 days after the end of the first taxable year of the building's credit period may also result in the cancellation of a development's allocation of credits.*

- ***Recapture*** – An instance of noncompliance whereby the IRS "takes back" the accelerated portion of the tax credit for prior years when the building(s) was in compliance;
- ***Loss of Housing Credit*** – Noncompliance whereby the IRS determines that an owner's tax credit ability is suspended (i.e., lost) for a certain taxable year(s) in which the building was/were not in compliance; and
- ***Interest*** – Noncompliance whereby the IRS assess interest for the recapture year and/or previous years

If noncompliance is due to a reduction in qualified basis and the minimum eligibility requirements is met, then recapture and disallowance of credit will apply only to units not in compliance.

B. State

Consequences of **state noncompliance** may include:

- ***Cancellation of Credit Allocation*** – An instance of noncompliance whereby the Corporation cancels a development's allocation of credits due to major program violations;[111]
- ***Development Not in Good Standing Designation*** – Noncompliance whereby the Corporation determines an owner has no intention on fulfilling his/her obligation(s) under the terms of the final HTC Application or LURA by way of repeated delays or ignoring the Corporation's request for monitoring reviews, reports, fees, etc.;
- ***Judicial Enforcement*** – The Corporation takes legal action to enforce provisions of the LURA;
- ***Financial Penalties*** – Additional compliance fees are assessed against a development owner (which are separate and apart from monitoring fees) as a reimbursement for all expenses incurred as a result of the noncompliance event. ***(See Section 11.7 of this Chapter for specifics regarding noncompliance fees & penalties);*** *and/or*
- ***Collection Action –*** Collection action is a consequence of noncompliance whereby the Corporation (in an effort to collect on monies/fees due to the Corporation) turns an owner of a development over to an agency responsible for collecting on financial obligations. Collection activity to commence on all accounts 120+ days delinquent.

11.7 FEES & PENALTIES

The owner of a development found in noncompliance will be responsible for reimbursing the Corporation for all expenses incurred. Reimbursement will be assessed in accordance with the following schedule:

[111] *A cancellation of credits by the Corporation issued within 180 days after the end of the first taxable year of the building's credit period permanently removes the development's allocation and future participation in the HTC program.*

Fee Type	Penalty Amount
General Noncompliance:	$55.00
Subsequent Review Fee:	$55.00 per hour*
Missed Deadline:	$55.00 per day*; $100 per day (physical inspection critical violation correction deadline)
Report Late Submission:	$100.00 per day *
Re-inspection Fee:	$55.00 per hour*
	Standard Mileage & Overnight Accommodations, *if applicable*
	Meal allowance in accordance w/applicable federal regulations
Copy (hard copies):	$.15 per copy
Research Fee:	$55.00 per hour
Missed Inspection Fee:	$55.00 per day*
Report Manual Submission Fee:	$40.00 per unit (AOC & QOR); $100.00 flat fee (DFAR)
Building Disposition/Transfer Fee:	$3,000 (QCT sale); $1,750 (Regular Sale); and $875 (Transfer)
Utility Allowance Request Fee:	$150.00 per development, per request
Staff Unit Request Fee:	$500.00 per request (Common Area > Residential Rental only)
Insufficient Fund Fee:	$40.00

**Reimbursement amount to be assessed at this rate up to 30 days.*

The Corporation must receive all fees assessed in association with an instance of noncompliance before the noncompliance event will be corrected with IRS. Likewise, the Corporation will only review corrective action documents, reports, etc., upon satisfactory payment of all fees assessed/due. Please include invoice number on check or attach copy of original invoice with payment of fees.

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HOUSING TAX CREDIT REGULATIONS

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FEDERAL REGULATION #1

Section 42 of the Internal Revenue Code

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Internal Revenue Code § 42 Low-income housing credit.

(a) In general.
For purposes of section 38 , the amount of the low-income housing credit determined under this section for any taxable year in the credit period shall be an amount equal to—

(1) the applicable percentage of

(2) the qualified basis of each qualified low-income building.

(b) Applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings.

(1) Determination of applicable percentage.

(A [sic]) For purposes of this section , the term "applicable percentage" means, with respect to any building, the appropriate percentage prescribed by the Secretary for the earlier of—

(i) the month in which such building is placed in service, or

(ii) at the election of the taxpayer—

(I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

(II) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

(B) Method of prescribing percentages. The percentages prescribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to—

(i) 70 percent of the qualified basis of a new building which is not federally subsidized for the taxable year, and

(ii) 30 percent of the qualified basis of a building not described in clause (i) .

(C) Method of discounting. The present value under subparagraph (B) shall be determined—

(i) as of the last day of the 1st year of the 10-year period referred to in subparagraph (B) ,

(ii) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month applicable under clause (i) or (ii) of subparagraph (A) and compounded annually, and

(iii) by assuming that the credit allowable under this section for any year is received on the last day of such year.

(2) Temporary minimum credit rate for non-federally subsidized new buildings.
In the case of any new building—

(A) which is placed in service by the taxtayer after the date of the enactment of this paragraph and before December 31, 2013, and

(B) which is not federally subsidized for the taxable year,

the applicable percentage shall not be less than 9 percent.

(3) Cross references.

(A) For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e) .

(B) For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3) .

(C) For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(7) .

(c) Qualified basis; qualified low-income building.
For purposes of this section —

(1) Qualified basis.

(A) Determination. The qualified basis of any qualified low-income building for any taxable year is an amount equal to—

(i) the applicable fraction (determined as of the close of such taxable year) of

(ii) the eligible basis of such building (determined under subsection (d)(5)).

(B) Applicable fraction. For purposes of subparagraph (A) , the term "applicable fraction" means the smaller of the unit fraction or the floor space fraction.

(C) Unit fraction. For purposes of subparagraph (B) , the term "unit fraction" means the fraction—

(i) the numerator of which is the number of low-income units in the building, and

(ii) the denominator of which is the number of residential rental units (whether or not occupied) in such building.

(D) Floor space fraction. For purposes of subparagraph (B) , the term "floor space fraction" means the fraction—

(i) the numerator of which is the total floor space of the low-income units in such building, and

(ii) the denominator of which is the total floor space of the residential rental units (whether or not occupied) in such building.

(E) Qualified basis to include portion of building used to provide supportive services for homeless. In the case of a qualified low-income building described in subsection (i)(3)(B)(iii) , the qualified basis of such building for any taxable year shall be increased by the lesser of—

(i) so much of the eligible basis of such building as is used throughout the year to provide supportive services designed

to assist tenants in locating and retaining permanent housing, or

(ii) 20 percent of the qualified basis of such building (determined without regard to this subparagraph).

(2) Qualified low-income building.
The term "qualified low-income building" means any building—

(A) which is part of a qualified low-income housing project at all times during the period—

(i) beginning on the 1st day in the compliance period on which such building is part of such a project, and

(ii) ending on the last day of the compliance period with respect to such building, and

(B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

(d) Eligible basis.
For purposes of this section —

(1) New buildings.
The eligible basis of a new building is its adjusted basis as of the close of the 1st taxable year of the credit period.

(2) Existing buildings.

(A) In general. The eligible basis of an existing building is—

(i) in the case of a building which meets the requirements of subparagraph (B) , its adjusted basis as of the close of the 1st taxable year of the credit period, and

(ii) zero in any other case.

(B) Requirements. A building meets the requirements of this subparagraph if—

(i) the building is acquired by purchase (as defined in section 179(d)(2)),

(ii) there is a period of at least 10 years between the date of its acquisition by the taxpayer and the date the building was last placed in service,

(iii) the building was not previously placed in service by the taxpayer or by any person who was a related person with respect to the taxpayer as of the time previously placed in service, and

(iv) except as provided in subsection (f)(5) , a credit is allowable under subsection (a) by reason of subsection (e) with respect to the building.

(C) Adjusted basis. For purposes of subparagraph (A) , the adjusted basis of any building shall not include so much of the basis of such building as is determined by reference to the basis of other property held at any time by the person acquiring the building.

(D) Special rules for subparagraph (B) .

(i) Special rules for certain transfers. For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service—

(I) in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom acquired,

(II) by a person whose basis in such building is determined under section 1014(a) (relating to property acquired from a decedent),

(III) by any governmental unit or qualified nonprofit organization (as defined in subsection (h)(5)) if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such unit or organization and all the income from such property is exempt from Federal income taxation,

(IV) by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such person and such building is resold within 12 months after the date such building is placed in service by such person after such foreclosure, or

(V) of a single-family residence by any individual who owned and used such residence for no other purpose than as his principal residence.

(ii) Related person. For purposes of subparagraph (B)(iii) , a person (hereinafter in this subclause referred to as the "related person") is related to any person if the related person bears a relationship to such person specified in section 267(b) or 707(b)(1) , or the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52).

(3) Eligible basis reduced where disproportionate standards for units.

(A) In general. Except as provided in subparagraph (B) , the eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.

(B) Exception where taxpayer elects to exclude excess costs.

(i) In general. Subparagraph (A) shall not apply with respect to a residential rental unit in a building which is not a low-income unit if—

(I) the excess described in clause (ii) with respect to such unit is not greater than 15 percent of the cost described in clause (ii)(II) , and

(II) the taxpayer elects to exclude from the eligible basis of such building the excess described in clause (ii) with respect to such unit.

(ii) Excess. The excess described in this clause with respect to any unit is the excess of—

(I) the cost of such unit, over

(II) the amount which would be the cost of such unit if the average cost per square foot of low-income units in the building were substituted for the cost per square foot of such unit.

The Secretary may by regulation provide for the determination of the excess under this clause on a basis other than square foot costs.

(4) Special rules relating to determination of adjusted basis.
For purposes of this subsection —

(A) In general. Except as provided in subparagraphs (B) and (C) , the adjusted basis of any building shall be determined without regard to the adjusted basis of any property which is not residential rental property.

(B) Basis of property in common areas, etc., included. The adjusted basis of any building shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation) used in common areas or provided as comparable amenities to all residential rental units in such building.

(C) Inclusion of basis of property used to provide services for certain nontenants.

(i) In general. The adjusted basis of any building located in a qualified census tract (as defined in paragraph (5)(C)) shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation and not otherwise taken into account) used throughout the taxable year in providing any community service facility.

(ii) Limitation. The increase in the adjusted basis of any building which is taken into account by reason of clause (i) shall not exceed the sum of—

(I) 25 percent of so much of the eligible basis of the qualified low-income housing project of which it is a part as does not exceed $15,000,000, plus

(II) 10 percent of so much of the eligible basis of such project as is not taken into account under subclause (I) .

For purposes of the preceding sentence, all community service facilities which are part of the same qualified low-income housing project shall be treated as one facility.

(iii) Community service facility. For purposes of this subparagraph , the term “community service facility” means any facility designed to serve primarily individuals whose income is 60 percent or less of area median income (within the meaning of subsection (g)(1)(B)).

(D) No reduction for depreciation. The adjusted basis of any building shall be determined without regard to paragraphs (2) and (3) of section 1016(a) .

(5) Special rules for determining eligible basis.

(A) Federal grants not taken into account in determining eligible basis. The eligible basis of a building shall not include any costs financed with the proceeds of a federally funded grant.

(B) Increase in credit for buildings in high cost areas.

(i) In general. In the case of any building located in a qualified census tract or difficult development area which is designated for purposes of this subparagraph —

(I) in the case of a new building, the eligible basis of such building shall be 130 percent of such basis determined without regard to this subparagraph , and

(II) in the case of an existing building, the rehabilitation expenditures taken into account under subsection (e) shall be 130 percent of such expenditures determined without regard to this subparagraph .

(ii) Qualified census tract.

(I) In general. The term “qualified census tract” means any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.

(II) Limit on MSA's designated. The portion of a metropolitan statistical area which may be designated for purposes of this subparagraph shall not exceed an area having 20 percent of the population of such metropolitan statistical area.

(III) Determination of areas. For purposes of this clause , each metropolitan statistical area shall be treated as a separate area and all nonmetropolitan areas in a State shall be treated as 1 area.

(iii) Difficult development areas.

(I) In general. The term “difficult development areas” means any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income.

(II) Limit on areas designated. The portions of metropolitan statistical areas which may be designated for purposes of this subparagraph shall not exceed an aggregate area having 20 percent of the population of such metropolitan statistical areas. A comparable rule shall apply to nonmetropolitan areas.

(iv) Special rules and definitions. For purposes of this subparagraph —

(I) population shall be determined on the basis of the most recent decennial census for which data are available,

(II) area median gross income shall be determined in accordance with subsection (g)(4) ,

(III) the term “metropolitan statistical area” has the same meaning as when used in section 143(k)(2)(B) , and

(IV) the term “nonmetropolitan area” means any county (or portion thereof) which is not within a metropolitan statistical area.

(v) Buildings designated by State housing credit agency. Any building which is designated by the State housing credit agency as requiring the increase in credit under this subparagraph in order for such building to be financially feasible as part of a qualified low-income housing project shall be treated for purposes of this subparagraph as located in a difficult development area which is designated for purposes of this subparagraph . The preceding sentence shall not apply to any building if paragraph (1) of subsection (h) does not apply to any portion of the eligible basis of such building by reason of paragraph (4) of such subsection .

(6) Credit allowable for certain buildings acquired during 10-year period described in paragraph (2)(B)(ii).

(A) In general. Paragraph (2)(B)(ii) shall not apply to any federally- or State-assisted building.

(B) Buildings acquired from insured depository institutions in default. On application by the taxpayer, the Secretary may waive paragraph (2)(B)(ii) with respect to any building acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

(C) Federally- or State-assisted building. For purposes of this paragraph —

(i) Federally-assisted building. The term “federally-assisted building” means any building which is substantially

assisted, financed, or operated under section 8 of the United States Housing Act of 1937, section 221(d)(3), 221(d)(4), or 236 of the National Housing Act, section 515 of the Housing Act of 1949, or any other housing program administered by the Department of Housing and Urban Development or by the Rural Housing Service of the Department of Agriculture.

(ii) State-assisted building. The term "State-assisted building" means any building which is substantially assisted, financed, or operated under any State law similar in purposes to any of the laws referred to in clause (i) .

(7) Acquisition of building before end of prior compliance period.

(A) In general. Under regulations prescribed by the Secretary, in the case of a building described in subparagraph (B) (or interest therein) which is acquired by the taxpayer—

(i) paragraph (2)(B) shall not apply, but

(ii) the credit allowable by reason of subsection (a) to the taxpayer for any period after such acquisition shall be equal to the amount of credit which would have been allowable under subsection (a) for such period to the prior owner referred to in subparagraph (B) had such owner not disposed of the building.

(B) Description of building. A building is described in this subparagraph if—

(i) a credit was allowed by reason of subsection (a) to any prior owner of such building, and

(ii) the taxpayer acquired such building before the end of the compliance period for such building with respect to such prior owner (determined without regard to any disposition by such prior owner).

(e) Rehabilitation expenditures treated as separate new building.

(1) In general.
Rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated for purposes of this section as a separate new building.

(2) Rehabilitation expenditures.
For purposes of paragraph (1) —

(A) In general. The term "rehabilitation expenditures" means amounts chargeable to capital account and incurred for property (or additions or improvements to property) of a character subject to the allowance for depreciation in connection with the rehabilitation of a building.

(B) Cost of acquisition, etc, not included. Such term does not include the cost of acquiring any building (or interest therein) or any amount not permitted to be taken into account under paragraph (3) or (4) of subsection (d) .

(3) Minimum expenditures to qualify.

(A) In general. Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if—

(i) the expenditures are allocable to 1 or more low-income units or substantially benefit such units, and

(ii) the amount of such expenditures during any 24-month period meets the requirements of whichever of the following subclauses requires the greater amount of such expenditures:

(I) The requirement of this subclause is met if such amount is not less than 20 percent of the adjusted basis of the building (determined as of the 1st day of such period and without regard to paragraphs (2) and (3) of section 1016(a)).

(II) The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units in the building, is $6,000 or more.

(B) Exception from 10 percent rehabilitation. In the case of a building acquired by the taxpayer from a governmental unit, at the election of the taxpayer, subparagraph (A)(ii)(I) shall not apply and the credit under this section for such rehabilitation expenditures shall be determined using the percentage applicable under subsection (b)(2)(B)(ii) .

(C) Date of determination. The determination under subparagraph (A) shall be made as of the close of the 1st taxable year in the credit period with respect to such expenditures.

(D) Inflation adjustment. In the case of any expenditures which are treated under paragraph (4) as placed in service during any calendar year after 2009, the $6,000 amount in subparagraph (A)(ii)(II) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 2008" for "calendar year 1992" in subparagraph (B) thereof .

Any increase under the preceding sentence which is not a multiple of $100 shall be rounded to the nearest multiple of $100.

(4) Special rules.
For purposes of applying this section with respect to expenditures which are treated as a separate building by reason of this subsection —

(A) such expenditures shall be treated as placed in service at the close of the 24-month period referred to in paragraph (3)(A) , and

(B) the applicable fraction under subsection (c)(1) shall be the applicable fraction for the building (without regard to paragraph (1)) with respect to which the expenditures were incurred.

Nothing in subsection (d)(2) shall prevent a credit from being allowed by reason of this subsection .

(5) No double counting.
Rehabilitation expenditures may, at the election of the taxpayer, be taken into account under this subsection or subsection (d)(2)(A)(i) but not under both such subsections.

(6) Regulations to apply subsection with respect to group of units in building.
The Secretary may prescribe regulations, consistent with the purposes of this subsection , treating a group of units with respect to which rehabilitation expenditures are incurred as a separate new building.

(f) Definition and special rules relating to credit period.

(1) Credit period defined.
For purposes of this section , the term “credit period” means, with respect to any building, the period of 10 taxable years beginning with—

(A) the taxable year in which the building is placed in service, or

(B) at the election of the taxpayer, the succeeding taxable year,

but only if the building is a qualified low-income building as of the close of the 1st year of such period. The election under subparagraph (B) , once made, shall be irrevocable.

(2) Special rule for 1st year of credit period.

(A) In general. The credit allowable under subsection (a) with respect to any building for the 1st taxable year of the credit period shall be determined by substituting for the applicable fraction under subsection (c)(1) the fraction—

(i) the numerator of which is the sum of the applicable fractions determined under subsection (c)(1) as of the close of each full month of such year during which such building was in service, and

(ii) the denominator of which is 12.

(B) Disallowed 1st year credit allowed in 11th year. Any reduction by reason of subparagraph (A) in the credit allowable (without regard to subparagraph (A)) for the 1st taxable year of the credit period shall be allowable under subsection (a) for the 1st taxable year following the credit period.

(3) Determination of applicable percentage with respect to increases in qualified basis after 1st year of credit period.

(A) In general. In the case of any building which was a qualified low-income building as of the close of the 1st year of the credit period, if—

(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of such building exceeds

(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the applicable percentage which shall apply under subsection (a) for the taxable year to such excess shall be the percentage equal to 2/3 of the applicable percentage which (after the application of subsection (h)) would but for this paragraph apply to such basis.

(B) 1st year computation applies. A rule similar to the rule of paragraph (2)(A) shall apply to any increase in qualified basis to which subparagraph (A) applies for the 1st year of such increase.

(4) Dispositions of property.
If a building (or an interest therein) is disposed of during any year for which credit is allowable under subsection (a) , such credit shall be allocated between the parties on the basis of the number of days during such year the building (or interest) was held by each. In any such case, proper adjustments shall be made in the application of subsection (j) .

(5) Credit period for existing buildings not to begin before rehabilitation credit allowed.

(A) In general. The credit period for an existing building shall not begin before the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building.

(B) Acquisition credit allowed for certain buildings not allowed a rehabilitation credit.

(i) In general. In the case of a building described in clause (ii) —

(I) subsection (d)(2)(B)(iv) shall not apply, and

(II) the credit period for such building shall not begin before the taxable year which would be the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building under the modifications described in clause (ii)(II) .

(ii) Building described. A building is described in this clause if—

(I) a waiver is granted under subsection (d)(6)(C) with respect to the acquisition of the building, and

(II) a credit would be allowed for rehabilitation expenditures with respect to such building if

subsection (e)(3)(A)(ii)(I) did not apply and if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.

(g) Qualified low-income housing project.
For purposes of this section —

(1) In general.
The term "qualified low-income housing project" means any project for residential rental property if the project meets the requirements of subparagraph (A) or (B) whichever is elected by the taxpayer:

(A) 20-50 test. The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

(B) 40-60 test. The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

Any election under this paragraph , once made, shall be irrevocable. For purposes of this paragraph , any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Rent-restricted units.

(A) In general. For purposes of paragraph (1) , a residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit. For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.

(B) Gross rent. For purposes of subparagraph (A) , gross rent—

(i) does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable

rental assistance program (with respect to such unit or occupants thereof),

(ii) includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937,

(iii) does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and

(iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949.

For purposes of clause (iii) , the term “supportive service” means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subsection (i)(3)(B)(iii) , such term includes any service provided to assist tenants in locating and retaining permanent housing.

(C) Imputed income limitation applicable to unit. For purposes of this paragraph , the imputed income limitation applicable to a unit is the income limitation which would apply under paragraph (1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

(i) In the case of a unit which does not have a separate bedroom, 1 individual.

(ii) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

In the case of a project with respect to which a credit is allowable by reason of this section and for which financing is provided by a

bond described in section 142(a)(7) , the imputed income limitation shall apply in lieu of the otherwise applicable income limitation for purposes of applying section 142(d)(4)(B)(ii) .

(D) Treatment of units occupied by individuals whose incomes rise above limit.

(i) In general. Except as provided in clause (ii) , notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under paragraph (1) , such unit shall continue to be treated as a low-income unit if the income of such occupants initially met such income limitation and such unit continues to be rent-restricted.

(ii) Next available unit must be rented to low-income tenant if income rises above 140 percent of income limit. If the income of the occupants of the unit increases above 140 percent of the income limitation applicable under paragraph (1) , clause (i) shall cease to apply to such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation. In the case of a project described in section 142(d)(4)(B) , the preceding sentence shall be applied by substituting “170 percent” for “140 percent” and by substituting “any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income” for “any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation”.

(E) Units where federal rental assistance is reduced as tenant's income increases. If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the income limitation applicable under paragraph (1) , such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if—

(i) a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and

(ii) the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if—

(I) the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1) , and

(II) such units were rent-restricted within the meaning of subparagraph (A) .

The preceding sentence shall apply to any unit only if the result described in clause (ii) is required by Federal statute as of the date of the enactment of this subparagraph and as of the date the Federal rental assistance payment is made.

(3) Date for meeting requirements.

(A) In general. Except as otherwise provided in this paragraph , a building shall be treated as a qualified low-income building only if the project (of which such building is a part) meets the requirements of paragraph (1) not later than the close of the 1st year of the credit period for such building.

(B) Buildings which rely on later buildings for qualification.

(i) In general. In determining whether a building (hereinafter in this subparagraph referred to as the “prior building”) is a qualified low-income building, the taxpayer may take into account 1 or more additional buildings placed in service during the 12-month period described in subparagraph (A) with respect to the prior building only if the taxpayer elects to apply clause (ii) with respect to each additional building taken into account.

(ii) Treatment of elected buildings. In the case of a building which the taxpayer elects to take into account under clause (i) , the period under subparagraph (A) for such building shall end at the close of the 12-month period applicable to the prior building.

(iii) Date prior building is treated as placed in service. For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in

service on the most recent date any additional building elected by the taxpayer (with respect to such prior building) was placed in service.

(C) Special rule. A building—

(i) other than the 1st building placed in service as part of a project, and

(ii) other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified low-income building,

shall in no event be treated as a qualified low-income building unless the project is a qualified low-income housing project (without regard to such building) on the date such building is placed in service.

(D) Projects with more than 1 building must be identified. For purposes of this section , a project shall be treated as consisting of only 1 building unless, before the close of the 1st calendar year in the project period (as defined in subsection (h)(1)(F)(ii)), each building which is (or will be) part of such project is identified in such form and manner as the Secretary may provide.

(4) Certain rules made applicable.
Paragraphs (2) (other than subparagraph (A) thereof), (3) , (4) , (5) , (6) , and (7) of section 142(d) , and section 6652(j) , shall apply for purposes of determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit; except that, in applying such provisions for such purposes, the term “gross rent” shall have the meaning given such term by paragraph (2)(B) of this subsection

(5) Election to treat building after compliance period as not part of a project.
For purposes of this section , the taxpayer may elect to treat any building as not part of a qualified low-income housing project for any period beginning after the compliance period for such building.

(6) Special rule where de minimis equity contribution.
Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if—

(A) all amounts so paid are refunded to the occupant on the cessation of his occupancy of a unit in the project, and

(B) the purchase of the unit is not permitted until after the close of the compliance period with respect to the building in which the unit is located.

Any amount paid to the lessor as described in the preceding sentence shall be included in gross rent under paragraph (2) for purposes of determining whether the unit is rent-restricted.

(7) Scattered site projects.
Buildings which would (but for their lack of proximity) be treated as a project for purposes of this section shall be so treated if all of the dwelling units in each of the buildings are rent-restricted (within the meaning of paragraph (2)) residential rental units.

(8) Waiver of certain de minimis errors and recertifications.
On application by the taxpayer, the Secretary may waive—

(A) any recapture under subsection (j) in the case of any de minimis error in complying with paragraph (1) , or

(B) any annual recertification of tenant income for purposes of this subsection , if the entire building is occupied by low-income tenants.

(9) Clarification of general public use requirement.
A project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants—

(A) with special needs,

(B) who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group, or

(C) who are involved in artistic or literary activities.

(h) Limitation on aggregate credit allowable with respect to projects located in a state.

(1) Credit may not exceed credit amount allocated to building.

(A) In general. The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under this subsection .

(B) Time for making allocation. Except in the case of an allocation which meets the requirements of subparagraph (C) , (D) , (E) , or (F) an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.

(C) Exception where binding commitment. An allocation meets the requirements of this subparagraph if there is a binding commitment (not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing credit dollar amount to such building beginning in a specified later taxable year.

(D) Exception where increase in qualified basis.

(i) In general. An allocation meets the requirements of this subparagraph if such allocation is made not later than the close of the calendar year in which ends the taxable year to which it will 1st apply but only to the extent the amount of such allocation does not exceed the limitation under clause (ii) .

(ii) Limitation. The limitation under this clause is the amount of credit allowable under this section (without regard to this subsection) for a taxable year with respect to an increase in the qualified basis of the building equal to the excess of—

(I) the qualified basis of such building as of the close of the 1st taxable year to which such allocation will apply, over

(II) the qualified basis of such building as of the close of the 1st taxable year to which the most recent prior housing credit allocation with respect to such building applied.

(iii) Housing credit dollar amount reduced by full allocation. Notwithstanding clause (i) , the full amount of the allocation shall be taken into account under paragraph (2) .

(E) Exception where 10 percent of cost incurred.

(i) In general. An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.

(ii) Qualified building. For purposes of clause (i) , the term “qualified building” means any building which is part of a project if the taxpayer's basis in such project (as of the date which is 1 year after the date that the allocation was made) is more than 10 percent of the taxpayer's reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)). Such term does not include any existing building unless a credit is allowable under subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year.

(F) Allocation of credit on a project basis.

(i) In general. In the case of a project which includes (or will include) more than 1 building, an allocation meets the requirements of this subparagraph if—

(I) the allocation is made to the project for a calendar year during the project period,

(II) the allocation only applies to buildings placed in service during or after the calendar year for which the allocation is made, and

(III) the portion of such allocation which is allocated to any building in such project is specified not later than the close of the calendar year in which the building is placed in service.

(ii) Project period. For purposes of clause (i) , the term “project period” means the period—

(I) beginning with the 1st calendar year for which an allocation may be made for the 1st building placed in service as part of such project, and

(II) ending with the calendar year the last building is placed in service as part of such project.

(2) Allocated credit amount to apply to all taxable years ending during or after credit allocation year.
Any housing credit dollar amount allocated to any building for any calendar year—

(A) shall apply to such building for all taxable years in the compliance period ending during or after such calendar year, and

(B) shall reduce the aggregate housing credit dollar amount of the allocating agency only for such calendar year.

(3) Housing credit dollar amount for agencies.

(A) In general. The aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar year is the portion of the State housing credit ceiling allocated under this paragraph for such calendar year to such agency.

(B) State ceiling initially allocated to state housing credit agencies. Except as provided in subparagraphs (D) and (E) , the State housing credit ceiling for each calendar year shall be allocated to the housing credit agency of such State. If there is more than 1 housing credit agency of a State, all such agencies shall be treated as a single agency.

(C) State housing credit ceiling. The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to the sum of—

(i) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,

(ii) the greater of—

(I) $1.75 ($1.50 for 2001) multiplied by the State population, or

(II) $2,000,000,

(iii) the amount of State housing credit ceiling returned in the calendar year, plus

(iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

For purposes of clause (i) , the unused State housing credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (ii) through (iv) over the aggregate housing credit dollar amount allocated for such year. For purposes of clause (iii) , the amount of State housing credit ceiling returned in the calendar year equals the housing credit dollar amount previously allocated within the State to any project which fails to meet the 10 percent test under paragraph (1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which does not become a qualified low-income housing project within the period required by this section or the terms of the allocation or to any project with respect to which an allocation is cancelled by mutual consent of the housing credit agency and the allocation recipient.

(D) Unused housing credit carryovers allocated among certain states.

(i) In general. The unused housing credit carryover of a State for any calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

(ii) Unused housing credit carryover. For purposes of this subparagraph , the unused housing credit carryover of a State for any calendar year is the excess (if any) of—

(I) the unused State housing credit ceiling for the year preceding such year, over

(II) the aggregate housing credit dollar amount allocated for such year.

(iii) Formula for allocation of unused housing credit carryovers among qualified states. The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused housing credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence,

population shall be determined in accordance with section 146(j) .

(iv) Qualified State. For purposes of this subparagraph , the term “qualified State” means, with respect to a calendar year, any State—

(I) which allocated its entire State housing credit ceiling for the preceding calendar year, and

(II) for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii) .

(E) Special rule for states with constitutional home rule cities. For purposes of this subsection —

(i) In general. The aggregate housing credit dollar amount for any constitutional home rule city for any calendar year shall be an amount which bears the same ratio to the State housing credit ceiling for such calendar year as—

(I) the population of such city, bears to

(II) the population of the entire State.

(ii) Coordination with other allocations. In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying this paragraph with respect to housing credit agencies in such State other than constitutional home rule cities, the State housing credit ceiling for any calendar year shall be reduced by the aggregate housing credit dollar amounts determined for such year for all constitutional home rule cities in such State.

(iii) Constitutional home rule city. For purposes of this paragraph , the term “constitutional home rule city” has the meaning given such term by section 146(d)(3)(C) .

(F) State may provide for different allocation. Rules similar to the rules of section 146(e) (other than paragraph (2)(B) thereof) shall apply for purposes of this paragraph .

(G) Population. For purposes of this paragraph , population shall be determined in accordance with section 146(j) .

(H) Cost-of-living adjustment.

(i) In general. In the case of a calendar year after 2002, the $2,000,000 and $1.75 amounts in subparagraph (C) shall each be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 2001" for "calendar year 1992" in subparagraph (B) thereof.

(ii) Rounding.

(I) In the case of the $2,000,000 amount, any increase under clause (i) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

(II) In the case of the $1.75 amount, any increase under clause (i) which is not a multiple of 5 cents shall be rounded to the next lowest multiple of 5 cents.

(I) Increase in State housing credit ceiling for 2008 and 2009. In the case of calendar years 2008 and 2009—

(i) the dollar amount in effect under subparagraph (C)(ii)(I) for such calendar year (after any increase under subparagraph (H)) shall be increased by $0.20, and

(ii) the dollar amount in effect under subparagraph (C)(ii)(II) for such calendar year (after any increase under subparagraph (H)) shall be increased by an amount equal to 10 percent of such dollar amount (rounded to the next lowest multiple of $5,000).

(4) Credit for buildings financed by tax-exempt bonds subject to volume cap not taken into account.

(A) In general. Paragraph (1) shall not apply to the portion of any credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if —

(i) such obligation is taken into account under section 146 , and

(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing or such financing is refunded and described in section 146(i)(6) .

(B) Special rule where 50 percent or more of building is financed with tax-exempt bonds subject to volume cap. For purposes of subparagraph (A) , if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation described in subparagraph (A) , paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building.

(5) Portion of state ceiling set-aside for certain projects involving qualified nonprofit organizations.

(A) In general. Not more than 90 percent of the State housing credit ceiling for any State for any calendar year shall be allocated to projects other than qualified low-income housing projects described in subparagraph (B) .

(B) Projects involving qualified nonprofit organizations. For purposes of subparagraph (A) , a qualified low-income housing project is described in this subparagraph if a qualified nonprofit organization is to 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.

(C) Qualified nonprofit organization. For purposes of this paragraph , the term “qualified nonprofit organization” means any organization if—

(i) such organization is described in paragraph (3) or (4) of section 501(c) and is exempt from tax under section 501(a) ,

(ii) such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; and

(iii) 1 of the exempt purposes of such organization includes the fostering of low-income housing.

(D) Treatment of certain subsidiaries.

(i) In general. For purposes of this paragraph , a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

(ii) Qualified corporation. For purposes of clause (i) , the term “qualified corporation” means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

(E) State may not override set-aside. Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph .

(6) Buildings eligible for credit only if minimum long-term commitment to low-income housing.

(A) In general. No credit shall be allowed by reason of this section with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year.

(B) Extended low-income housing commitment. For purposes of this paragraph , the term “extended low-income housing commitment” means any agreement between the taxpayer and the housing credit agency—

(i) which requires that the applicable fraction (as defined in subsection (c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in such agreement and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii) ,

(ii) which allows individuals who meet the income limitation applicable to the building under subsection (g) (whether prospective, present, or former occupants of the building) the right to enforce in any State court the requirement and prohibitions of clause (i) ,

(iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies

unless all of the building to which such agreement applies is disposed of to such person,

(iv) which prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder,

(v) which is binding on all successors of the taxpayer, and

(vi) which, with respect to the property, is recorded pursuant to State law as a restrictive covenant.

(C) Allocation of credit may not exceed amount necessary to support commitment.

(i) In general. The housing credit dollar amount allocated to any building may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building, including any increase in such fraction pursuant to the application of subsection (f)(3) if such increase is reflected in an amended low-income housing commitment.

(ii) Buildings financed by tax-exempt bonds. If paragraph (4) applies to any building the amount of credit allowed in any taxable year may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building. Such commitment may be amended to increase such fraction.

(D) Extended use period. For purposes of this paragraph , the term "extended use period" means the period—

(i) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and

(ii) ending on the later of—

(I) the date specified by such agency in such agreement, or

(II) the date which is 15 years after the close of the compliance period.

(E) Exceptions if foreclosure or if no buyer willing to maintain low-income status.

(i) In general. The extended use period for any building shall terminate—

(I) on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period, or

(II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building.

Subclause (II) shall not apply to the extent more stringent requirements are provided in the agreement or in State law.

(ii) Eviction, etc. of existing low-income tenants not permitted. The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination—

(I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or

(II) any increase in the gross rent with respect to such unit not otherwise permitted under this section .

(F) Qualified contract. For purposes of subparagraph (E) , the term "qualified contract" means a bona fide contract to acquire (within a reasonable period after the contract is entered into) the non low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the extended low-income housing commitment) of—

(i) the sum of—

(I) the outstanding indebtedness secured by, or with respect to, the building,

(II) the adjusted investor equity in the building, plus

(III) other capital contributions not reflected in the amounts described in subclause (I) or (II) , reduced by

(ii) cash distributions from (or available for distribution from) the project.

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph , including regulations to prevent the manipulation of the amount determined under the preceding sentence.

(G) Adjusted investor equity.

(i) In general. For purposes of subparagraph (E) , the term "adjusted investor equity" means, with respect to any calendar year, the aggregate amount of cash taxpayers invested with respect to the project increased by the amount equal to—

(I) such amount, multiplied by

(II) the cost-of-living adjustment for such calendar year, determined under section 1(f)(3) by substituting the base calendar year for "calendar year 1987".

An amount shall be taken into account as an investment in the project only to the extent there was an obligation to invest such amount as of the beginning of the credit period and to the extent such amount is reflected in the adjusted basis of the project.

(ii) Cost-of-living increases in excess of 5 percent not taken into account. Under regulations prescribed by the Secretary, if the CPI for any calendar year (as defined in section 1(f)(4)) exceeds the CPI for the preceding calendar year by more than 5 percent, the CPI for the base calendar year shall be increased such that such excess shall never be taken into account under clause (i) .

(iii) Base calendar year. For purposes of this subparagraph , the term “base calendar year” means the calendar year with or within which the 1st taxable year of the credit period ends.

(H) Low-income portion. For purposes of this paragraph , the low-income portion of a building is the portion of such building equal to the applicable fraction specified in the extended low-income housing commitment for the building.

(I) Period for finding buyer. The period referred to in this subparagraph is the 1-year period beginning on the date (after the 14th year of the compliance period) the taxpayer submits a written request to the housing credit agency to find a person to acquire the taxpayer's interest in the low-income portion of the building.

(J) Effect of noncompliance. If, during a taxable year, there is a determination that an extended low-income housing agreement was not in effect as of the beginning of such year, such determination shall not apply to any period before such year and subparagraph (A) shall be applied without regard to such determination if the failure is corrected within 1 year from the date of the determination.

(K) Projects which consist of more than 1 building. The application of this paragraph to projects which consist of more than 1 building shall be made under regulations prescribed by the Secretary.

(7) Special rules.

(A) Building must be located within jurisdiction of credit agency. A housing credit agency may allocate its aggregate housing credit dollar amount only to buildings located in the jurisdiction of the governmental unit of which such agency is a part.

(B) Agency allocations in excess of limit. If the aggregate housing credit dollar amounts allocated by a housing credit agency for any calendar year exceed the portion of the State housing credit ceiling allocated to such agency for such calendar year, the housing credit dollar amounts so allocated shall be reduced (to the extent of such excess) for buildings in the reverse of the order in which the allocations of such amounts were made.

(C) Credit reduced if allocated credit dollar amount is less than credit which would be allowable without regard to placed in service convention, etc.

(i) In general. The amount of the credit determined under this section with respect to any building shall not exceed the clause (ii) percentage of the amount of the credit which would (but for this subparagraph) be determined under this section with respect to such building.

(ii) Determination of percentage. For purposes of clause (i) , the clause (ii) percentage with respect to any building is the percentage which—

(I) the housing credit dollar amount allocated to such building bears to

(II) the credit amount determined in accordance with clause (iii) .

(iii) Determination of credit amount. The credit amount determined in accordance with this clause is the amount of the credit which would (but for this subparagraph) be determined under this section with respect to the building if—

(I) this section were applied without regard to paragraphs (2)(A) and (3)(B) of subsection (f) , and

(II) subsection (f)(3)(A) were applied without regard to "the percentage equal to 2/3 of".

(D) Housing credit agency to specify applicable percentage and maximum qualified basis. In allocating a housing credit dollar amount to any building, the housing credit agency shall specify the applicable percentage and the maximum qualified basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum qualified basis so specified shall not exceed the applicable percentage and qualified basis determined under this section without regard to this subsection .

(8) Other definitions.
For purposes of this subsection —

(A) Housing credit agency. The term “housing credit agency” means any agency authorized to carry out this subsection .

(B) Possessions treated as states. The term “State” includes a possession of the United States.

(i) Definitions and special rules.
For purposes of this section —

(1) Compliance period.
The term “compliance period” means, with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

(2) Determination of whether building is federally subsidized.

(A) In general. Except as otherwise provided in this paragraph , for purposes of subsection (b)(1) , a new building shall be treated as federally subsidized for any taxable year if, at any time during such taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under section 103 the proceeds of which are or were used (directly or indirectly) with respect to such building or the operation thereof.

(B) Election to reduce eligible basis by proceeds of obligations. A tax-exempt obligation shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude from the eligible basis of the building for purposes of subsection (d) the proceeds of such obligation.

(C) Special rule for subsidized construction financing. Subparagraph (A) shall not apply to any tax-exempt obligation used to provide construction financing for any building if—

(i) such obligation (when issued) identified the building for which the proceeds of such obligation would be used, and

(ii) such obligation is redeemed before such building is placed in service.

(3) Low-income unit.

(A) In general. The term “low-income unit” means any unit in a building if—

(i) such unit is rent-restricted (as defined in subsection (g)(2)), and

(ii) the individuals occupying such unit meet the income limitation applicable under subsection (g)(1) to the project of which such building is a part.

(B) Exceptions.

(i) In general. A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis.

(ii) Suitability for occupancy. For purposes of clause (i) , the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes.

(iii) Transitional housing for homeless. For purposes of clause (i) , a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building—

(I) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302), as in effect on the date of the enactment of this clause) to independent living within 24 months, and

(II) in which a governmental entity or qualified nonprofit organization (as defined in subsection (h)(5)) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

(iv) Single-room occupancy units. For purposes of clause (i) , a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

(C) Special rule for buildings having 4 or fewer units. In the case of any building which has 4 or fewer residential rental units, no

unit in such building shall be treated as a low-income unit if the units in such building are owned by—

(i) any individual who occupies a residential unit in such building, or

(ii) any person who is related (as defined in subsection (d)(2)(D)(iii)) to such individual.

(D) Certain students not to disqualify unit. A unit shall not fail to be treated as a low-income unit merely because it is occupied—

(i) by an individual who is—

(I) a student and receiving assistance under title IV of the Social Security Act,

(II) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act, or

(III) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or

(ii) entirely by full-time students if such students are—

(I) single parents and their children and such parents are not dependents (as defined in section 152 , determined without regard to subsections (b)(1) , (b)(2) , and (d)(1)(B) thereof) of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children, or. [sic ,]

(II) married and file a joint return.

(E) Owner-occupied buildings having 4 or fewer units eligible for credit where development plan.

(i) In general. Subparagraph (C) shall not apply to the acquisition or rehabilitation of a building pursuant to a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in subsection (h)(5)(C)).

(ii) Limitation on credit. In the case of a building to which clause (i) applies, the applicable fraction shall not exceed 80 percent of the unit fraction.

(iii) Certain unrented units treated as owner-occupied. In the case of a building to which clause (i) applies, any unit which is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

(4) New building.
The term “new building” means a building the original use of which begins with the taxpayer.

(5) Existing building.
The term “existing building” means any building which is not a new building.

(6) Application to estates and trusts.
In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax under subsection (j) shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(7) Impact of tenant's right of 1st refusal to acquire property.

(A) In general. No Federal income tax benefit shall fail to be allowable to the taxpayer with respect to any qualified low-income building merely by reason of a right of 1st refusal held by the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency to purchase the property after the close of the compliance period for a price which is not less than the minimum purchase price determined under subparagraph (B) .

(B) Minimum purchase price. For purposes of subparagraph (A) , the minimum purchase price under this subparagraph is an amount equal to the sum of—

(i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and

(ii) all Federal, State, and local taxes attributable to such sale.

Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii) .

(8) Treatment of rural projects.
For purposes of this section , in the case of any project for residential rental property located in a rural area (as defined in section 520 of the Housing Act of 1949), any income limitation measured by reference to area median gross income shall be measured by reference to the greater of area median gross income or national non-metropolitan median income. The preceding sentence shall not apply with respect to any building if paragraph (1) of section 42(h) does not apply by reason of paragraph (4) thereof to any portion of the credit determined under this section with respect to such building.

(j) Recapture of credit.

(1) In general.
If—

(A) as of the close of any taxable year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than

(B) the amount of such basis as of the close of the preceding taxable year, then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount.

(2) Credit recapture amount.
For purposes of paragraph (1) , the credit recapture amount is an amount equal to the sum of—

(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if the accelerated portion of the credit allowable by reason of this section were not allowed for all prior taxable years with respect to the excess of the amount described in paragraph (1)(B) over the amount described in paragraph (1)(A) , plus

(B) interest at the overpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B) .

(3) Accelerated portion of credit.
For purposes of paragraph (2) , the accelerated portion of the credit for the prior taxable years with respect to any amount of basis is the excess of—

(A) the aggregate credit allowed by reason of this section (without regard to this subsection) for such years with respect to such basis, over

(B) the aggregate credit which would be allowable by reason of this section for such years with respect to such basis if the aggregate credit which would (but for this subsection) have been allowable for the entire compliance period were allowable ratably over 15 years.

(4) Special rules.

(A) Tax benefit rule. The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) Only basis for which credit allowed taken into account. Qualified basis shall be taken into account under paragraph (1)(B) only to the extent such basis was taken into account in determining the credit under subsection (a) for the preceding taxable year referred to in such paragraph.

(C) No recapture of additional credit allowable by reason of subsection (f)(3) . Paragraph (1) shall apply to a decrease in qualified basis only to the extent such decrease exceeds the amount of qualified basis with respect to which a credit was allowable for the taxable year referred to in paragraph (1)(B) by reason of subsection (f)(3) .

(D) No credits against tax. Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter.

(E) No recapture by reason of casualty loss. The increase in tax under this subsection shall not apply to a reduction in qualified

basis by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

(F) No recapture where de minimis changes in floor space. The Secretary may provide that the increase in tax under this subsection shall not apply with respect to any building if—

(i) such increase results from a de minimis change in the floor space fraction under subsection (c)(1) , and

(ii) the building is a qualified low-income building after such change.

(5) Certain partnerships treated as the taxpayer.

(A) In general. For purposes of applying this subsection to a partnership to which this paragraph applies—

(i) such partnership shall be treated as the taxpayer to which the credit allowable under subsection (a) was allowed,

(ii) the amount of such credit allowed shall be treated as the amount which would have been allowed to the partnership were such credit allowable to such partnership,

(iii) paragraph (4)(A) shall not apply, and

(iv) the amount of the increase in tax under this subsection for any taxable year shall be allocated among the partners of such partnership in the same manner as such partnership's taxable income for such year is allocated among such partners.

(B) Partnerships to which paragraph applies. This paragraph shall apply to any partnership which has 35 or more partners unless the partnership elects not to have this paragraph apply.

(C) Special rules.

(i) Husband and wife treated as 1 partner. For purposes of subparagraph (B)(i) , a husband and wife (and their estates) shall be treated as 1 partner.

(ii) Election irrevocable. Any election under subparagraph (B) , once made, shall be irrevocable.

(6) No recapture on disposition of building which continues in qualified use.

(A) In general. The increase in tax under this subsection shall not apply solely by reason of the disposition of a building (or an interest therein) if it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

(B) Statute of limitations. If a building (or an interest therein) is disposed of during any taxable year and there is any reduction in the qualified basis of such building which results in an increase in tax under this subsection for such taxable or any subsequent taxable year, then—

(i) the statutory period for the assessment of any deficiency with respect to such increase in tax shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of such reduction in qualified basis, and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(k) Application of at-risk rules.
For purposes of this section —

(1) In general.
Except as otherwise provided in this subsection , rules similar to the rules of section 49(a)(*1*) (other than subparagraphs (D)(ii)(II) and (D)(iv)(I) thereof), section 49(a)(2) , and section 49(b)(1) shall apply in determining the qualified basis of any building in the same manner as such sections apply in determining the credit base of property.

(2) Special rules for determining qualified person.
For purposes of paragraph (1) —

(A) In general. If the requirements of subparagraphs (B) , (C) , and (D) are met with respect to any financing borrowed from a qualified nonprofit organization (as defined in subsection (h)(5)), the determination of whether such financing is qualified

commercial financing with respect to any qualified low-income building shall be made without regard to whether such organization—

(i) is actively and regularly engaged in the business of lending money, or

(ii) is a person described in section 49(a)(1)(D)(iv)(II) .

(B) Financing secured by property. The requirements of this subparagraph are met with respect to any financing if such financing is secured by the qualified low-income building, except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if—

(i) a security interest in such building is not permitted by a Federal agency holding or insuring the mortgage secured by such building, and

(ii) the proceeds from the financing (if any) are applied to acquire or improve such building.

(C) Portion of building attributable to financing. The requirements of this subparagraph are met with respect to any financing for any taxable year in the compliance period if, as of the close of such taxable year, not more than 60 percent of the eligible basis of the qualified low-income building is attributable to such financing (reduced by the principal and interest of any governmental financing which is part of a wrap-around mortgage involving such financing).

(D) Repayment of principal and interest. The requirements of this subparagraph are met with respect to any financing if such financing is fully repaid on or before the earliest of—

(i) the date on which such financing matures,

(ii) the 90th day after the close of the compliance period with respect to the qualified low-income building, or

(iii) the date of its refinancing or the sale of the building to which such financing relates.

In the case of a qualified nonprofit organization which is not described in section 49(a)(1)(D)(iv)(II) with respect to a building, clause (ii) of this subparagraph shall be applied as if the date

described therein were the 90th day after the earlier of the date the building ceases to be a qualified low-income building or the date which is 15 years after the close of a compliance period with respect thereto.

(3) Present value of financing.
If the rate of interest on any financing described in paragraph (2)(A) is less than the rate which is 1 percentage point below the applicable Federal rate as of the time such financing is incurred, then the qualified basis (to which such financing relates) of the qualified low-income building shall be the present value of the amount of such financing, using as the discount rate such applicable Federal rate. For purposes of the preceding sentence, the rate of interest on any financing shall be determined by treating interest to the extent of government subsidies as not payable.

(4) Failure to fully repay.

(A) In general. To the extent that the requirements of paragraph (2)(D) are not met, then the taxpayer's tax under this chapter for the taxable year in which such failure occurs shall be increased by an amount equal to the applicable portion of the credit under this section with respect to such building, increased by an amount of interest for the period—

(i) beginning with the due date for the filing of the return of tax imposed by chapter 1 for the 1st taxable year for which such credit was allowable, and

(ii) ending with the due date for the taxable year in which such failure occurs,

determined by using the underpayment rate and method under section 6621 .

(B) Applicable portion. For purposes of subparagraph (A) , the term “applicable portion” means the aggregate decrease in the credits allowed to a taxpayer under section 38 for all prior taxable years which would have resulted if the eligible basis of the building were reduced by the amount of financing which does not meet requirements of paragraph (2)(D) .

(C) Certain rules to apply. Rules similar to the rules of subparagraphs (A) and (D) of subsection (j)(4) shall apply for purposes of this subsection .

(l) Certifications and other reports to secretary.

(1) Certification with respect to 1st year of credit period.
Following the close of the 1st taxable year in the credit period with respect to any qualified low-income building, the taxpayer shall certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes)—

(A) the taxable year, and calendar year, in which such building was placed in service,

(B) the adjusted basis and eligible basis of such building as of the close of the 1st year of the credit period,

(C) the maximum applicable percentage and qualified basis permitted to be taken into account by the appropriate housing credit agency under subsection (h) ,

(D) the election made under subsection (g) with respect to the qualified low-income housing project of which such building is a part, and

(E) such other information as the Secretary may require.

In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of subsection (a) with respect to such building for any taxable year ending before such certification is made.

(2) Annual reports to the Secretary.
The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth—

(A) the qualified basis for the taxable year of each qualified low-income building of the taxpayer,

(B) the information described in paragraph (1)(C) for the taxable year, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor.

(3) Annual reports from housing credit agencies.
Each agency which allocates any housing credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying—

(A) the amount of housing credit amount allocated to each building for such year,

(B) sufficient information to identify each such building and the taxpayer with respect thereto, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the report required by the preceding sentence on the date prescribed therefor.

(m) Responsibilities of housing credit agencies.

(1) Plans for allocation of credit among projects.

(A) In general. Notwithstanding any other provision of this section , the housing credit dollar amount with respect to any building shall be zero unless—

(i) such amount was allocated pursuant to a qualified allocation plan of the housing credit agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part,

(ii) such agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project,

(iii) a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project is conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by such agency, and

(iv) a written explanation is available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the housing credit agency.

(B) Qualified allocation plan. For purposes of this paragraph , the term “qualified allocation plan” means any plan—

(i) which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions,

(ii) which also gives preference in allocating housing credit dollar amounts among selected projects to—

(I) projects serving the lowest income tenants,

(II) projects obligated to serve qualified tenants for the longest periods, and

(III) projects which are located in qualified census tracts (as defined in subsection (d)(5)(C)) and the development of which contributes to a concerted community revitalization plan, and

(iii) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

(C) Certain selection criteria must be used. The selection criteria set forth in a qualified allocation plan must include—

(i) project location,

(ii) housing needs characteristics,

(iii) project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan,

(iv) sponsor characteristics,

(v) tenant populations with special housing needs,

(vi) public housing waiting lists,

Caution: Clauses (m)(1)(C)(vii)-(viii), following, are effective for allocations made before 1/1/2009. For clauses (m)(1)(C)(vii)-(x), effective for allocations made after 12/31/2008, see below.

(vii) tenant populations of individuals with children, and

(viii) projects intended for eventual tenant ownership.

Caution: Clauses (m)(1)(C)(vii)-(ix), following, are effective for allocations made after 12/31/2008. For clauses (m)(1)(C)(vii)-(viii), effective for allocations made before 1/1/2009, see above.

(vii) tenant populations of individuals with children,

(viii) projects intended for eventual tenant ownership,

(ix) the energy efficiency of the project, and

(x) the historic nature of the project.

(D) Application to bond financed projects. Subsection (h)(4) shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located.

(2) Credit allocated to building not to exceed amount necessary to assure project feasibility.

(A) In general. The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

(B) Agency evaluation. In making the determination under subparagraph (A) , the housing credit agency shall consider—

(i) the sources and uses of funds and the total financing planned for the project,

(ii) any proceeds or receipts expected to be generated by reason of tax benefits,

(iii) the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries, and

(iv) the reasonableness of the developmental and operational costs of the project.

Clause (iii) shall not be applied so as to impede the development of projects in hard-to-develop areas. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

(C) Determination made-when credit amount applied for and when building placed in service.

(i) In general. A determination under subparagraph (A) shall be made as of each of the following times:

(I) The application for the housing credit dollar amount.

(II) The allocation of the housing credit dollar amount.

(III) The date the building is placed in service.

(ii) Certification as to amount of other subsidies. Prior to each determination under clause (i) , the taxpayer shall certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.

(D) Application to bond financed projects. Subsection (h)(4) shall not apply to any project unless the governmental unit which issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of subparagraphs (A) and (B) .

(n) Regulations.
The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section , including regulations—

(1) dealing with—

(A) projects which include more than 1 building or only a portion of a building,

(B) buildings which are placed in service in portions,

(2) providing for the application of this section to short taxable years,

(3) preventing the avoidance of the rules of this section , and

(4) providing the opportunity for housing credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.

FEDERAL REGULATION #2

IRS Revenue Ruling 2004-82: LIHTC Questions & Answers

IRS Revenue Ruling 2004-82

Answering 12 Questions About Low-Income Housing Credit Under I.R.C. Section 42

This revenue ruling is scheduled to appear in Internal Revenue Bulletin 2004-35, dated Aug. 30, 2004.

Part I

Section 42.--Low-Income Housing Credit
(Also §§1.42-5, 1.42-15, 1.103-8.)

Rev. Rul. 2004-82

PURPOSE

This revenue ruling answers certain questions about the low-income housing credit under 42 of the Internal Revenue Code.

LAW AND QUESTIONS AND ANSWERS

A. ELIGIBLE BASIS AND QUALIFIED BASIS ISSUES

Law
Section 42(a) provides for a credit for investment in certain low-income housing buildings. The amount of the low-income housing credit for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building (as defined in §42(c)(2)).

Section 42(c)(1)(A) provides that the qualified basis of any qualified low-income building for any taxable year is an amount equal to (i) the applicable fraction (determined as of the close of the taxable year) of (ii) the eligible basis of the building (determined under § 42(d)).

Section 42(c)(1)(B) defines the applicable fraction as the smaller of the unit fraction or the floor space fraction. Section 42(c)(1)(C) defines the unit fraction as the fraction the numerator of which is the number of low-income units (as defined in §42(i)(3)(A)) in the building and the denominator of which is the number of residential rental units (that is, all units in the building which are available to rent as personal residences), whether or not occupied, in the building. Section 42(c)(1)(D) defines the floor space fraction as the fraction the numerator of which is the total floor space of the low-income units in the building and the denominator of which is the total floor space of the residential rental units, whether or not occupied, in the building.

Section 42(d)(1) provides that the eligible basis of a new building is its adjusted basis as of the close of the first taxable year of the credit period. Section 42(d)(4)(A) provides that, except as provided in § 42(d)(4)(B) and (C), the adjusted basis of any building is determined without regard to the adjusted basis of any property that is not residential rental property. Section 42(d)(4)(B) provides that the adjusted basis of any building includes the adjusted basis of property of a character subject to the allowance for depreciation (1) used in common areas or (2) provided as comparable amenities to all residential rental units in the building.

Section 42(d)(4)(C)(i) provides that the adjusted basis of any building located in a qualified census tract is determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation and not otherwise taken into account) used throughout the taxable year in providing any community service facility. Section 42(d)(4)(C)(iii) provides that the term "community service facility" means any facility designed to serve primarily individuals whose income is 60 percent or less of area median income (AMGI) (within the meaning of § 42(g)(1)(B)). Section 42(d)(5)(C)(ii)(I) defines the term "qualified census tract" as any census tract (1) which is designated by the Secretary of Housing and Urban Development (HUD), and (2) for the most recent year for which census data are available on household income in the tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the AMGI for the year or which has a poverty rate of at least 25 percent. See http://www.huduser.org/datasets/qct.html for a listing of census tracts designated by the Secretary of HUD.

Section 42(d)(4)(C)(ii) provides that the increase in the adjusted basis of any building which is taken into account because of a community service facility may not exceed 10 percent of the eligible basis of the qualified low-income housing project (as defined in §42(g)(1)) of which the community service facility is a part. For this purpose, §42(d)(4)(C)(ii) provides that all community service facilities which are part of the same qualified low-income housing project are treated as one facility.

Rev. Rul. 2003-77, 2003-29 I.R.B. 75, provides that the requirement that a community service facility must be designed to serve primarily individuals whose income is 60 percent or less of AMGI will be satisfied if the following conditions are met. First, the facility must be used to provide services that will improve the quality of life for community residents. Second, the taxpayer must demonstrate that the services provided at the facility will be appropriate and helpful to individuals in the area of the project whose income is 60 percent or less of AMGI. This may, for example, be demonstrated in the market study required to be conducted under § 42(m)(1)(A)(iii), or another similar study. Third, the facility must be located on the same tract of land as one of the buildings that is part of the qualified low-income housing project. Finally, if fees are charged for services provided, they must be affordable to individuals whose income is 60 percent or less of AMGI.

The legislative history of §42 states that residential rental property for purposes of the lowincome housing credit has the same meaning as residential rental property for purposes of § 103. The legislative history of §42 further states that residential rental property includes residential rental units, facilities for use by the tenants, and other facilities reasonably required by the project. H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-89 (1986), 1986-3 (Vol. 4) C.B. 89.

In the Tax Reform Act of 1986 (the "1986 Act"), Congress reorganized §§103 and 103A of the Internal Revenue Code of 1954 (the "1954 Code") regarding tax-exempt bonds into §§103 and 141 through 150 of the Internal Revenue Code of 1986. Congress intended that to the extent not amended by the 1986 Act, all principles of pre-1986 Act law would continue to apply to the reorganized provisions. H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-686 (1986), 1986-3 (Vol. 4) C.B. 686. Because no regulations have been promulgated relating to residential rental property for purposes of §103, the regulations relating to residential rental property promulgated pursuant

to the 1954 Code continue to apply except as otherwise modified by the 1986 Act and subsequent law.

Under § 1.1038(b)(4)(i) of the Income Tax Regulations, facilities that are functionally related and subordinate to residential rental projects are considered residential rental property. Section 1.1038(b)(4)(iii) provides that functionally related and subordinate facilities include facilities for use by the tenants, such as swimming pools and other recreational facilities, parking areas, and other facilities reasonably required for the project. Examples in § 1.1038(b)(4)(iii) of facilities reasonably required for a project include units for resident managers or maintenance personnel.

Q-1.
A new qualified low-income building (Building) is located in an area in which owners of apartment buildings typically employ security officers due to the level of crime in the area.

(a) If a unit in Building is occupied by a full-time security officer for that building and Building's owner requires the security officer to live in the unit, is the adjusted basis of that unit includable in Building's eligible basis under §42(d)(1)?

(b) If yes, is that unit a residential rental unit includable in the numerator and denominator of Building's applicable fraction under § 42(c)(1)(B)?

A-1.
(a) Yes. The legislative history of §42 indicates that residential rental property includes, in addition to the residential rental units, facilities for use by the tenants and other facilities reasonably required by the project.

Under §1.103-8(b)(4)(iii), functionally related and subordinate property is property that is reasonably required for the project. Examples of functionally related and subordinate property are units for resident managers or maintenance personnel. See §1.103-8(b)(4)(iii). Thus, while units for resident managers or maintenance personnel are not residential rental units, they are treated as part of residential rental property because these units are functionally related and subordinate to the project. The unit occupied by a full-time security officer is similar to the units described in the examples contained in § 1.103-8(b)(4)(iii), and is reasonably required by the project because of the level of crime in the area. Thus, the unit is functionally related and subordinate to Building. As a result, the unit is residential rental property for purposes of §42 and its adjusted basis is includable in Building's eligible basis under § 42(d)(1).

(b) No. The term "residential rental unit" has a different meaning than the term "residential rental property" for purposes of §42. Under §1.103-8(b)(4)(iii), units for resident managers or maintenance personnel are residential rental property because they are functionally related and subordinate to residential rental projects, not because they are residential rental units. Similarly, a unit occupied by a full-time security officer is not a residential rental unit. Only residential rental units are includable in Building's applicable fraction under § 42(c)(1)(B).

If in a later year of the credit period, the unit occupied by the full-time

security officer is converted to a residential rental unit, the unit will be includable in the denominator of Building's applicable fraction for that year. If the unit also becomes a low-income unit in a later year, the unit will be includable in the numerator of Building's applicable fraction for that year.

Q-2.
A new qualified low-income building (Building) received a housing credit allocation on June 1, 2003, and was placed in service in 2004. Building is located in a qualified census tract (as defined in §42(d)(5)(C)). The neighborhood in which Building is located is an area with a high rate of crime. In 2004, the local police department leases a unit in Building to be used as a police substation (Facility). The Facility is part of the police department's community outreach program. This Facility is intended to serve as a deterrent to crime in the community, assist the community with solving crime-related problems, reduce the response time to area calls for service, and provide the locally assigned police officers with a local office. The services provided by the police are free of charge. The adjusted basis of the property constituting the Facility (of a character subject to the allowance for depreciation and not otherwise taken into account in the adjusted basis of Building) does not exceed 10 percent of the eligible basis of Building.

As required by § 42(m)(1)(A)(iii), prior to the allocation of low-income housing credit to Building, a comprehensive market study was conducted to assess the housing needs of the low-income individuals in the area to be served by Building. The study found, among other items, that due to the high rate of crime in the community in which Building is located, providing a police substation would be appropriate and helpful to individuals in the area of Building whose income is 60 percent or less of AMGI.

(a) Is the adjusted basis of the Facility includable in Building's eligible basis under § 42(d)(1)?

(b) If yes, is the Facility includable in Building's applicable fraction under § 42(c)(1)(B)?

A-2.
(a) Yes. The Facility qualifies as a community service facility under § 42(d)(4)(C)(iii). Under the facts presented, the Facility is designed to serve primarily individuals whose income is 60 percent or less of AMGI for the following reasons: (1) the services provided at the Facility are services that will help improve the quality of life for community residents; (2) the market study required to be conducted under § 42(m)(1)(A)(iii) found that the services provided at the Facility would be appropriate and helpful to individuals in the area of Building whose income is 60 percent or less of AMGI; (3) the Facility is located within Building; and (4) the services provided at the Facility are affordable to individuals whose income is 60 percent or less of AMGI.

Because the other requirements set forth in § 42(d)(4)(C) are met, the adjusted basis of Building will be determined by taking into account the adjusted basis of the Facility. Thus, the adjusted basis of the Facility is includable in Building's eligible basis.

(b) No. The Facility is not a residential rental unit for purposes of §42. Therefore, the Facility is not includable in either the numerator or

denominator of Building's applicable fraction.

Q-3.
On applying to the housing credit agency for an allocation of §42 credits for a new building, the housing credit agency requires that the applicant pay a nonrefundable application fee. If the applicant is successful, an allocation fee is payable to the housing credit agency. Are the application fee and allocation fee includable in the eligible basis of the applicant's low-income housing building?

A-3.
No. The application fee and allocation fee are not includable in the eligible basis of the applicant's low-income housing building because the fees are not capitalizable into the adjusted basis of the building. See §263 and §263A. However, depending on the facts and circumstances, all or a portion of these fees may be required to be capitalized as amounts paid to create an intangible asset. See § 1.263(a)-4. Any portion of these fees not required to be capitalized under § 1.263(a)-4 may be deductible as an ordinary and necessary expense under § 162 or § 212, provided the taxpayer satisfies the requirements of those sections.

B. FIRST-YEAR LOW-INCOME UNIT ISSUE

Law

Section 42(i)(3)(A) defines "low-income unit" as any unit in a building if (i) the unit is rent-restricted (as defined in §42(g)(2)), and (ii) the individuals occupying the unit meet the income limitation applicable under §42(g)(1) to the project of which the building is a part (individuals that meet the applicable income limitation are referred to as "income-qualified"). Section 42(i)(3)(B) provides that a unit will not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis.

Section 42(f)(1) defines the "credit period" for a low-income housing credit building as the period of 10 taxable years beginning with (A) the taxable year in which the building is placed in service or (B) at the election of the taxpayer, the succeeding taxable year, but in either case only if the building is a qualified low-income building as of the close of the first year of the period.

Section 42(f)(2)(A) provides a special rule for determining the amount of the low-income housing credit allowable for the first year of the credit period. It provides that the credit allowable under §42(a) with respect to any building for the first taxable year of the credit period must be determined by substituting for the applicable fraction under § 42(c)(1) the fraction (i) the numerator of which is the sum of the applicable fractions determined under § 42(c)(1) as of the close of each full month of the first taxable year of the credit period during which the building was in service, and (ii) the denominator of which is 12.

Q-4.
On initial occupancy of a unit in the first year of a newly constructed building's credit period, an income-qualified tenant moved into the unit on the last day of a month. The unit was rent-restricted in accordance with §42(g)(2). In determining the low-income housing credit for the building for the first year of the credit period, is the unit treated as a low-income

unit for that month for purposes of the fraction calculated under §42(f)(2)(A)?

A-4.
Yes. The unit is treated as a low-income unit eligible for inclusion in the numerator and denominator of the monthly applicable fraction calculated under § 42(f)(2)(A)(i) if the tenant, who meets the income limitation under §42(g)(1), resides in the rent-restricted unit on the last day of the month. However, in accordance with § 42(f)(2)(A), the building must have been placed in service for a full month for the unit to be includable in the numerator and denominator of the monthly applicable fraction.

C. EXTENDED LOW-INCOME HOUSING COMMITMENT ISSUE

Law

Section 42(h)(6)(A) provides that no credit will be allowed with respect to any building for the taxable year unless an extended low-income housing commitment (as defined in §42(h)(6)(B)) is in effect as of the end of the taxable year. Section 42(h)(6)(B)(i) provides that "the term "extended low-income housing commitment" means any agreement between the taxpayer and the housing credit agency which requires that the applicable fraction (as defined in §42(c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in the agreement and which prohibits the actions described in subclauses (I) and (II) of §42(h)(6)(E)(ii)" (emphasis added).

Section 42(h)(6)(E)(ii) provides that the termination of an extended low-income housing commitment under §42(h)(6)(E)(i) will not be construed to permit before the close of the 3-year period following the termination (I) the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or (II) any increase in the gross rent with respect to a low-income unit not otherwise permitted under §42.

Section 42(h)(6)(D) defines the term "extended use period" as the period beginning on the first day in the compliance period on which the building is part of a qualified low-income housing project and ending on the later of (1) the date specified by the agency in the extended low-income housing commitment, or (2) the date which is 15 years after the close of the compliance period.

Section 42(h)(6)(J) provides that if, during a taxable year, there is a determination that a valid extended low-income housing commitment was not in effect as of the beginning of the year, the determination will not apply to any period before that year and §42(h)(6)(A) will be applied without regard to the determination provided that the failure is corrected within 1 year from the date of the determination.

In the Omnibus Budget Reconciliation Act of 1990, 1991-2 C.B. 481, 531 (the "1990 Act"), Congress amended §42(h)(6)(B)(i) by adding the language emphasized above, which prohibits the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii). At the time of this amendment, however, §42(h)(6)(E)(ii) was already part of §42.

The legislative history to §42 states that the extended low-income housing commitment must prohibit the eviction or termination of tenancy (other than for good cause) of an existing tenant of a low-income unit or any increase in the gross rent inconsistent with the rent restrictions on the unit. H. Rep. No. 894, 101st Cong., 2d Sess. 10, 13 (1990).

Q-5.
Must the extended low-income housing commitment prohibit the actions described in subclauses (I) and (II) of §42(h)(6)(E)(ii) only for the 3-year period described in §42(h)(6)(E)(ii)?

A-5.
No. Section 42(h)(6)(B)(i) requires that an extended low-income housing commitment include a prohibition during the extended use period against (1) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit (no-cause eviction protection) and (2) any increase in the gross rent with respect to the unit not otherwise permitted under §42. When Congress amended §42(h)(6)(B)(i) to add the language emphasized above, §42(h)(6)(E)(ii) was already part of §42. As a result, Congress must have intended the amendment to § 42(h)(6)(B)(i) to add an additional requirement beyond what was contained in § 42(h)(6)(E)(ii), which already prohibited the actions described in that section for the 3 years following the termination of the extended use period. Because the requirements of §42(h)(6)(B)(i) otherwise apply for the extended use period, Congress must have intended the addition of the prohibition against the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii) to apply throughout the extended use period.

If it is determined by the end of a taxable year that a taxpayer's extended low-income housing commitment for a building does not meet the requirements for an extended low-income housing commitment under §42(h)(6)(B) (for example, it does not provide no-cause eviction protection for the tenants of low-income units throughout the extended use period), the low-income housing credit is not allowable with respect to the building for the taxable year, or any prior taxable year. However, if the failure to have a valid extended low-income housing commitment in effect is corrected within 1 year from the date of the determination, the determination will not apply to the current year of the credit period or any prior year.

Pursuant to this revenue ruling, each housing credit agency is required to review its extended low-income housing commitments for compliance with the interpretation of § 42(h)(6)(B)(i) provided in this question and answer. This review must be completed by December 31, 2004. If during the review period the housing credit agency determines that an extended low-income housing commitment is not in compliance with the interpretation of §42(h)(6)(B)(i) provided in this question and answer, the 1-year period described under §42(h)(6)(J) will commence on the date of that determination.

D. HOME INVESTMENT PARTNERSHIP ACT LOAN ISSUES

Law

Section 42(b)(2)(A) provides that for a qualified low-income building placed in service by the taxpayer after 1987, the term "applicable percentage"

means (1) the 70-percent present value credit under §42(b)(2)(B)(i) for new buildings which are not federally subsidized, and (2) the 30-percent present value credit under §42(b)(2)(B)(ii) for new buildings which are federally subsidized and for existing buildings.

In general, §42(d)(5)(C)(i) provides that in the case of any building located in a designated qualified census tract or difficult development area (as defined in § 42(d)(5)(C)(ii) and (iii)), (I) the eligible basis of a new building will be 130 percent of the eligible basis determined without regard to this rule, and (II) in the case of an existing building, the rehabilitation expenditures taken into account under §42(e) will be 130 percent of the expenditures determined without regard to this rule.

Section 42(g)(1) defines the term "qualified low-income housing project" as any project for residential rental property if the project meets the requirements of § 42(g)(1)(A) or (B), whichever the taxpayer elects. The election is irrevocable. The project meets the requirements of §42(g)(1)(A) if 20 percent or more of the residential units in the project are rent-restricted and occupied by individuals whose income is 50 percent or less of AMGI. The project meets the requirements of §42(g)(1)(B) if 40 percent or more of the residential units in the project are rent-restricted and occupied by individuals whose income is 60 percent or less of AMGI. The requirement a taxpayer elects is referred to as the "minimum set-aside" for the project.

Section 42(g)(2)(A) provides that for purposes of §42(g)(1), a residential unit is rent-restricted if the gross rent with respect to the unit does not exceed 30 percent of the imputed income limitation applicable to the unit.

Section 42(g)(2)(C) provides that the imputed income limitation applicable to a unit is the income limitation which would apply under §42(g)(1) to individuals occupying the unit if the number of individuals occupying the unit were: (i) in the case of a unit which does not have a separate bedroom, 1 individual; and (ii) in the case of a unit which has one or more separate bedrooms, 1.5 individuals for each separate bedroom.

Section 42(g)(3)(A) provides that a building will be treated as a qualified low-income building only if the project (of which the building is a part) meets the requirements of §42(g)(1) not later than the close of the first year of the credit period for the building.

Section 42(i)(2)(A) provides that for purposes of §42(b)(1), a new building will be treated as federally subsidized for any taxable year if, at any time during the taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under §103, or any below market Federal loan, the proceeds of which are or were used (directly or indirectly) with respect to the building or operation thereof.

Section 42(i)(2)(B) provides that a loan or tax-exempt obligation will not be taken into account under §42(i)(2)(A) if the taxpayer elects to exclude from eligible basis of the building for purposes of §42(d), in the case of a loan, the principal amount of the loan, and in the case of a tax-exempt obligation, the proceeds of the obligation.

Section 42(i)(2)(C) provides that §42(i)(2)(A) will not apply to any tax-exempt obligation or below market Federal loan used to provide

construction financing for any building if (i) the obligation or loan (when issued or made) identified the building for which the proceeds of the obligation or loan would be used, and (ii) the obligation is redeemed, and the loan is repaid, before the building is placed in service.

Section 42(i)(2)(D) provides that the term "below market Federal loan" means any loan funded in whole or in part with Federal funds if the interest rate payable on the loan is less than the applicable Federal rate (AFR) in effect under §1274(d)(1) (as of the date the loan was made).

Section 42(i)(2)(E)(i) generally provides that assistance provided under the HOME Investment Partnerships Act (HOME) with respect to any building will not be treated as a below market Federal loan under § 42(i)(2)(D) if 40 percent or more of the residential units in the building are occupied by individuals whose income is 50 percent or less of AMGI (the special set-aside). Section 42(d)(5)(C) (the 130 percent eligible basis increase) does not apply to any building to which the preceding sentence applies.

Q-6.
Taxpayer owns a new qualified low-income housing project consisting of Buildings 1 and 2, each containing 100 residential rental units. Forty percent of the units in each building are low-income units. Taxpayer elected the minimum set-aside for the project under §42(g)(1)(B). Also, Taxpayer elected on Form 8609, Low-Income Housing Credit Allocation Certification, to treat the buildings as part of a multiple building project. A HOME loan at less than the AFR was provided with respect to the project.

(a) How does the special set-aside under §42(i)(2)(E)(i) apply to qualify Buildings 1 and 2 for the 70-percent present value credit under §42(b)?

(b) What rent restriction applies to the low-income units used to satisfy the special set-aside under §42(i)(2)(E)(i)?

A-6.
(a) To qualify the project for the 70-percent present value credit, Taxpayer must rent at least 40 units in each of Buildings 1 and 2 to tenants whose income is 50 percent or less of AMGI throughout the 15-year compliance period because the rule under §42(i)(2)(E)(i) applies on a building-by-building basis. Because these units are to be low-income units and Taxpayer elected the minimum set-aside under § 42(g)(1)(B), the same units used to satisfy the special set-aside under §42(i)(2)(E)(i) will also satisfy the project's minimum set-aside.

(b) The rent restriction that applies for all of the low-income units in the project, including the units in Buildings 1 and 2 which are used to satisfy the special set-aside under § 42(i)(2)(E)(i), is based on the applicable income limitation under § 42(g)(1)(B) because §42(g)(2)(C) contains no exception for buildings that satisfy the special set-aside contained in §42(i)(2)(E)(i). Therefore, the imputed income limitation (as defined in §42(g)(2)(C)) applicable to the units in this project is 60 percent of AMGI. Under §42(g)(2), rent may not exceed 30 percent of this imputed income limitation.

Q-7.
(a) Taxpayer owns a newly constructed qualified low-income housing project consisting of one building located in a qualified census tract (Building). A HOME loan at less than the AFR was provided with respect to Building.

Construction of Building was funded in part with an obligation the interest on which is exempt from tax under §103 that was outstanding after Building was placed in service. Taxpayer did not elect to exclude from eligible basis the principal amount of the HOME loan or the proceeds of the tax-exempt obligation as provided under §42(i)(2)(B). Forty percent of the residential units in Building are occupied by individuals whose income is 50 percent or less of area median gross income. Is Building eligible for the increase in eligible basis provided under §42(d)(5)(C)(i)(I)?

(b) The facts are the same as in (a) above except that the interest rate on the HOME loan when made was not less than the AFR in effect under §1274(d)(1), and the tax-exempt obligation was redeemed before Building was placed in service. Is Building eligible for the increase in eligible basis under §42(d)(5)(C)(i)(I)?

(c) The facts are the same as in (a) above except that the special set-aside under §42(i)(2)(E)(i) was not met, and the tax-exempt obligation was redeemed before Building was placed in service. Is Building eligible for the increase in eligible basis under §42(d)(5)(C)(i)(I)?

A-7.
(a) Yes. Because the tax-exempt obligation is outstanding after Building was placed in service and the proceeds of the obligation were not excluded from Building's eligible basis under §42(i)(2)(B), Building is treated as federally subsidized under § 42(i)(2)(A). Inasmuch as the building is treated as federally subsidized, the 30-percent present value credit under §42(b) will apply to Building. The fact that the tax-exempt obligation caused Building to be federally subsidized makes §42(i)(2)(E)(i) (which provides that certain HOME loans will not cause a project to be federally subsidized if the special set-aside requirement under that section is satisfied, and whose applicability prohibits the increase in eligible basis under §42(d)(5)(C)) inapplicable. Accordingly, Building is eligible for the increase in eligible basis under § 42(d)(5)(C)(i)(I).

If the tax-exempt obligation was redeemed before Building was placed in service or the proceeds of the obligation were excluded from Building's eligible basis, Building would no longer be treated as federally subsidized by the tax-exempt obligation under § 42(i)(2)(A). Therefore, §42(i)(2)(E)(i) would be applicable, and cause Building not to be treated as federally subsidized by the HOME loan under §42(i)(2)(A). Accordingly, the prohibition in §42(i)(2)(E)(i) against using §42(d)(5)(C) would apply, and Building would not be eligible for the increase in eligible basis under §42(d)(5)(C)(i)(I). The 70-percent value credit under §42(b) would apply to Building.

(b) Yes. When the HOME loan was made, the interest rate on the loan was not less than the AFR. Therefore, the loan is not described in §42(i)(2)(D), and the building will not be treated as federally subsidized under §42(i)(2)(A). The 70-percent present value credit will apply to Building. Because §42(i)(2)(E)(i) is inapplicable to HOME loans not described in §42(i)(2)(D), this loan is not subject to §42(i)(2)(E)(i), and the prohibition in §42(i)(2)(E)(i) against using §42(d)(5)(C) does not apply. Accordingly, Building is eligible for the increase in eligible basis under §42(d)(5)(C)(i)(I).

(c) Yes. Although Building meets the exception under §42(i)(2)(C) with respect to the tax-exempt obligation, Building is treated as federally

subsidized under § 42(i)(2)(A) because it received a HOME loan at less than the AFR and does not meet the special set-aside under §42(i)(2)(E)(i). The 30-percent present value credit will apply to Building as it is treated as federally subsidized. Because Building does not meet the special set-aside under §42(i)(2)(E)(i), the prohibition in §42(i)(2)(E)(i) against using §42(d)(5)(C) does not apply, and Building is eligible for the increase in eligible basis under §42(d)(5)(C)(i)(I).

If Taxpayer elected to exclude the principal amount of the HOME loan from the eligible basis of Building under §42(i)(2)(B) (whether or not the special set-aside under § 42(i)(2)(E)(i) was met), Building would not be treated as federally subsidized under § 42(i)(2)(A), and the 70-percent present value credit would apply to Building. Because the HOME loan would not be taken into account, §42(i)(2)(D) and §42(i)(2)(E)(i) do not apply to Building. Therefore, Building would not be described in §42(i)(2)(E)(i). Accordingly, the prohibition in §42(i)(2)(E)(i) against using §42(d)(5)(C) would not apply, and Building would be eligible for the increase in eligible basis under § 42(d)(5)(C)(i)(I).

E. VACANT UNIT RULE ISSUES

Law

Section 1.42-5(c)(1)(ix) provides that a housing credit agency must require the owner of a low-income housing project to certify at least annually to the housing credit agency that, for the preceding 12-month period, if a low-income unit in the project became vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income (the "vacant unit rule").

The legislative history to §42 indicates that vacant units, formerly occupied by low-income individuals, may continue to be treated as occupied by qualified low-income individuals for purposes of the minimum set-aside requirement (as well as for determining qualified basis) provided reasonable attempts are made to rent the unit. H.R. Conf. Rep. No. 841, supra, at II-94.

Section 42(g)(2)(D)(i) provides that notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under § 42(g)(1), the unit will continue to be treated as a low-income unit if the income of the occupants initially met the income limitation and the unit continues to be rent-restricted. Section 42(g)(2)(D)(ii) provides that if the income of the occupants of the unit increases above 140 percent of the income limitation applicable under §42(g)(1), the unit ceases to be treated as a low-income unit if any available or subsequently available residential rental unit in the building (of a size comparable to, or smaller than, the unit) is occupied by a new resident whose income exceeds the income limitation (the "available unit rule").

Under §1.42-15(a), a low-income unit in which the aggregate income of the occupants of the unit rises above 140 percent of the applicable income limitation under §42(g)(1) is referred to as an "over-income unit."

Section 1.42-15(c) provides that a unit is not available for purposes of the

available unit rule when the unit is no longer available for rent due to contractual arrangements that are binding under local law (for example, a unit is not available if it is subject to a preliminary reservation that is binding on the owner under local law prior to the date a lease is signed or the unit is occupied).

Q-8.
On July 1, 2003, an income-qualified household (Household) initially occupied a rent-restricted residential rental unit in Building 1 of Project. On October 31, 2003, the property manager moved Household (and transferred Household's lease) to a similar rent-restricted unit in Building 2 of Project that was not previously occupied. Household occupied the Building 2 unit at the end of 2003. The unit Household vacated in Building 1 was unoccupied during November and December. Are both units in Buildings 1 and 2 low-income units at the end of 2003?

A-8.
No. While a vacant low-income unit generally retains its character as a low-income unit, where an owner simply moves a tenant from a unit in one building to a unit in another building in the same project, both units may not be treated as low-income units; rather, only the unit that the tenant actually occupies at the end of a month in the first year of the credit period and at the end of each year in subsequent years qualifies as a low-income unit. Thus, in this situation, while the unit in Building 1 vacated by Household was treated as a low-income unit during the months it was occupied by Household, the unit ceased to be treated as a low-income unit when Household vacated the unit. At that time, the vacated unit would be treated as a unit not previously occupied.

Q-9.
Ten units previously occupied by income-qualified tenants in a 200-unit mixed-use housing project are vacant. None of the low-income units in the project had been over-income units. The project owner displayed a banner and for rent signs at the entrance to the project, placed classified advertisements in two local newspapers, and contacted prospective low-income tenants on a waiting list for the project and on a local public housing authority list of section 8 voucher holders about the low-income unit vacancies. These are customary methods of advertising apartment vacancies in the area of the project for identifying prospective tenants. Subsequent to the low-income unit vacancies, a market-rate unit of comparable size to the low-income units became vacant. Will the owner violate the vacant unit rule if the owner rents the market-rate unit before any of the low-income units?

A-9.
No. In accordance with §1.42-5(c)(1)(ix), the owner of a qualified low-income housing project has to use reasonable attempts to rent a vacant low-income unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project are rented to tenants not having a qualifying income. Thus, if the project owner makes reasonable attempts to rent the vacant low-income units to income-qualified tenants, the owner may rent the newly vacated market-rate unit before renting the low-income units and continue to characterize the vacant low-income units as low-income units for purposes of the minimum set-aside requirements in §42(g)(1) and calculation of the applicable fraction under § 42(c)(1)(B).

What constitutes reasonable attempts to rent a vacant unit is based on facts and circumstances, and may differ from project to project depending on factors such as the size and location of the project, tenant turnover rates, and market conditions. Also, the different advertising methods that are accessible to owners and prospective tenants would affect what is considered reasonable. Under the facts in this situation, the owner used reasonable methods of advertising an apartment vacancy in the area of the project before the owner rented the market-rate unit. Thus, the owner made reasonable attempts to rent the vacant low-income units.

In addition, the available unit rule is not violated by rental of the market-rate unit before the low-income units because there are no over-income units in the building.

Q-10.
A building has 10 units of comparable size, consisting of 7 low-income units (none was an over-income unit) and 3 market-rate units. All units in the building were occupied except for one market-rate unit. A low-income unit became vacant on March 15, 2004. Between March 15, 2004, and March 29, 2004, the owner made reasonable attempts to rent this unit to an income-qualified tenant. The vacant low-income unit became subject to a reservation (a contractual arrangement that is binding on the building owner under local law prior to the date a lease is signed or the unit is occupied) on March 29, 2004, under which the owner agreed to rent the unit to A, whose income meets the income limitation elected for the project under §42(g)(1). Thereafter, the owner ceased any efforts to attempt to rent the unit. On April 30, 2004, A signed a lease for the unit and occupied the unit on May 1, 2004. The vacant market-rate unit was rented to a market-rate tenant on April 15, 2004. Did the owner violate the vacant unit rule?

A-10.
No. For purposes of the vacant unit rule, an owner needs to make reasonable attempts to rent an available vacant low-income unit. To determine what constitutes an available unit for purposes of the vacant unit rule, the Internal Revenue Service will adopt the rule under §1.42-15(c) for when a unit is considered not available. Therefore, a unit is not available for purposes of the vacant unit rule when the unit is no longer available for rent due to contractual arrangements that are binding under local law, such as a reservation entered into between a building owner and a prospective tenant. Thus, in this situation, because the vacant low-income unit was subject to a reservation that was binding under local law prior to the renting of the vacant market-rate unit, the low-income unit was not available when the market-rate unit was rented. Accordingly, the owner no longer needed to make reasonable efforts to rent the low-income unit.

In addition, the available unit rule is not violated by rental of the market-rate unit because there is no over-income unit in the building.

F. RECORDKEEPING AND RECORD RETENTION ISSUE

Law

Section 42(m)(1)(A)(i) requires each housing credit agency to allocate low-income housing credits according to a qualified allocation plan. Under § 42(m)(1)(B)(iii), an allocation plan is not qualified unless it contains a procedure that the housing credit agency (or an agent or other private contractor of the agency) will follow in (1) monitoring for noncompliance

with the provisions of § 42, (2) notifying the Service of any noncompliance which the agency becomes aware of, and (3) monitoring for noncompliance with habitability standards through regular site visits.

Under § 1.425(a)(2)(i)(A), for the procedure to satisfy §42(m)(1)(B)(iii), the procedure must include the recordkeeping and record retention provisions of § 1.425(b). However, a monitoring procedure adopted by a housing credit agency may require additional recordkeeping and record retention provisions beyond those specifically provided in §1.42-5(b).

Section 1.42-5(b)(1) provides that a housing credit agency must require the owner of a low-income housing project to keep certain specified records for each qualified low-income building in the project for each year in the compliance period. Under §1.425(b)(2), the owner must be required to retain the records described in § 1.42-5(b)(1) for a particular year for at least 6 years after the due date (with extensions) for filing the Federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least 6 years beyond the due date (with extensions) for filing the Federal income tax return for the last year of the compliance period (as defined in §42(i)(1)) of the building. Section 1.42-5(b)(3) also specifies that the owner must be required to retain the original local health, safety, or building code violation reports or notices that were issued by the state or local government unit (as described in § 1.425(c)(1)(vi)) for inspection by the housing credit agency.

The general requirements for keeping records for purposes of the Code are in § 6001 and the regulations thereunder.

Rev. Proc. 97-22, 1997-1 C.B. 652, provides guidance to taxpayers that maintain books and records by using an electronic storage system that either images their hardcopy (paper) books and records or transfers their computerized books and records to an electronic storage media, such as an optical disk. Rev. Proc. 97-22 provides that records maintained in an electronic storage system that complies with the requirements of this revenue procedure will constitute records within the meaning of § 6001.

Q-11.
May a taxpayer comply with the recordkeeping and record retention provisions under § 1.425(b) by using an electronic storage system instead of maintaining hardcopy (paper) books and records?

A-11.

Yes, provided that the electronic storage system satisfies the requirements of Rev. Proc. 97-22. However, complying with the recordkeeping and record retention requirements of the Service does not exempt an owner from having to satisfy any additional recordkeeping and record retention requirements of the monitoring procedure adopted by the housing credit agency. For example, the housing credit agency may require the taxpayer to maintain hardcopy books and records.

For the basic requirements of maintaining records in an automated data processing system, including electronic storage systems, see Rev. Proc. 98-25, 1998-1 C.B. 689.

G. TENANT INCOME DOCUMENTATION ISSUE

Law

Section 1.42-5(b)(1)(vi) provides that a housing credit agency must require the owner of a low-income housing project to keep records for each qualified low-income building in the project that show, for each year in the compliance period, the annual income certification of each low-income tenant per unit. Under §1.42-5(b)(1)(vii), the housing credit agency must require the owner to keep documentation to support each low-income tenant's income certification (for example, a copy of the tenant's Federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation).

Under §1.42-5(c)(1)(iii), the housing credit agency must require the owner of a low-income housing project to certify at least annually that, for the preceding 12-month period, the owner has received an annual income certification from each low-income tenant, and documentation to support that certification.

Rev. Proc. 94-65, 1994-2 C.B. 798, indicates that an owner may satisfy the documentation requirement of §1.42-5(b)(1)(vii) for a low-income tenant's income from assets by obtaining a signed, sworn statement from the tenant or prospective tenant if (1) the tenant's or prospective tenant's Net Family assets do not exceed $5,000, and (2) the tenant or prospective tenant provides a signed, sworn statement to this effect to the building owner. The revenue procedure provides that a housing credit agency's monitoring procedure may not permit an owner to rely on a low-income tenant's signed, sworn statement of annual income from assets if a reasonable person in the owner's position would conclude that the tenant's income is higher than the tenant's represented annual income. In this case, the owner must obtain other documentation of the low-income tenant's income from assets to satisfy the documentation requirement. In addition, the revenue procedure indicates that a housing credit agency's monitoring procedure may continue to require that an owner obtain documentation, other than the signed, sworn statement, to support a low-income tenant's annual certification of income from assets.

Q-12.
On reviewing tenant files of a project, the housing credit agency discovered that for purposes of determining the income of certain tenants, the owner had accepted signed, sworn self-certifications in which the tenants stated that they had not received any child support payments. Is a signed, sworn self-certification by a tenant sufficient documentation under §1.42-5(b)(1)(vii) to show that the tenant is not receiving child support payments?

A-12.
Yes. Consistent with the documentation requirements in Rev. Proc. 94-65, a signed, sworn self-certification by a tenant is sufficient documentation under § 1.42-5(b)(1)(vii) to show that a tenant is not receiving child support payments. In addition to specifying that a tenant is not receiving any child support payments, an annual signed, sworn self-certification should indicate whether the tenant will be seeking or expects to receive child support payments within the next 12 months. If the tenant possesses a child support agreement but is not presently receiving any child support payments, the tenant should include an explanation of this and all supporting documentation such as a divorce decree and court documents to enforce payment. Also, the self-certification should indicate that the tenant will notify the owner of any changes in the status of child support.

A housing credit agency's monitoring procedure, however, may not permit an owner to rely on a low-income tenant's signed, sworn statement indicating that the tenant is not receiving child support payments if a reasonable person in the owner's position would conclude that the tenant's income is higher than the tenant's represented annual income. In this case, the owner must obtain other documentation of the low-income tenant's annual child support payments to satisfy the documentation requirement in §1.42-5(b)(1)(vii).

A housing credit agency's monitoring procedure may continue to require that an owner obtain documentation, other than the statement described above, to support a low-income tenant's annual certification of child support payments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Gregory N. Doran. For further information regarding this revenue ruling, contact Harold Burghart of the Office of Associate Chief Counsel (Passthroughs and Special Industries) at (202) 622-3040 (not a toll-free call).

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FEDERAL REGULATION #3

IRS Revenue Procedure 2003-82 & 2005-37: Safe Harbor Procedures

Rev. Proc. 2003-82

SECTION 1. PURPOSE

This revenue procedure provides safe harbors under which the Internal Revenue Service will treat a residential unit in a building as a low-income unit under §42(i)(3)(A) of the Internal Revenue Code if the incomes of the individuals occupying the unit are at or below the applicable income limitation under §42(g)(1) or §142(d)(4)(B)(i) before the beginning of the first taxable year of the building's credit period under §42(f)(1), but their incomes exceed the applicable income limitation at the beginning of the first taxable year of the building's credit period.

SECTION 2. BACKGROUND

.01 Questions have arisen regarding when individuals must satisfy the applicable income limitation under §42(g)(1) or §142(d)(4)(B)(i) when they move into a residential unit in an existing building under §42(i)(5) on or after the date a taxpayer acquires the existing building for rehabilitation under §42(e), but before the beginning of the first taxable year of the building's credit period under §42(f)(1). Because of these questions, some taxpayers require that the individuals' incomes not exceed the applicable income limitation at the beginning of the first taxable year of the building's credit period, even though the individuals' income did not exceed the applicable income limitation when the individuals moved into the unit. This has resulted in some individuals being evicted, where permissible under local law, from low-income housing projects.

.02 Section 42(a) provides that, for purposes of §38, the amount of the low-income housing credit determined for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building.

.03 Section 42(c)(2)(A) generally defines a qualified low-income building as any building which is part of a qualified low-income housing project at all times during the building's compliance period (which is defined in §42(i)(1) as the period of 15 taxable years beginning with the first taxable year of the credit period under §42(f)(1)).

.04 Section 42(i)(4) defines a new building as a building the original use of which begins with the taxpayer. An existing building is defined in §42(i)(5) as any building which is not a new building. Section 42(e)(1) provides that rehabilitation expenditures paid or incurred by the taxpayer with respect to any building are treated as a separate new building for purposes of §42.

.05 Section 42(f)(1) defines the credit period as the period of 10 taxable years beginning with (A) the taxable year in which the building is placed in service, or (B) at the election of the taxpayer, the succeeding taxable year, but in each case only if the building is a qualified low-income building as of the close of the first year of the period. Under §42(f)(5)(A), the credit period for an existing building must not begin before the first taxable year of the credit period for rehabilitation expenditures with respect to the building.

.06 Section 42(g)(1) defines a qualified low-income housing project as any project for residential rental use that meets one of the following requirements: (A) 20 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 50 percent or less of the area median gross income, or (B) 40 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 60 percent or less of the area median gross income. Under §42(g)(2), a residential unit is rent-restricted for purposes of §42(g)(1) if the gross rent for the unit does not exceed 30 percent of the imputed income limitation for the unit. Residential units that satisfy these rent and income requirements are defined in §42(i)(3)(A) as "low-income units." Section 42(i)(3)(B), (C), (D), and (E) provide more requirements for low-income units. Under §42(g)(4), a deep rent skewed project, as defined in §142(d)(4)(B), is also a qualified low-income housing project. To be a deep rent skewed project, §142(d)(4)(B)(i) requires that 15 percent or more of the low-income units in the project must be occupied by individuals whose income is 40 percent or less of the area median gross income.

.07 Section 42(g)(2)(D)(i) provides that, notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under §42(g)(1), the unit will continue to be treated as a low-income unit if the income of the occupants initially met the income limitation and the unit continues to be rent-restricted. However, under the available unit rule in §42(g)(2)(D)(ii), if the income of the occupants of the unit increases above 140 percent of the income limitation applicable under §42(g)(1), §42(g)(2)(D)(i) ceases to apply to the unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds the applicable income limitation. In the case of a deep rent skewed project described in §142(d)(4)(B), if the income of the occupants of the unit increases above 170 percent of the income limitation applicable under §42(g)(1), §42(g)(2)(D)(i) ceases to apply to the unit if any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income. See also §1.42-15 of the Income Tax Regulations.

.08 Under §42(h)(1), the amount of the credit determined under §42(a) for any taxable year with respect to any building must not exceed the housing credit dollar amount allocated to the building. However, under §42(h)(4)(A), a credit allocation generally is not necessary for the portion of a building's eligible basis financed by an obligation the interest on which is exempt from tax under §103 and the obligation is taken into account under §146. Under §42(h)(4)(B), no credit allocation under §42(h)(1) is necessary for any portion of a building's eligible basis if 50 percent or more of the aggregate basis of the building and the land on which it is located is financed with tax-exempt obligations.

SECTION 3. SCOPE

This revenue procedure only applies to residential units in a building where the incomes of the individuals occupying the unit are at or below the applicable income limitation under §42(g)(1) or §142(d)(4)(B)(i) before the beginning of the first taxable year of the building's credit period under §42(f)(1), but their incomes exceed the applicable income limitation at the beginning of the first taxable year of the building's credit period.

SECTION 4. SAFE HARBORS

.01 Existing buildings under §42(i)(5) and new buildings under §42(e)(1). A residential unit in an existing building under §42(i)(5) or a new building under §42(e)(1) will be considered a low-income unit under §42(i)(3)(A) at the beginning of the first taxable year of the building's credit period under §42(f)(1) if:

(1) The individuals occupying the unit have incomes that are at or below the applicable income limitation under §42(g)(1) or §142(d)(4)(B)(i) on either the date the existing building was acquired by the taxpayer or the date the individuals started occupying the unit, whichever is later (based on the area median gross income on that date), but their incomes exceed the applicable income limitation at the beginning of the first taxable year of the building's credit period (based on the area median gross income on that date);

(2) The incomes of the individuals occupying the unit are first tested for purposes of the available unit rule under §42(g)(2)(D)(ii) and §1.42-15 at the beginning of the first taxable year of the building's credit period;

(3) The unit has been rent-restricted under §42(g)(2) from either the date the existing building was acquired by the taxpayer or the date the individuals started occupying the unit, whichever is later, to the beginning of the first taxable year of the building's credit period;

(4) Either:

(a) Section 42(h)(1) applies to the building and the taxpayer either receives an allocation to rehabilitate the existing building or enters into a binding commitment for an allocation to rehabilitate the existing building by either the end of the taxable year the taxpayer acquired the existing building or the end of the taxable year the individuals started occupying the unit, whichever is later; or

(b) Section 42(h)(1) does not apply to the building by reason of §42(h)(4) and the tax-exempt bonds for the project are issued by either the end of the taxable year the taxpayer acquired the existing building or the end of the taxable year the individuals started occupying the unit, whichever is later; and

(5) The unit has been a low-income unit under §42(i)(3)(B), (C), (D), and (E) from either the date the existing building was acquired by the taxpayer or the date the individuals started occupying the unit, whichever is later, to the beginning of the first taxable year of the building's credit period.

.02 New buildings under §42(i)(4) (not including new buildings under §42(e)(1)). A residential unit in a new building under §42(i)(4) will be considered a low-income unit under §42(i)(3)(A) at the beginning of the first taxable year of the building's credit period under §42(f)(1) if:

(1) The individuals occupying the unit have incomes that are at or below the applicable income limitation under §42(g)(1) or §142(d)(4)(B)(i) on the date the individuals started occupying the unit (based on the area median gross income on that date), but their incomes exceed the applicable income limitation in effect at the beginning of the first taxable year of the building's credit period (based on the area median gross income on that date);

(2) The incomes of the individuals occupying the unit are first tested for purposes of the available unit rule under §42(g)(2)(D)(ii) and §1.42-15 at the beginning of the first taxable year of the building's credit period;

(3) The unit has been rent-restricted under §42(g)(2) from the date the individuals started occupying the unit to the beginning of the first taxable year of the building's credit period;

(4) The taxpayer elects under §42(f)(1)(B) to treat the taxable year succeeding the taxable year the building was placed in service as the first taxable year of the credit period; and

(5) The unit has been a low-income unit under §42(i)(3)(B), (C), (D), and (E) from the date the individuals started occupying the unit to the beginning of the first taxable year of the building's credit period.

SECTION 5. AUDIT PROTECTION

If the taxpayer currently uses a method consistent with the safe harbors for determining whether a unit is a low-income unit under §42(i)(3)(A) at the beginning of the first taxable year of the building's credit period under §42(f)(1) (as described in section 4 of this revenue procedure), the issue will not be raised by the Service in a taxable year that ends before November 24, 2003. Also, if the taxpayer currently uses a method consistent with the safe harbors for determining whether a unit is a low-income unit under §42(i)(3)(A) at the beginning of the first taxable year of the building's credit period under §42(f)(1) (as described in section 4 of this revenue procedure) and the issue is under consideration (within the meaning of section 3.09 of Rev. Proc. 2002-9, 2002-1 C.B. 327) for taxable years in examination, before an appeals office, or before the U.S. Tax Court in a taxable year that ends before November 24, 2003, the issue will not be further pursued by the Service.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after November 24, 2003.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Paul Handleman of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Handleman at (202) 622-3040 (not a toll-free call).

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, § 42; 1.42-5.)

Rev. Proc. 2005-37

SECTION 1. PURPOSE

This revenue procedure establishes a safe harbor under which housing credit agencies and project owners may meet the requirements of § 42(h)(6)(B)(i) of the Internal Revenue Code as described in Q&A-5 of Rev. Rul. 2004-82, 2004-35 I.R.B. 350, concerning extended low-income housing commitments (commitments).

SECTION 2. BACKGROUND

Section 42(a) provides for a credit for investment in qualified low-income buildings (as defined in § 42(c)(2)). Under § 42(i)(3)(A), low-income units in a building must be occupied by individuals who meet the income limitation applicable under § 42(g)(1) to the project of which the building is a part. The building owner must elect under § 42(g)(1) to rent a percentage of the residential units to individuals whose income is 50 percent or less of area median gross income or 60 percent or less of area median gross income.

Section 42(h)(6)(A) provides that no credit will be allowed with respect to any building for the taxable year unless a commitment (as defined in § 42(h)(6)(B)) is in effect as of the end of the taxable year.

Section 42(h)(6)(B)(i) requires commitments to include the prohibitions against the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii) during the extended use period, that is, prohibitions against eviction or termination of tenancy of an existing tenant of any low-income unit (other than for good cause) and any increase in the gross rent with respect to a low-income unit not otherwise permitted by § 42, applicable throughout the entire commitment period.

Section 42(h)(6)(B)(ii) provides that a commitment must allow individuals who meet the income limitation applicable to the building under § 42(g) (whether prospective, present, or former occupants of the building) the right to enforce in any state court the prohibitions of § 42(h)(6)(B)(i).

Section 42(h)(6)(J) provides that if, during a taxable year, there is a determination that a commitment was not in effect as of the beginning of the taxable year, the determination shall not apply to any period before the year and subparagraph (A) shall be applied without regard to the determination if the failure is corrected within 1 year from the date of determination.

Section 1.42-5(c)(1)(xi) of the Income Tax Regulations provides that a housing credit agency must require the owner of a low-income housing project to certify at least annually to the housing credit agency that, for the preceding 12-month period, a commitment as described in § 42(h)(6) was in effect (for buildings subject to § 7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989, 1990-1 C.B. 210),

including the requirement under § 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f (for buildings subject to § 13142(b)(4) of the Omnibus Budget Reconciliation Act of 1993, 1993-3 C.B. 1).

On August 30, 2004, the Service ruled in Q&A-5 of Rev. Rul. 2004-82 that § 42(h)(6)(B)(i) requires commitments to include the prohibitions against the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii) during the extended use period, that is, prohibitions against eviction or termination of tenancy of an existing tenant of any low-income unit (other than for good cause) and any increase in the gross rent with respect to a low-income unit not otherwise permitted by § 42, applicable throughout the entire commitment period. This requirement for commitments extends back to the effective date of § 42(h)(6)(B)(i). See § 11701(a)(7)(A) of the Omnibus Budget Reconciliation Act of 1990, 1991-2 C.B. 481, 531.

Q&A-5 provided that if it is determined by the end of a taxable year that a taxpayer's commitment does not meet the requirements for a commitment under § 42(h)(6)(B) (for example, it does not provide no-cause eviction protection for the tenants of low-income units throughout the extended use period), the low income housing credit is not allowable with respect to the building for the taxable year, or any prior taxable year. However, if the failure to have a valid commitment in effect is corrected within 1 year from the date of the determination, the determination will not apply to the current year of the credit period or any prior year.

Q&A-5 required each Agency to review its existing commitments by December 31, 2004, to ensure that the no-cause eviction protection and the prohibition against improper increases in gross rent apply throughout the extended use period. If during that review, an Agency determined that a commitment did not comply with these requirements, the 1-year period described under § 42(h)(6)(J) will commence on the date of that determination.

SECTION 3. SAFE HARBOR

.01 The Service has determined that Agencies may satisfy the review requirements under Q&A-5 for commitments entered into before January 1, 2006, under § 42(h)(6)(B)(i) in the following manner:

(1) Commitments entered into before January 1, 2006, that contain general language requiring building owners to comply with the requirements of § 42 (catch-all language) satisfy the requirements under Q&A-5, if:

(a) Agencies notify building owners in writing on or before December 31, 2005, that consistent with the interpretation in Q&A-5, the catch-all language prohibits the owner from evicting or terminating the tenancy of an existing tenant of any low-income unit (other than for good cause) throughout the entire commitment period. Further, Agencies must notify building owners that the catch-all language prohibits the owner from making an increase in the gross rent with respect to a low-income unit not otherwise permitted by § 42 throughout the entire commitment period;

(b) The owner must, as part of its certification under § 1.42-5(c)(1)(xi), certify annually that for the preceding 12-month period no tenants in low-income units were evicted or had their tenancies terminated other than for good cause and that no tenants

had an increase in the gross rent with respect to a low-income unit not otherwise permitted under § 42;

(c) If the owner fails to make the certifications in (b) above or the Agency learns that the owner has evicted tenants in low-income units or terminated their tenancies other than for good cause or has increased the gross rent of a tenant with respect to a low-income unit not otherwise permitted under § 42, the Agency shall report the owner to the Internal Revenue Service using Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition; and

(d) Section 3.02 shall also apply to any amendment to any commitment containing catch-all language if the amendment is executed after December 31, 2005.

(2) Commitments entered into before January 1, 2006, that do not contain specific language on the § 42(h)(6)(B)(i) prohibition against the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii) or catch-all language do not satisfy the requirements of Q&A-5 and must be amended to clearly provide for the § 42(h)(6)(B)(i) prohibition against the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii) by December 31, 2005.

.02 The Service has determined that Agencies may satisfy the review requirements under Q&A-5 for commitments executed after December 31, 2005, under § 42(h)(6)(B)(i) in the following manner:

(1) Commitments executed after December 31, 2005, must clearly provide for the § 42(h)(6)(B)(i) prohibition against the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii);

(2) The owner must, as part of its certifications under § 1.42-5(c)(1)(xi), certify annually that for the preceding 12-month period no tenants in low-income units were evicted or had their tenancies terminated other than for good cause and that no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under § 42; and

(3) If the owner fails to make the certifications in (2) above or the Agency learns that the owner has evicted tenants in low-income units or terminated their tenancies other than for good cause or has increased the gross rent of a tenant with respect to a low-income unit not otherwise permitted under § 42, the Agency shall report the owner to the Internal Revenue Service using Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition.

EFFECTIVE DATE

This revenue procedure is effective on June 21, 2005, the date this revenue procedure was released to the tax services.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jack Malgeri of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Mr. Malgeri on (202) 622-3040 (not a toll-free call).

APPENDICES

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APPENDIX A

Glossary of Terms

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GLOSSARY OF TERMS

Term	Definition
140% Rule:	See Next Available Unit Rule.
Accessibility:	Usable for access or capable of being used.
Acquisition:	Action taken to acquire by purchase, donation, or eminent domain real property**.**
American with Disabilities Act (ADA):	A broad civil rights law guaranteeing equal opportunity for individuals with disabilities in employment, public accommodations transportation, state and local government services, and telecommunications.
Amount of tax credit:	The tax credit percentage multiplied by the qualified basis**.**
Annual Owner Certification (AOC) Report:	A report or series of reports submitted to the Corporation annually (generally due January 31st) that documents a development's compliance and occupancy status as of the end of the monitoring year.
Annual Gross Income:	The anticipated total income from all sources and assets received by the family head, co-head and/or spouse and by each additional member of the family from a source outside the family for the 12-month period following certification of eligibility.
Applicable Federal Rate (AFR):	A monthly "present value" calculation of interest rate statistic issued by the Treasury Department used to determine the annual tax credit percentage for projects based on the placed in service date.
Applicable Fraction:	The portion or the percentage of a project leased as qualified tax credit units, which is determined at the end of the tax year and is the lesser of the number of tax credit units as percentage of residential units or total floor space of credit units as a percentage of the total floor space of all residential units.
Asset Income:	Income which is generated by items of value that may be turned into cash, such as a savings accounts, real estate, or other investments.
Bond Posting:	A bond posted with a Treasury Department approved surety company to avoid recapture of a portion of previously claimed credits after a change of ownership of a LIHTC property. The bond must be maintained throughout the compliance period and for 58 months after the end of the compliance period.
Building Identification Number:	A number assigned by Mississippi Home Corporation which allows the Internal Revenue Service to identify a building in a tax credit project. The BIN may be found on IRS Form 8609.
Carryover Allocation:	The credit of allocation that is to be placed in service no later than the end of the second calendar year following the allocation year. Carryover allocation also gives owners additional time to place a project in service
Cash Value:	Equal to the fair market value less reasonable expenses that would be incurred in selling or converting an asset to cash.
Certificate of Occupancy ("CO"):	A certificate issued which certifies that a building is ready for occupancy.

Term	Definition
Common Space/Area:	Facilities that are reasonably required for the development and include common areas such as swimming pools, other recreational facilities, community buildings and parking areas. Common areas can only be counted for tax credits if they are available for all residents on a nondiscriminatory basis at no additional charge.
Common Area Unit:	A unit in a development that is occupied by resident managers, maintenance personnel, or security officer. A common area unit is not a housing unit and is not included in the total housing unit for the development. A common area unit is not included in the calculations for the unit fraction, floor space fraction or applicable fraction. Common area unit must not be charged rent.
Compliance Period:	A period of compliance which begins the date the project is placed in service and lasts for 15 consecutive years.
Compliance Violations:	See noncompliance**.**
Credit:	The low-income housing tax credit available for federal income tax purposes under Section 42 of the Internal Revenue Code of 1986 for a qualified building.
Credit Period:	A period of ten years beginning with the first year the development claimed tax credits, which may be the year the building was placed-in-service or the year after, should the owner make the election.
Development Financial Analysis Report (DFAR):	An annual financial report due from the owner detailing the development's financial health and reserve requirement, including but not limited to the development's income, expenses, debt service ratio and operating and replacement reserve expenditures and balances.
Discriminatory Housing Practice:	An act that is unlawful under Section 804, 805, 806, or 818 of the Fair Housing Act.
Eligible Basis:	Reflects the amount of project cost such as acquisition and/or rehabilitation cost allowable under the Low Income Housing Tax Credit program.
Elderly Family:	A family of two or more persons of which one person is 62 years of age or older.
Empty Unit:	A tax credit unit that has never been occupied by a low-income qualified household.
Extended Use Agreement:	See LURA.
Extended Use Period:	The period beginning on the first day of the compliance period on which the building is a part of a qualified tax credit housing development and ending on the later of 1) the date specified by the agency in the extended low-income housing commitment or 2) the date which is 15 years after the close of the compliance period.
Fair Housing Act:	Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 which makes it illegal to discriminate in the sale, rental, financing, advertising or operation of housing. It also makes it illegal to discriminate in residential lending decisions and to make discriminatory statements in advertising.
Fair Market Rent (FMR):	The maximum chargeable gross rent in an area for projects participating in the HUD Section 8 program and is determined by HUD.

Term	Definition
Floor Space Fraction:	The fraction of a development reserved for low-income housing. The numerator of this fraction is the total square footage of floor space in all low-income housing units in the development, and the denominator is the total square footage of floor space in all housing units in the project, whether occupied or not. Where applicable, the floor space fraction is determined building by building.
FmHA:	See Rural Development.
Full-time Student:	A person(s) who attends school full-time during at least five calendar months (months do not have to be consecutive) during the calendar year at a regular educational institution. Full-time student status is as defined by the educational institution.
General Partner:	An individual or entity responsible for the development's operation and is normally accountable to investors primarily for compliance requirements as well as losses and/or financial risk.
Government Subsidized:	Units for which all or part of the rent or operating expenses are paid for directly by a government agency. Government subsidy programs include HUD Section 8 and 236, Rural Housing Services (RHS) Section 515, and other programs sponsored by local housing authorities or agencies. Typically, tenants are charged a percentage of their income (usually 30%) as rent if they are unable to pay the full cost of a unit.
Gross Income:	The gross amount (before taxes or deductions) of countable earned and unearned income and asset income of all household members.
Gross Rent:	Total tenant paid rent plus an allowance for tenant paid utilities and mandatory charges.
Handicapped:	A person with a physical or mental impairment that is expected to be long-continued, indefinite duration and/or impedes the person ability to live independently.
HUD:	United States Department of Housing and Urban Development. The primary agency for sponsoring subsidized housing in the United States, particularly in urban areas.
HUD Section 8 Voucher:	A government subsidized housing program administered by local public housing agencies through which income-qualified tenants can use government subsidies to reside at any project which meets certain qualifications. Qualified households pay 30% of adjusted income or 10% of gross income, whichever is greater. Government subsidies pay the housing unit owner the difference between what the qualified household pays and the area payment standard. Voucher holders may choose housing that rents for more than the area payment standard, but they will be responsible for paying the difference between the charged rent and payment standard.
Imputed Asset Income:	Cash value of all assets multiplied by the passbook rate. Thus, this is the potential income had all assets earned interest. The greater of imputed income or actual asset income is used in calculating annual gross income if the total of all assets is greater than $5,000.
Income Limits:	50% or 60% of the area median gross income on a per person basis for tax credit purposes.
Income Eligibility:	The determination of the household's gross income as it relates to the applicable income limits.
Initial Compliance:	The deadline to initially meet the minimum set-aside election.

Term	Definition
Inspection:	Physical on-site monitoring inspections which include, but not limited to, an inspection of the physical appearance of a property as well as the files and documentation of all TC units on a property.
IRC:	Internal Revenue Code
IRS:	Internal Revenue Service
Lease-up Period:	The period of time which begins once a project is placed in service and lasts until the owner claims the development's low income housing tax credits. Owners can start claiming credits at the end of the taxable year that the project was placed in service, or they can wait until the end of the following tax year to claim their credits.
LIHC:	Low Income Housing Credit
LIHTC:	Low Income Housing Tax Credit
LIHTC Dwelling Lease:	A contract between the development owner and the resident outlining the terms/requirements of the resident's occupancy. For LIHTC, the lease generally has an original lease term of 6 months or longer and contain signatures of the head of household and an authorized owner and/or property management representative.
Limited Partnership:	A group of persons and/or entity who has a vested interest in the property.
Live-in Aide/Attendant:	A person who lives with an elderly, disabled, or handicapped individual and is essential to that individual(s) care and well-being but not obligated for the individual(s) support and would be living in the unit except to provide support services.
Low Income Housing:	A housing development which is set aside in whole or part for the LIHTC program.
Low-Income Unit:	A qualified housing unit that is both rent-restricted and occupied by residents whose income is at or below the applicable percentage of the level selected as the minimum set-aside.
LURA:	An abbreviation for the Declaration of Land Use Restriction Agreement. Also, known as an Extended Use Agreement. An agreement which extends the low-income occupancy requirements and rent restrictions of a Housing Tax Credit development for a minimum of 15 years or more beyond the end of the compliance period unless certain conditions are met.
Market Rent:	Rent collected from families ineligible for rental assistance through other programs and is generally comparable to the rents of other projects in the area where the project(s) is located.
Metropolitan Statistical Area (MSA):	Denotes an area associated with an urban area. MSA determinations are made by the Census Bureau based on population and interaction. Non-urban areas included in an MSA are marked by a high rate of commuting and interaction. MSA boundaries are particularly important in determining maximum allowable rents for Tax Credit development.
Minimum Set-Aside:	A federally required election made by the owner at the time of allocation. The election designates the percentage of units (i.e., 20% or 40%) set aside for tenant populations with gross income that are either 50% or 60% or less of area median gross income. Usually seen as 20/50, 40/60, or 15/40 (NYC only).

Term	Definition
Mixed Income Projects:	Developments which have tenants/units whose incomes are restricted and those whose income are not restricted.
Next Available Unit Rule:	Rule is triggered when a household's income increases more than 140% above the current maximum income limit per person at recertification. Requires that the next available vacant unit be rented to a low-income qualified household.
Noncompliance:	An event in which an owner's development becomes classified for failure to either adhere to guidelines as set forth in Section 42 of the Internal Revenue Code (IRC), the Corporation's Compliance Monitoring Plan and/or conditions of the Extended Use Agreement.
Noncompliance Fee:	A fee charged to an owner by the Corporation for failure to comply with LIHTC, national, state or local guidelines.
Occupied Unit:	A LIHTC unit which has been rented.
Overage:	The term used to describe gross rent which exceed LIHTC maximum allowable rent and must be refunded to the tenant by an owner.
Over Income Tenant:	A tenant whose total anticipated gross annual income exceeds the maximum allowable income for the family in a particular area.
Passbook Rate:	Interest rate determined by HUD and applied to assets when calculating imputed asset income.
Placed in Service (PIS):	The date when a building or a project is ready for occupancy and an owner is permitted to begin claiming tax credits.
Private Letter Ruling:	Generally, a request made to the IRS by individual taxpayers on particular transaction involving the tax credit.
Public Housing:	A housing development that is publicly funded and administered for low-income families.
Qualified Allocation Plan (QAP):	A plan, adopted by Mississippi Home Corporation, for allocating credits in accordance with Section 42(c)(l) of the IRC and outlines housing needs specific to the State of Mississippi.
Qualified Basis:	Reflects the eligible cost attributable to eligible low-income units, and is determined by taking the amount of allowable project cost and adjusting the amount by the applicable fraction. The "claimable" portion of credits in a property according to the Internal Revenue code (IRC) formula and eligible low income units.
Qualified Census Tract:	The areas as defined by the Census, where 50% of all households have incomes less than 60 percent of the area median family income, adjusted for household size; such areas receive special additional tax benefits under this program; this calculation is based on 1990 census data and current income limit policies and area definitions.
Quarterly Occupancy Report (QOR):	An occupancy report due from the owner on a quarterly basis detailing the development's lease-up activities. The report is due until the development acquires its targeted applicable fraction as verified and acknowledged by the Corporation.
Recapture:	The reduction in the allowable credit as penalties for noncompliance. In addition, the sale or disposition of a tax credit building may, as well, result in recapture event.

Term	Definition
Recertification:	The annual redetermination of household income and eligibility.
Recertification Waiver:	A waiver given to owners of 100% tax credit projects eliminating the requirement to acquire annual recertifications. However, it does not eliminate the need to annually verify/certify to student status.
Rent Floor:	The maximum permissible rent (generally the initial rental amount) for any unit which may not fall below the initial rent at the time of place in service or allocation, as elected by the owner.
Restricted Rent:	The maximum allowable rent according to the IRS formula including any utilities or services that must be paid by the resident.
Rental Application:	A form used to survey a household's income and gather information about household income and composition.
Revenue Ruling:	An official interpretation of the tax laws by the IRS published in the Internal Revenue Bulletin.
Rural Development (RD):	The U.S. Department of Agriculture Rural Development [formerly Farmers Home Administration (FmHA)] or Rural Housing Services.
Services:	Activities and/or programs provided to residents that are in addition to the furnishing of a housing unit.
Transient Housing:	Housing that does not have an initial lease term of six months or longer and has a kitchen and bathroom in each housing unit. There is no limitation on the length of a lease, nor is there any minimum rental period.
Unit Type:	Description of the unit's structure (i.e. single family home, apartment, townhouse, etc).
Utility Allowance:	An allowance for tenant paid utilities, excluding telephone, cable, etc. Must be factored in gross rent and determining rent restrictions. Utility allowance also varies by unit type and unit size. Developments with utilities paid solely by an owner do not have a utility allowance.
Vacant Unit:	A LIHTC unit from which is currently vacant but was previously occupied by a low-income qualified household.
Verifications:	The appropriate documents received which supports the income, composition, and compliance status as certified by the household.
Voucher:	See HUD Section 8 Voucher.

APPENDIX B

Sample Utility Allowance Schedules

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Exhibit A-6
(Revision 1)

HOUSING ALLOWANCES FOR
UTILITIES AND OTHER PUBLIC SERVICES
EFFECTIVE
DATE January 1, 2004

NAME OF BORROWER

LOCATION AND IDENTIFICATION OF PROJECT

PART 1

UTILITY OR SERVICE	Monthly Dollar Allowances 0-BR	1-BR	2-BR	3-BR	4-BR
HEATING					
a. Natural Gas			28		
Bottle Gas					
c. Electric					
Oil					
AIR CONDITIONING			20		
COOKING					
Natural Gas					
Bottle Gas					
Electric			7		
OTHER ELECTRIC LIGHTING, REFRIGERATION, ETC.			19		
WATER HEATING					
a. Natural Gas			12		
Bottle Gas					
Electric					
d. Oil					
WATER					
SEWER					
TRASH COLLECTION					
OTHER (Specify)					
TOTAL ALLOWANCE (Round to next highest dollar)	0		80		0

SAMPLE

REC'D JUN 29 2005

PREPARED BY:

Borrower or Agent Title Signature Date

APPROVED BY RURAL DEVELOPMENT:

Name Title Signature Date

HOUSING ALLOWANCES FOR UTILITIES AND OTHER PUBLIC SERVICES

PART II

BLOCK A

TO: _____

Address of tenant

No. of Bedrooms 2

You will be billed directly for utilities and service charges. Block B sets forth the allowances credited in your rent for the payment of utilities. You may be billed for more or less than shown in Block B dependir on your use of utilities.

Signature of Borrower/or Agent

January 1, 2004
(Date)

BLOCK B

ALLOWONCES FOR UTILITIES AND SERVICES BILLED DIRECTLY TO AND PAID BY TENANT	Per Month
HEATING	$ 28
AIR CONDITIONING	20
COOKING	7
OTHER ELECTRIC	13
WATER HEATING	12
WATER	
SEWER	
TRASH COLLECTION	
OTHER (Specify)	
_____	
Total (Round to next highest dollar)	$ 80

SAMPLE

REC'D JUN 29 2005

HUD 52667
APRIL 1975

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT SECTION 8 EXISTING HOUSING ALLOWANCES FOR TENANT-FURNISHED UTILITIES AND OTHER SERVICES						DATE 10/01/2002
LOCALITY * COUNTIES OF COAHOMA, PANOLA, QUITMAN, SUNFLOWER, TALLAHATCHIE & TUNICA				UNIT TYPE		
	MONTHLY DOLLAR ALLOWANCES					
UTILITY OR SERVICE	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR
HEATING a. Natural Gas		17.00	23.00	29.00	35.00	41.00
b. Bottle Gas						
c. Oil						
d. Electric		25.00	30.00	35.00	40.00	45.00
AIR CONDITIONING		10.00	10.00	10.00	10.00	10.00
COOKING a. Natural Gas		3.00	3.00	3.00	3.00	3.00
b. Electric		5.00	5.00	5.00	5.00	5.00
c. Bottle Gas						
OTHER ELECTRIC LIGHTING, REFRIGERATION, ETC.		8.00	10.00	12.00	14.00	16.00
WATER HEATING a. Natural Gas		8.00	10.00	12.00	14.00	16.00
b. Electric		13.00	16.00	19.00	22.00	25.00
c. Bottle Gas						
d. Oil						
WATER		6.00	6.00	6.00	6.00	6.00
SEWER		3.00	3.00	3.00	3.00	3.00
TRASH COLLECTION						
RANGE		10.00	10.00	10.00	10.00	10.00
REFRIGERATOR		10.00	10.00	10.00	10.00	10.00
OTHER (Specify)						

SAMPLE

ACTUAL FAMILY ALLOWANCES (To be used by family to compute allowance. Complete below for Actual Unit Rented.)	UTILITY OR SERVICE	PER MONTH
NAME OF FAMILY	HEATING	29
	AIR CONDITIONING	10
ADDRESS OF UNIT	COOKING	3
	OTHER ELECTRIC	12
	WATER HEATING	12
	WATER	—
	SEWER	—
	TRASH COLLECTION	—
	RANGE	—
	REFRIGERATOR	—
NUMBER OF BEDROOMS 3	OTHER (Specify)	—
	TOTAL	$ 66

RECD JUN 7 2005

North Delta Regional Housing Authority
P.O. Drawer 1148
Clarksdale, MS 38614

U. S. Department of Housing & Urban Development
Section 8 Allowances for Tenant-Furnished Utilities and Other Services
HUD-52667

MISSISSIPPI REGIONAL HOUSING AUTHORITY II
UTILITY ALLOWANCE CALCULATION

Hof H Name: _____ # of Bedrooms: _____

Unit Address: _____ / _____ / _____
Street Address City St Zip

	1BR	2BR	3BR	4BR	5BR
HEATING					
NATURAL GAS	14.00	17.00	20.00	22.00	25.00
ELECTRIC	✓16.00	✓19.00	✓20.00	23.00	25.00
BOTTLED GAS	6.00	6.00	6.00	6.00	6.00
COOKING					
NATURAL GAS	3.00	4.00	5.00	5.00	5.00
ELECTRIC	✓3.00	✓5.00	✓7.00	9.00	11.00
BOTTLED GAS	6.00	6.00	6.00	6.00	6.00
AIR CONDITIONING	✓12.00	✓12.00	✓12.00	12.00	12.00
OTHER ELECTRIC	✓16.00	✓17.00	✓19.00	22.00	24.00
WATER HEATING					
NATURAL GAS	8.00	9.00	10.00	12.00	13.00
ELECTRIC	✓10.00	✓12.00	✓14.00	16.00	17.00
BOTTLED GAS	6.00	6.00	6.00	6.00	6.00
WATER					
CITY	8.00	8.00	10.00	11.00	12.00
COUNTY	10.00	10.00	12.00	13.00	14.00
SEWER					
CITY	8.00	8.00	10.00	11.00	12.00
COUNTY	-0.00-	-0.00-	-0.00-	-0.00-	-0.00-
TRASH COLLECTION					
CITY	11.00	11.00	11.00	11.00	11.00
COUNTY	9.00	9.00	9.00	9.00	9.00
RANGE	5.00	5.00	5.00	5.00	5.00
REFRIGERATOR	5.00	5.00	5.00	5.00	5.00
	57	65	72	TOTAL	

SAMPLE

Note: In accordance with HUD regulations 24 CFR 982.512, the Utility Allowances for tenant furnished utilities are reviewed annually by the Mississippi Regional Housing Authority II. in the month of October. In October, 2004, these allowances were reviewed but not revised. They remain the same as those given to you in October, 2003.

Phyllis S. Johnson
Executive Director

October 1, 2004
Date

[Format to use when petitioning local utility company on development with 10 or more units.
RETYPE on company Letterhead]

[Date]

[Name]
[Address]
[City, State, Zip]

RE: Request for Utility Estimates /Actual at [Property Name,
Address
City]

Dear Sir or Madam:

SAMPLE

Please accept this correspondence as an official request for the utility allowance usage pattern for the above captioned development. For your use, ***Exhibit A*** has been provided that identifies each building in the development and the unit number/size/type associated with each building address.

In preparing your estimates, we ask that you please provide data based on the [electrical, gas and water] usage pattern of each unit size (i.e., 1 bedroom, 2 bedrooms, 3 bedrooms, etc.) in the development over a 12-month period. In addition, please ensure that estimates/figures provided are based on data acquired from the applicable number of units (per unit size). Note, if any unit variations exist (i.e., townhouse vs. flat, studio vs. efficiency), then please provide estimates for these unit variations separately. {{See Exhibit A}}

Finally, in accordance with the requirement established by the Mississippi Home Corporation, the state housing finance agency to which these estimates must be submitted, we respectfully ask that you forward a copy of your response directly to the contact person identified at the bottom of this form.

Thank you in advance for your assistance. In order to assist you in preparing a response, please find attached a letter/framework that may be used if needed. Should you have any questions, please do not hesitate to contact [enter contact person] at [enter phone number].

Sincerely,

[Signature and Title of Representative of
the Ownership Entity, management agent, tenant]

Enclosures: Exhibit A

Cc: Mississippi Home Corporation
Attn.: Karen C. Georgetown
P O Box 23369
Jackson, MS 39229-3369

[DEVELOPMENT NAME]
[OWNER'S NAME]

EXHIBIT A

BIN	Unit #	STREET ADDRESS	CITY	STATE	Bedroom Size	Type
Example: 09-002	Z109	999 Bever Run Dr.	Mikey Mouse	Mississippi	1	Townhouse
				Mississippi		
				Mississippi		
				Mississippi		
				Mississippi		
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				Mississippi		

SAMPLE

[Framework for utility allowance estimates with 10 or more units.
RETYPE on company Letterhead]

[Date]

[Name]
[Address]
[City, State, Zip]

RE: Request for Utility Estimates /Actual at [Property Name,
Address
City]

SAMPLE

Dear Sir or Madam:

Thank you for your request for the utility usuage patterns at [enter development name] located in [enter city, Mississippi]. As you requested, a copy of this correspondence has been forwarded to the Mississippi Home Corporation.

We have reviewed the accounts at this location and determined the utility usage based on a 12-month average of the units (per bedroom size and type) provided on Exhibit A to be approximately [enter usage estimates per bedroom size, respectively]. Please be advised that the usage pattern may be different from month to month based upon the individual customer's living habits.

Should you have any questions, please feel free to contact our customer service center at [enter telephone number]. Thank you for allowing us to provide your utility needs. As always, we value YOU as a customer and appreciate this opportunity to serve you.

Sincerely,

[Signature & title of Utility Company agent preparing report]

Cc: Mississippi Home Corporation
Attn.: Karen C. Georgetown
P O Box 23369
Jackson, MS 39229-3369

[Format to Use when petitioning Local uUility Company on Development w/10 units or less. RETYPE on company Letterhead]

[Date]

[Name]
[Address]
[City, State, Zip]

RE: Request for Utility Estimates /Actual at [Property Name, Address City]

Dear Sir or Madam::

SAMPLE

Please accept this correspondence as an official request for the utility allowance usage pattern for the above captioned development. For your use, ***Exhibit A*** has been provided that identifies each building on the development and the unit number/size/type associated with each building address.

In preparing your estimates, we ask that you please provide data based on the [electrical, gas and water] usage pattern of each unit size (i.e., 1 bedroom, 2 bedrooms, 3 bedrooms, etc.) in the development over a 12-month period. In addition, please ensure that estimates/figures provided are based on data acquired from a review of the usage pattern of the units in the development. Note, if any unit variations exist (i.e., townhouse vs. flat, studio vs. efficiency), then please provide estimates for these unit variations separately. {{See Exhibit A}}

Finally, in accordance with the requirement established by the Mississippi Home Corporation, the state housing finance agency to which these estimates must be submitted, we respectfully ask that you forward a copy of your response directly to the contact person identified at the bottom of this form.

Thank you in advance for your assistance. In order to assist you in preparing a response, please find attached a letter/framework that may be used if needed. Should you have any questions, please do not hesitate to contact [enter contact person] at [enter phone number].

Sincerely,

[Signature and Title of Representative of
the Ownership Entity, management agent, tenant]

Enclosures: Exhibit A

Cc: Mississippi Home Corporation
Attn.: Karen C. Georgetown
P O Box 23369
Jackson, MS 39229-3369

[DEVELOPMENT NAME]
[OWNER'S NAME]

EXHIBIT A

BIN	Unit #	STREET ADDRESS	CITY	STATE	Bedroom Size	Type
Example: 09-002	Z109	999 Bever Run Dr.	Mikey Mouse	Mississippi	1	Townhouse
				Mississippi		
				Mississippi		
				Mississippi		
				Mississippi		
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				Mississippi		
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SAMPLE

[Framework for Utility Allowance estimates w/10 or less units.
RETYPE on company Letterhead]

[Date]

[Name]
[Address]
[City, State, Zip]

RE: Request for Utility Estimates /Actual at [Property Name,
Address
City]

SAMPLE

Dear Sir or Madam:

Thank you for your request for the utility usuage patterns at [enter development name] located in [enter city, Mississippi]. As you requested, a copy of this correspondence has been forwarded to the Mississippi Home Corporation.

We have reviewed the accounts at this location and determined the utility usage based on a 12-month average of the units (per bedroom size and type) you provided on Exhibit A to be approximately [enter usage estimates per bedroom size, respectively]. Please be advised that the usage pattern may be different from month to month based upon the individual customer's living habits.

Should you have any questions, please feel free to contact our customer service center at [enter telephone number]. Thank you for allowing us to provide your utility needs. As always, we value YOU as a customer and appreciate this opportunity to serve you.

Sincerely,

[Signature & title of Utility Company agent preparing report]

Cc: Mississippi Home Corporation
Attn.: Karen C. Georgetown
P O Box 23369
Jackson, MS 39229-3369

HUD UTILITY MODEL INSTRUCTIONS

Note: Please go to www.huduser.org/datasets/lihtc.html to download various components of the HUD Utility Schedule model explained in the instructions below. The preparer who utilizes this model will need access to a computer to download certain components in order to properly calculate utility estimates for the tax credit development.

I. Introduction

The HUD Utility Schedule Model has been developed to provide a consistent basis for determining utility schedules, using form HUD-52667, throughout the U.S. This spreadsheet model is organized into several tabs and was designed to work with Microsoft Excel 2000 and 2003 although it may also work with other spreadsheets including older versions of Excel.

Each first time user must complete the entries on the "Location" tab and the "Tariffs" tab of the spreadsheet model. Entries are shown as cells with a white background and are surrounded by cells with a grey background. The resulting forms are on tabs with "52667" as part of their name. When you print from the "52667" tabs, the entire page is not printed, only the utility schedule. Four different "52667" forms are included but you can add more or remove any that you don't want. No changes to the "52667" tabs are needed except for selecting the Unit Type, the type of Electric Tariff, kind of Electric Heating, and Age of Dwelling. Values cannot be entered directly on the form. They are based on the calculations shown to the right and below the form.

The summary tab shows the total allowances for a large number of common cases. It can be used to see the overall impact of a rate change.

Almost all the calculations are performed on the "52667" tabs. The main form is in the upper left hand corner of the worksheet tab but below it and to the right are the calculations. They are shown in a step-by-step fashion to make it clear how the calculations were performed. These calculations cannot be changed, they take the values you have entered on the "Location" and "Tariffs" tabs and simply perform the calculations.

II. Detailed Instructions

The following sections are related to the sections on each of the tabs of the HUD Utility Schedule Model. Remember, the input is on the "Location" tab, "Tariffs" tab, and just four places at the top of the "52667" tabs. No other inputs or changes are permitted.

A. Help on the Location Tab

The first time you use the spreadsheet you will need to enter some values on the "Location" tab, but after that most of the values will not need to change except for the "Form Date." The "Form Date" is the date that you want shown on the "52667" forms.

1. General Information on the Location Tab – The first section of the "Location" tab is for "General Information" and contains items that apply to all HUD-52667 forms in the spreadsheet.

Name of Housing Authority - enter the name that you want to appear on the HUD-52667 forms. This can either signify a Housing Authority, a housing project name, or an area name. This entry will be automatically put on each copy of the form under the work "Locality". Unless the name changes, it is unlikely that you will need to alter this value.

Form Date – enter the date that you want to appear on the completed forms. This date is often the date the form goes into effect, or the date the form was last changed. This entry is likely to change every time the spreadsheet is updated.

Include Allowance for Air Conditioning – check the box if your housing authority normally includes an allowance for the electricity consumption associated with providing air conditioning. Depending on the location and the climate, this is normally checked.

2. Climate Data on the Location Tab – The "Climate Data on the Location tab can be quickly gathered from the companion spreadsheet tool called ZipCodeToDegreeDays. Select the location closest to your housing authority using zipcode information. At times multiple weather monitoring sites will be available; select the site that is closest to the population served by the housing authority or the most well known monitoring location. Data from the ZipCodeToDegreeDays spreadsheet can be copied and pasted directly on to the "Location" tab using the [Edit][Paste Special][Values] menu item in Excel.

If you prefer to enter data directly into the Climate Data area of the "location" tab, you can do that also. You only need to enter data into the fields show as "required" since they are the only ones in the Climate Data Section that are used by the rest of the spreadsheet. If you do enter the monthly degree day data and annual degree day data, the calculated fields at the bottom of the entry area "check of HDD" and "check of CDD" will indicate if the monthly values add up to the annual value by showing a zero difference.

B. Help on Tariffs Tab

A majority of the effort in using this model is to update the rates paid for utilities. This is the purpose of the "Tariffs" tab. The "Tariffs" tab allows you to update the tariffs for electricity, natural gas fuel oil, liquefied petroleum gas (LPG), water, sewer, trash and certain appliance fees. The tab has columns for the Current and Previous values for

almost all of the entries. Only the entries under the Current column are used in the rest of the spreadsheet and get used in calculating the values that appear on the forms. The entries in the Previous column are ignored and are there only for reference and to determine how much the tariff has changed. All energy and non-energy related costs area entered on this tab. Most utilities allow you to download a tariff or rate book from their web site. After you do this, get a bill to use as an example and determine all of the components that make up the bill. At times the tariff is broken into a main tariff and many riders. Some utilities describe taxes in the rate book and some do not, so check the example bill.

In some locations, utilities have become deregulated and multiple companies may be involved in providing this service. This is especially likely for natural gas and electric utilities. While the spreadsheet does not have any specific entries for deregulated utilities, it is easy to use the spreadsheet with them. To enter deregulated utilities, simply add up the charges for each kWh or other unit of measure and enter the combined total. For example, if an electric generating company charges 4 cents per kWh and the electric distribution company charges 3 cents per kWh, simply add the two charges together for 7 cents per kWh. If the companies have multiple block rates, these charges need to be combined for each rate block.

1. Standard Electric Utility Tariff –

Utility Name and Rate Name – enter the name or an abbreviation of the name for the utility that provides electricity and for the specific rate to be used in the calculations. Many utilities have multiple rates that could be used by residential customers and you should choose one that is the most typical.

Rate Effective Date – often utilities will use the same name for a tariff even though they may change the values. Entering an effective date here will allow you to understand what version of the tariff you are using.

First Month of Summer and Last Month of Summer – select from the pull down lists the months that are the first and last months of the summer period as defined in the electric tariff. If the tariff does not vary by season, use only the "summer" blocks and set the summer period from January through December. If the tariff is seasonal but starts mid-month, make sure the number of months in the tariff that are summer and the number of months here are equivalent since the number of months is more important than exactly when in each month the tariff changes. If your spreadsheet program is not Excel, you may not see the drop down list of choices. If that is the case, just enter the month number in the rows below each input.

Monthly Charges – enter the value charged for electric service. This is sometimes called a monthly charge or a service charge.

Size of XXX Block – This entry is repeated for the first, second, third and fourth blocks of the tariff in the summer and in the winter. If the tariff does not have block rates that vary by season, then only enter values for the summer entries. The size of a block is important for tariffs that have "stepped" blocks. A stepped tariff charges a certain amount for each kWh in the first group of kWh, and different charges for greater use. They are often expressed as 5 cents per kWh for the first 500 kWh and 4 cents per kWh for the remaining kWh. For this case you would enter "500" in the "Size of First Block" and "remaining" in the "Size of the Second Block". You could also enter a large number instead of the word "remaining" in the "Size of the Second Block" field, which will indicate that the rest of the kWh should be charged at that price. Since some utilities have multiple blocks in their tariffs, up to four blocks are provided. If more blocks are part of the tariff, average the cost of some of the blocks together and combine their sizes. If the rate is not a stepped rate, enter values for the first block only.

Cost of XXX Block – This entry is repeated for the first, second, third, and fourth blocks of the tariff in the summer and in the winter. If the tariff does not have blocks that vary by season, only enter values for the summer entries. The cost of a block is important for tariffs that have "stepped" blocks. A stepped tariff charges a certain amount for each kWh in the first group of kWh, and different charges for greater use. They are often expressed as 5 cents per kWh for the first 500 kWh and 4 cents per kWh for the remaining kWh. For this case you would enter 0.05 in the "Cost of First Block" a 0.04 in the "Cost of the Second Block". Since some utilities have multiple blocks in their tariffs, up to four blocks are provided. If more blocks are part of the tariff, average the cost of some of the blocks together and combine their sizes. If the rate is not a stepped rate, enter values for the first block only. If multiple companies are involved in providing the utility service, such as when the utilities are deregulated, then add up the costs for each company for that block.

Extra Charges – An extra fee that is charged by the utility for every kWh that is sold. This is often expressed as a fuel cost adjustment, an energy cost adjustment, or a surcharge. Credits are often expressed as a fuel cost adjustment, an energy cost adjustment or a surcharge. Credits are often provided on the basis of every kWh and can be entered as negative numbers. If multiple extra charges exist in the tariff, then add them up.

Taxes – This is expressed as a whole number percent. Don't format the cell in Excel as a "percent" format. For a 3% tax simply enter 3. The tax is calculated after calculating a subtotal that includes the block charges, the monthly charge and the extra charges.

2. Special Electric Heating/All Electric Tariff –

Use Electric Heat Tariff – some utilities have special discounted tariffs for customers that heat with electricity or use only electricity and no other source of energy in their homes. If that is the case, and you want to provide special 52667 forms for those

customers, check this box. You may need to make more copies of the 52667 tabs and specify that some use the special electric heating rate.

Utility Name and Rate Name – enter the name or an abbreviation of the name for the utility that provides electricity and for the specific rate to be used in the calculations. Many utilities have multiple rates that could be used by residential customers and you should choose one that is the most typical.

Rate Effective Date – often utilities will use the same name for a tariff even though they may change the values. Entering an effective date here will allow you to understand what version of the tariff you are using.

First Month of Summer and Last Month of Summer – select from the pull down lists the months that are the first and last months of the summer period as defined in the electric tariff. If the tariff does not vary by season, use only the "summer" blocks and set the summer period from January through December. If the tariff is seasonal but starts mid-month, make sure the number of months in the tariff that are summer and the number of months here are equivalent since the number of months is more important than exactly when in each month the tariff changes. If your spreadsheet program is not Excel, you may not see the drop down list of choices. If that is the case, just enter the month number in the rows below each input.

Monthly Charges – enter the value charged for electric service. This is sometimes called a monthly charge or a service charge.

Size of XXX Block – This entry is repeated for the first, second, third and fourth blocks of the tariff in the summer and in the winter. If the tariff does not have block rates that vary by season, then only enter values for the summer entries. The size of a block is important for tariffs that have "stepped" blocks. A stepped tariff charges a certain amount for each kWh in the first group of kWh, and different charges for greater use. They are often expressed as 5 cents per kWh for the first 500 kWh and 4 cents per kWh for the remaining kWh. For this case you would enter "500" in the "Size of First Block" and "remaining" in the "Size of the Second Block". You could also enter a large number instead of the word "remaining" in the "Size of the Second Block" field, which will indicate that the rest of the kWh should be charged at that price. Since some utilities have multiple blocks in their tariffs, up to four blocks are provided. If more blocks are part of the tariff, average the cost of some of the blocks together and combine their sizes. If the rate is not a stepped rate, enter values for the first block only.

Cost of XXX Block – This entry is repeated for the first, second, third, and fourth blocks of the tariff in the summer and in the winter. If the tariff does not have blocks that vary by season, only enter values for the summer entries. The cost of a block is important for tariffs that have "stepped" blocks. A stepped tariff charges a certain amount for each kWh in the first group of kWh, and different charges for greater use. They are often expressed as 5 cents per kWh for the first 500 kWh and 4 cents per kWh for the remaining kWh. For this case you would enter 0.05 in the "Cost of First Block" a 0.04 in

the "Cost of the Second Block". Since some utilities have multiple blocks in their tariffs, up to four blocks are provided. If more blocks are part of the tariff, average the cost of some of the blocks together and combine their sizes. If the rate is not a stepped rate, enter values for the first block only. If multiple companies are involved in providing the utility service, such as when the utilities are deregulated, then add up the costs for each company for that block.

Extra Charges – An extra fee that is charged by the utility for every kWh that is sold. This is often expressed as a fuel cost adjustment, an energy cost adjustment, or a surcharge. Credits are often expressed as a fuel cost adjustment, an energy cost adjustment or a surcharge. Credits are often provided on the basis of every kWh and can be entered as negative numbers. If multiple extra charges exist in the tariff, then add them up.

Taxes – This is expressed as a whole number percent. Don't format the cell in Excel as a "percent" format. For a 3% tax simply enter 3. The tax is calculated after calculating a subtotal that includes the block charges, the monthly charge and the extra charges.

3. Standard Natural Gas Utility Tariff –

Utility Name and Rate Name – enter the name or an abbreviation of the name for the utility that provides natural gas and for the specific rate to be used in the calculations. Many utilities have multiple rates that could be used by residential customers and you should choose one that is the most typical.

Rate Effective Date – often utilities will use the same name for a tariff even though they may change the values. Entering an effective date here will allow you to understand what version of the tariff you are using.

Measurement Units – natural gas utilities provide natural gas on the basis of one of several different units. Select the units used by the utility in the rate. Notice that the units correspondingly change on many of the remaining fields in the tariff. Changing the measurement units will not change the values entered in the rest of the rate. If your spreadsheet program is not Excel and the pull down list is not seen, enter 1 for therms, 2 for CCF, 3 for MCF, and 4 for MMBtu.

First Month of Summer and Last Month of Summer – select from the pull down lists the months that are the first and last months of the summer period as defined in the natural gas tariff. If the tariff does not vary by season, use only the "summer" blocks and set the summer period from January through December. If the tariff is seasonal but starts mid-month, make sure the number of months in the tariff that are summer and the number of months here are equivalent since the number of months is more important than exactly when in each month the tariff changes. If your spreadsheet program is not Excel, you may not see the drop down list of choices. If that is the case, just enter the month number in the rows below each input.

Monthly Charges – enter the value charged for natural gas service. This is sometimes called a monthly charge or a service charge.

Size of XXX Block – This entry is repeated for the first, second, third and fourth blocks of the tariff in the summer and in the winter. If the tariff does not have block rates that vary by season, then only enter values for the summer entries. The size of a block is important for tariffs that have "stepped" blocks. A stepped tariff charges a certain amount for each therm in the first group of therms, and different charges for greater use. They are often expressed as 80 cents per therm for the first 10 therms and 70 cents per therm for the remaining therms. For this case you would enter "10" in the "Size of First Block" and "remaining" in the "Size of the Second Block". You could also enter a large number instead of the word "remaining" in the "Size of the Second Block" field, which will indicate that the rest of the therms should be charged at that price. Since some utilities have multiple blocks in their tariffs, up to four blocks are provided. If more blocks are part of the tariff, average the cost of some of the blocks together and combine their sizes. If the rate is not a stepped rate, enter values for the first block only.

Cost of XXX Block – This entry is repeated for the first, second, third, and fourth blocks of the tariff in the summer and in the winter. If the tariff does not have blocks that vary by season, only enter values for the summer entries. The cost of a block is important for tariffs that have "stepped" blocks. A stepped tariff charges a certain amount for each therm in the first group of therms, and different charges for greater use. They are often expressed as 80 cents per therm for the first 10 therms and 70 cents per therm for the remaining therms. For this case you would enter 0.80 in the "Cost of First Block" a 0.70 in the "Cost of the Second Block". Since some utilities have multiple blocks in their tariffs, up to four blocks are provided. If more blocks are part of the tariff, average the cost of some of the blocks together and combine their sizes. If the rate is not a stepped rate, enter values for the first block only. If multiple companies are involved in providing the utility service, such as when the utilities are deregulated, then add up the costs for each company for that block.

Extra Charges – An extra fee that is charged by the utility for every therm that is sold. This is often expressed as a fuel cost adjustment, an energy cost adjustment, or a surcharge. Credits are often expressed as a fuel cost adjustment, an energy cost adjustment or a surcharge. Credits are often provided on the basis of every therm and can be entered as negative numbers. If multiple extra charges exist in the tariff, then add them up.

Taxes – This is expressed as a whole number percent. Don't format the cell in Excel as a "percent" format. For a 3% tax simply enter 3. The tax is calculated after calculating a subtotal that includes the block charges, the monthly charge and the extra charges.

4. Fuel Oil Delivery Contract –

Supplier Name – enter the name or an abbreviation of the name for the supplier for fuel oil.

Effective Date – entering an effective date here will allow you to understand what version of the contract you are using.

Monthly Charges – enter the amount that the fuel oil supplier charges to provide service. This is sometime called a monthly charge or a service charge.

Size of XXX Block – This entry is repeated for the first, second, third and fourth blocks of the contract. A stepped contract charges a certain amount for each gallon in the first group of gallons, and different charges for greater use. They are often expressed as 2.50 dollars per gallon for the first 50 gallons and 2.40 dollars per gallon for the remaining gallons. For this case you would enter "50" in the "Size of First Block" and "remaining" in the "Size of the Second Block". You could also enter a large number instead of the word "remaining" in the "Size of the Second Block" field, which will indicate that the rest of the gallons should be charged at that price. Up to four blocks are provided, if more blocks are part of the contract, then average the cost of some of the blocks together and combine their sizes. If the rate is not a stepped rate, enter values for the first block only.

Cost of XXX Block – This entry is repeated for the first, second, third, and fourth blocks of the contract. A stepped contract charges a certain amount for each gallon in the first group of gallons, and different charges for greater use. They are often expressed as 2.50 dollars per gallon for the first 50 gallons and 2.40 dollars per gallon for the remaining gallons. For this case you would enter2.50 in the "Cost of First Block" a2.40 in the "Cost of the Second Block". Up to four blocks are provided, if more blocks are part of the contract, then average the cost of some of the blocks together and combine their sizes. If the rate is not a stepped rate, enter values for the first block only.

Extra Charges – An extra fee that is charged by the utility for every gallon that is sold. This is often expressed as a fuel cost adjustment, an energy cost adjustment, or a surcharge. Credits are often expressed as a fuel cost adjustment, an energy cost adjustment or a surcharge. Credits are often provided on the basis of every gallon and can be entered as negative numbers. If multiple extra charges exist in the contract, then add them up.

Taxes – This is expressed as a whole number percent. Don't format the cell in Excel as a "percent" format. For a 3% tax simply enter 3. The tax is calculated after calculating a subtotal that includes the block charges, the monthly charge and the extra charges.

5. Liquefied Petroleum Gas Delivery Contract –

Supplier Name – enter the name or an abbreviation of the name for the supplier for liquefied petroleum gas (LPG).

Effective Date – entering an effective date here will allow you to understand what version of the contract you are using.

Monthly Charges – enter the amount that the LPG supplier charges to provide service. This is sometime called a monthly charge or a service charge.

Size of XXX Block – This entry is repeated for the first, second, third and fourth blocks of the contract. A stepped contract charges a certain amount for each pound in the first group of pounds, and different charges for greater use. They are often expressed as 20 cents per pound for the first 500 pounds and 18 cents per pound for the remaining pounds. For this case you would enter "500" in the "Size of First Block" and "remaining" in the "Size of the Second Block". You could also enter a large number instead of the word "remaining" in the "Size of the Second Block" field, which will indicate that the rest of the gallons should be charged at that price. Up to four blocks are provided, if more blocks are part of the contract, then average the cost of some of the blocks together and combine their sizes. If the rate is not a stepped rate, enter values for the first block only.

Cost of XXX Block – This entry is repeated for the first, second, third, and fourth blocks of the contract. A stepped contract charges a certain amount for each pound in the first group of pounds, and different charges for greater use. They are often expressed as 20 cents per pound for the first 500 pounds and 18 cents per pound for the remaining pounds. For this case you would enter 0.20 in the "Cost of First Block" a 0.18 in the "Cost of the Second Block". Up to four blocks are provided, if more blocks are part of the contract, then average the cost of some of the blocks together and combine their sizes. If the rate is not a stepped rate, enter values for the first block only.

Extra Charges – An extra fee that is charged by the utility for every pound that is sold. This is often expressed as a surcharge. Credits are often provided on the basis of every pound and can be entered as negative numbers. If multiple extra charges exist in the contract, then add them up.

Taxes – This is expressed as a whole number percent. Don't format the cell in Excel as a "percent" format. For a 3% tax simply enter 3. The tax is calculated after calculating a subtotal that includes the block charges, the monthly charge and the extra charges.

6. Water Supply Utility Tariff –

Supplier Name – enter the name or an abbreviation of the name for the water supplier.

Effective Date – entering an effective date here will allow you to understand what version of the contract you are using.

Measurement Units –utilities provide water on the basis of one of several different units. Select the units used by the utility in the rate. Notice that the units correspondingly change on many of the remaining fields in the tariff. Changing the measurement units will not change the values entered in the rest of the rate. If your spreadsheet program is not Excel and the pull down list is not seen, enter 1 for cubic feet and 2 for gallons.

Monthly Charges – enter the amount that the water supplier charges to provide service. This is sometime called a monthly charge or a service charge.

Size of XXX Block – This entry is repeated for the first, second, third and fourth blocks of the tariff. The size of a block is important for tariffs that have "stepped" blocks. A stepped tariff charges a certain amount for each cubic foot in the first group of cubic feet, and different charges for greater use. They are often expressed as 5 cents per cubic foot for the first 500 cubic feet and 4 cents per cubic foot for the remaining usage. For this case you would enter "500" in the "Size of First Block" and "remaining" in the "Size of the Second Block". You could also enter a large number instead of the word "remaining" in the "Size of the Second Block" field, which will indicate that the rest of the water usage should be charged at that price. Since some suppliers have multiple blocks in their tariffs, up to four blocks are provided. If more blocks are part of the tariff, average the cost of some of the blocks together and combine their sizes. If the rate is not a stepped rate, enter values for the first block only.

Cost of XXX Block – This entry is repeated for the first, second, third, and fourth blocks of the tariff. If the tariff does not have blocks that vary by season, only enter values for the summer entries. The cost of a block is important for tariffs that have "stepped" blocks. A stepped tariff charges a certain amount for each cubic foot in the first group of cubic feet, and different charges for greater use. They are often expressed as 5 cents per cubic foot for the first 500 cubic feet and 4 cents per cubic foot for the remaining usage. For this case you would enter 0.05 in the "Cost of First Block" a 0.04 in the "Cost of the Second Block". Since some utilities have multiple blocks in their tariffs, up to four blocks are provided. If more blocks are part of the tariff, average the cost of some of the blocks together and combine their sizes. If the rate is not a stepped rate, enter values for the first block only.

Extra Charges – An extra fee that is charged by the utility for every cubic foot that is sold. This is often expressed as a surcharge. Credits are often provided on the basis of every cubic foot and can be entered as negative numbers. If multiple extra charges exist in the contract, then add them up.

Taxes – This is expressed as a whole number percent. Don't format the cell in Excel as a "percent" format. For a 3% tax simply enter 3. The tax is calculated after calculating a subtotal that includes the block charges, the monthly charge and the extra charges.

7. Sewer Tariff –

Sewer Charge Included in Water Tariff – check the box if the water tariff (described above) already includes the sewer charge. This is the case for many locations. If this box is checked, no other inputs are necessary.

Supplier Name – enter the name or an abbreviation of the name for the sewer company.
Effective Date – entering an effective date here will allow you to understand what version of the contract you are using.

Measurement Units –utilities provide sewer service on the basis of one of several different units. Select the units used by the utility in the rate. Notice that the units correspondingly change on many of the remaining fields in the tariff. Changing the measurement units will not change the values entered in the rest of the rate. If your spreadsheet program is not Excel and the pull down list is not seen, enter 1 for cubic feet and 2 for gallons.

Monthly Charges – enter the amount that the sewer utility charges to provide service. This is sometime called a monthly charge or a service charge.

Size of XXX Block – This entry is repeated for the first, second, third and fourth blocks of the tariff. The size of a block is important for tariffs that have "stepped" blocks. A stepped tariff charges a certain amount for each cubic foot in the first group of cubic feet, and different charges for greater use. They are often expressed as 5 cents per cubic foot for the first 500 cubic feet and 4 cents per cubic foot for the remaining usage. For this case you would enter "500" in the "Size of First Block" and "remaining" in the "Size of the Second Block". You could also enter a large number instead of the word "remaining" in the "Size of the Second Block" field, which will indicate that the rest of the usage should be charged at that price. Since some suppliers have multiple blocks in their tariffs, up to four blocks are provided. If more blocks are part of the tariff, average the cost of some of the blocks together and combine their sizes. If the rate is not a stepped rate, enter values for the first block only.

Cost of XXX Block – This entry is repeated for the first, second, third, and fourth blocks of the tariff. If the tariff does not have blocks that vary by season, only enter values for the summer entries. The cost of a block is important for tariffs that have "stepped" blocks. A stepped tariff charges a certain amount for each cubic foot in the first group of cubic feet, and different charges for greater use. They are often expressed as 5 cents per cubic foot for the first 500 cubic feet and 4 cents per cubic foot for the remaining usage. For this case you would enter 0.05 in the "Cost of First Block" a 0.04 in the "Cost of the Second Block". Since some suppliers have multiple blocks in their tariffs, up to four blocks are provided. If more blocks are part of the tariff, average the cost of some of the blocks together and combine their sizes. If the rate is not a stepped rate, enter values for the first block only.

Extra Charges – An extra fee that is charged by the utility for every cubic foot that is sold. This is often expressed as a surcharge. Credits are often provided on the basis of

every cubic foot and can be entered as negative numbers. If multiple extra charges exist in the contract, then add them up.

Taxes – This is expressed as a whole number percent. Don't format the cell in Excel as a "percent" format. For a 3% tax simply enter 3. The tax is calculated after calculating a subtotal that includes the block charges, the monthly charge and the extra charges.

8. Trash Collection Fees – enter the average monthly fees for different size dwelling using for trash collection.

9. Range/Microwave Fees – enter the average monthly cost for renting or financing the purchase of a range and microwave oven for different size dwelling unit.

10. Refrigerator Fees – enter the average monthly cost for renting or financing the purchase of a refrigerator for different size dwelling units.

11. Other Fees – enter the average monthly fees for different size dwelling units for any other fees.

C. 52667 Tabs

Each 52667 tab contains three sections: Case selection, the HUD 52667 form, and the computations to create the form. They are described below. Each 52667 tab has been designed to be independent so they can be copies or deleted without affecting other forms. Since the calculations are located on the same tab as the form, almost no "linking" is needed when more 52667 tabs are added or deleted.

Unit Type – select the type of unit that corresponds to the form. The unit types include detached houses, townhouses, apartments and manufactured homes. If you add new 52667 tabs, it is a good idea to name the tab using the unit type as part of the name.

Electric Tariff – select "Standard Electric Utility Tariff: for most situations. The only time you would choose the other option, "Special Electric Heating/All Electric Tariff", is when the utility has a special discounted rate for allowances for those units and when you are trying to make a HUD 52667 form for those specific units.

Electric Heating – most housing authorities will select "Mixed Electric Resistance and Heat Pump Heating." If your housing authority has a different allowance for homes with heat pumps, select "Heat Plumps Only." The allowances for heating with heat pumps are smaller since heat pumps are more efficient than electric resistance heating.

Age of Dwelling – use this input if the housing authority has different allowances for dwellings of different ages, or if not, select "Mixed Ages". There are three choices for age ranges: "Before 1980", "1980 to 1996", or "1996 or Newer". Each selection modifies the heating and cooling values.

Each 52667 tab should have a unique selection of the Unit Type, Electric Tariff, Electric Heating, and Age of Dwelling.

The HUD 52667 form is shown in the upper left hand corner of the spreadsheet tab in the white background. The grey border is not part of the form. Only the form within the grey border should be printed when printing the tab. If the printout contains the computations, then use [File][Select Print Area] menu after you select only the form par of the spreadsheet tab.

No modifications to the 52667 tab are needed except for the selection for "Unit Type", "Electric Tariff", "Electric Heating", and "Age of Dwelling". The rest of the spreadsheet, including the form should not be modified. All values that are shown on the form are linked from the calculations part of the tab.

The calculations part of the 52667 tab are below and to the right of the form.

Computations– are below and to the right of the form and cannot be modified. They use values entered on the "Location" tab and the "Tariffs" tab and the selections at the top of the 52667 tab and generate all of the values needed for the HUD Form 52667. You may want to review the calculations to understand how values on the form are determined. The calculations start at the "Age of Structure Adjustment" section and proceed downward in a stepwise manner.

The Derived Consumption Equations are abased on an analysis performed using primarily data from DOE/EIA Residential Energy Consumption Survey (RECS). Most of the coefficients for the variables in the equations were derived using regression analysis of RECS survey cases. The coefficients were derived for the five basic housing unit types that RECS uses and a table is present to adjust these five housing unit types into the unit types you have selected. These are then combined into groups by utility in the section labeled "Average Consumption Per Month Component Subtotals and Ordering." In each group, the services are added individually until finally the last group for electricity "Other Electric + Cooking + Water Heating + Heating + Air Conditioning" is shown. The reason for this is that the utility bills are estimated for each group and then the difference between the groups, the incremental cost, for each added service can be independently determined.

Unit conversions are then performed for the energy consumptions that could have different measurement units applied.

The next section labeled "Tariff Summary" has links to the tariffs tab but is shown in more compact summary format. Directly after that is the electric and natural gas tariffs shown on a month-by-month basis depending on the starting and ending month selected for each. The other utilities do not vary by season so they do not need to be represented monthly.

Climate adjustments are made for the heating and air conditioning uses. They are adjusted by the degree days entered on the location tab and are shown on a monthly basis. The incremental consumptions are then also expressed on a monthly basis.

All utilities are then calculated on a monthly basis for each dwelling unit size in terms of number of bedrooms. The utility bill estimates are compiled for each of the consumptions groups and then the incremental difference between the groups are determined to obtain the incremental cost for just that end-use.

The number of consumption units and the cost of each consumption unit per block are separately calculated. The monthly charges and the extra charges are calculated, as are the taxes and the total bill for each consumption group. This is repeated for each consumption group and for each utility. The monthly and annual costs are then calculated. The formulas for each utility bill estimate are very similar.

The average monthly costs are determined from the annual totals and some checks are performed to make sure that all components are included.

Non-energy related expenses are shown in a compact format similar to the utility tariff summary section.

A summary of total utility allowances is shown for a variety of cases. This summary is copied and "past linked" to the summary tab.

D. Summary Tab

The "Summary" tab contains the only links to the 52667 tabs. If your housing authority doesn't require a summary to process the 52667 forms, then you can ignore this tab. The summary tab takes the values from the 52667 tabs near the bottom of the calculations (located below and to the right of the form) and links to them. The summary is only for the most common number of bedrooms for each type of unit and does not include certain combinations of fuel uses that are likely to exist. The summary tab includes both the energy and non-energy portion of the allowances. All values shown are in dollars per month.

E. Creating New 52667 Tabs

For many housing authorities, the four 52667 tabs that come predefined in this spreadsheet may not be appropriate. The four predefined tabs are “Detached 52667”, Townhouse 52667, Apartment 52667”, and “Manu 52667”. These are the four forms that are the most likely to be used by housing authorities. To create a new tab, copy one of the existing 52667 tabs by right clicking on, for example, the “Detached 52667” tab name and select the “Move or copy…” option. Select where the new 52667 tab should go and check the “create a copy” checkbox at the bottom of the menu block and then click OK. If you are using the Summary tab, you will need to use [Edit][Copy] an d[Edit][Paste Special][Paste Link] to connect the summary information from the bottom of the calculation section of the new 52667 tab to the summary table.

F. Removing Some 52667 Tabs

If you don’t need all of the 52667 tabs shown in the spreadsheet, you can delete the tabs by right clicking on the name of the unwanted tab and selecting Delete. If you are using the Summary tab, you may need to delete the portion of the table linked to that spreadsheet tab.

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APPENDIX C

HTC Program Tax Forms

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Form **8609**
(Rev. December 2008)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Allocation and Certification

▶ **See separate instructions.**

OMB No. 1545-0988

Part I Allocation of Credit

Check if: ☐ Addition to Qualified Basis ☐ Amended Form

A Address of **building** (do not use P.O. box) (see instructions)

B Name and address of **housing credit agency**

C Name, address, and TIN of **building owner** receiving allocation

TIN ▶

D Employer identification number of agency

E Building identification number (BIN)

1a Date of allocation ▶ / / **b** Maximum housing credit dollar amount allowable — **1b**

2 Maximum applicable credit percentage allowable (see instructions) . . . . . — **2** %

3a Maximum qualified basis . . . . . — **3a**

b If the eligible basis used in the computation of line 3a was increased, check the applicable box and enter the percentage to which the eligible basis was increased (see instructions) . . . — **3b** 1 _ _ %

☐ Building located in the Gulf Opportunity (GO) Zone, Rita GO Zone, or Wilma GO Zone

☐ Section 42(d)(5)(B) high cost area provisions

4 Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-.) . . — **4** %

5 Date building placed in service . . . . . ▶ / /

6 Check the boxes that describe the allocation for the building (check those that apply):

a ☐ Newly constructed and federally subsidized **b** ☐ Newly constructed and **not** federally subsidized **c** ☐ Existing building

d ☐ Sec. 42(e) rehabilitation expenditures federally subsidized **e** ☐ Sec. 42(e) rehabilitation expenditures **not** federally subsidized

f ☐ Not federally subsidized by reason of 40-50 rule under sec. 42(i)(2)(E) **g** ☐ Allocation subject to nonprofit set-aside under sec. 42(h)(5)

Signature of Authorized Housing Credit Agency Official—Completed by Housing Credit Agency Only

Under penalties of perjury, I declare that the allocation made is in compliance with the requirements of section 42 of the Internal Revenue Code, and that I have examined this form and to the best of my knowledge and belief, the information is true, correct, and complete.

▶ Signature of authorized official ▶ Name (please type or print) ▶ Date

Part II First-Year Certification—Completed by Building Owners with respect to the First Year of the Credit Period

7 Eligible basis of building (see instructions) . . . . . — **7**

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)? . . . . . ☐ Yes ☐ No

9a If box 6a or box 6d is checked, do you elect to reduce eligible basis under section 42(i)(2)(B)? ☐ Yes ☐ No

b For market-rate units above the average quality standards of low-income units in the building, do you elect to reduce eligible basis by disproportionate costs of non-low income units under section 42(d)(3)(B)? . ▶ ☐ Yes ☐ No

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 ☐ 25-60 (N.Y.C. only)

d Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions) . . . . . ☐ 15-40

Under penalties of perjury, I declare that the above building continues to qualify as a part of a qualified low-income housing project and meets the requirements of Internal Revenue Code section 42. I have examined this form and attachments, and to the best of my knowledge and belief, they are true, correct, and complete.

▶ Signature ▶ Taxpayer identification number ▶ Date

▶ Name (please type or print) ▶ Tax year

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Instructions for Form 8609

(Rev. December 2008)

Low-Income Housing Credit Allocation and Certification

Department of the Treasury
Internal Revenue Service

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

What's New

Buildings placed in service after July 30, 2008. The following changes apply to these buildings:

- For new non-federally subsidized buildings, a minimum applicable credit percentage of 9% is in effect. See the line 2 instructions for details.
- A "difficult development area" will also include any building designated by the state credit agency as requiring an increase in credit in order to be financially feasible as part of a qualified low-income housing project. See the line 3b instructions for details.
- The definition of a "federally subsidized building" has been narrowed to include only buildings with outstanding tax-exempt bond financing. See the line 6a and 6d instructions for details.
- The eligible basis of a building shall not include any costs paid by a federal grant. Also, do not reduce the eligible basis by the principle amount of any below-market federal loan. See the line 7 instructions for details.

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 should not 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 to a building located in the Gulf Opportunity (GO) Zone, Rita GO Zone, or Wilma GO Zone, if the allocation is made in 2006, 2007, or 2008, and the building is placed in service during the period beginning on January 1, 2006, and ending on December 31, 2010 (see Pub. 4492, *Information for Taxpayers Affected by Hurricanes Katrina, Rita, and Wilma*, for a list of the counties and parishes in these specific zones);
4. 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
5. 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. The part of the allocation that applies to any building is specified by the end of the calendar year in which the building is placed in service.

See sections 42(h)(1)(E) and 42(h)(1)(F) and Regulations section 1.42-6 for more details.

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. An allocation is not 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 certain tax-exempt bonds. 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. 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:

Internal Revenue Service
P.O. Box 331
Attn: LIHC Unit, DP 607 South
Philadelphia Campus
Bensalem, PA 19020

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 allocated to the building on line 2 reflects an election under section 42(b)(1)[(A)](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.

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. Do not 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 an amount that is only 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.

Buildings placed in service before July 31, 2008. 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 former section 42(b)(2)(A)(ii). This percentage may be less than the applicable percentage published by the IRS.

If an election was made under former section 42(b)(2)(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 are not federally subsidized under section 42(i)(2)(A), use the applicable percentage for the 70% present value credit. 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 principal amount of any outstanding below-market federal loan or 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), do not 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.

Buildings placed in service after July 30, 2008. 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)[(A)](ii). This percentage may be less than the applicable percentage published by the IRS.

CAUTION *A minimum applicable credit percentage of 9% is in effect for new non-federally subsidized buildings placed in service after July 30, 2008, but before December 31, 2013. The 9% minimum also applies to new non-federally subsidized buildings even if the taxpayer made an irrevocable election (under former section 42(b)(2)(A)(ii)) on or before July 30, 2008. If this circumstance applies, do not enter less than 9% on line 2, unless the housing credit agency determines that a lesser amount is necessary to assure project feasibility. See section 42(m), Regulations section 1.42-8(a)(4), and Notice 2008-106, 2008-49 I.R.B. 1239.*

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 are not federally subsidized under section 42(i)(2)(A), use the applicable percentage for the 70% present value credit, but do not 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), do not 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 is not required to reduce maximum qualified basis and can lower the maximum applicable percentage on line 2. To figure this, 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, a unit is not treated as a low-income unit unless it is suitable for occupancy, used other than on a transient basis, and occupied by qualifying tenants. 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," "difficult development area," Gulf Opportunity (GO) Zone, Rita GO Zone, or Wilma GO Zone), 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."

Buildings placed in service after July 30, 2008. For these buildings, the definition of a "difficult development area" has been expanded to include any building designated by the state credit agency in

order to be financially feasible as part of a qualified low-income housing project.

TIP *See section 42(d)(5)(B) (former section 42(d)(5)(C) for buildings placed in service before July 31, 2008) for definitions of a qualified census tract and a difficult development area, and for other details.*

Gulf Opportunity (GO) Zone, Rita GO Zone, and Wilma GO Zone. The housing credit agency may increase the eligible basis of buildings in these specific zones if the buildings were placed in service during the period beginning on January 1, 2006, and ending on December 31, 2010. For more information, see section 1400N(c)(3).

Note. Before increasing eligible basis, the eligible basis must be reduced by any federal subsidy which the taxpayer elects to exclude from eligible basis and any federal grant received.

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-. Do not 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. Do not issue Form 8609 for acquisition of an existing building unless substantial rehabilitation under section 42(e) is placed in service.

Lines 6a and 6d for buildings placed in service before July 31, 2008. Generally, a building is treated as federally subsidized if at any time during the tax year or any prior tax year there is outstanding any tax-exempt bond financing or any below-market federal loan, 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 principal amount of any outstanding below-market federal loan or the proceeds of any tax-exempt obligation.

Lines 6a and 6d for buildings placed in service after July 30, 2008. 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.

Line 6f for buildings placed in service before July 31, 2008. Under section 42(i)(2)(E), buildings receiving assistance under the HOME Investment Partnerships Act (as in effect on August 10, 1993) or the Native American Housing Assistance and Self-Determination Act of 1996 (as in effect on October 1, 1997) are not treated as federally subsidized if 40% or more of the residential units in the building are occupied by individuals whose income is 50% or less of the area median gross income (or national nonmetropolitan median gross income, when applicable). Buildings located in New York City receiving this assistance are not treated as federally subsidized if 25% or more of the residential units in the building are occupied by individuals whose income is 50% or less of the area median gross income.

Part II—First-Year Certification

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

CAUTION *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 does not 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. Do not include the cost of the nonresident 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.

Buildings placed in service before July 31, 2008. You must reduce the eligible basis by the amount of any federal grant received. 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 does not 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 principal amount of any outstanding below-market federal loan or 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 principal amount of such loan or obligation proceeds before entering the amount on line 7. You must reduce the eligible basis by the principal amount of such loan or obligation proceeds, or any federal grant received, before multiplying the eligible basis by the increased percentage in Part I, line 3b.

Buildings placed in service after July 30, 2008. 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 does not 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.

CAUTION *The minimum set-aside requirement (see the instructions for line 10c) is a project-based test.*

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.

CAUTION *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).*

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, unless all of the dwelling units in all of the buildings being aggregated in the multiple building project are low-income 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.

Buildings placed in service before July 31, 2008. You may elect to reduce the eligible basis by the principal amount of any outstanding below-market federal loan or the proceeds of any tax-exempt obligation and claim the 70% present value credit on the remaining eligible basis. 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 below-market federal loan or the tax-exempt obligation.

Buildings placed in service after July 30, 2008. 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, that apply for the date the building was placed in service.

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 do not 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.** 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.** 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.

CAUTION *By electing the 20-50 test, the qualifying income limit for all low-income individuals in the project is determined by reference to 50% of area median gross income.*

Gulf Opportunity (GO) Zone. For purposes of the 20-50 and 40-60 tests defined above, the "national nonmetropolitan median gross income" will be substituted for the "area median gross income" for all property placed in service during 2006, 2007, or 2008 in a nonmetropolitan area in the Gulf Opportunity (GO) Zone.

Once made, the election is irrevocable.

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.

CAUTION *The minimum set-aside requirement 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 is not 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 nonmetropolitan median gross income or 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 nonmetropolitan median gross income or 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.

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, and the District of Columbia 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 prevent your claim from being processed. 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:

Learning about the law or the form	4 hr., 10 min.
Recordkeeping	10 hr., 45 min.
Preparing and sending the form to the IRS	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 write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the tax form to this office. Instead, see *Filing Requirement*, earlier.

Form **8609-A**
(Rev. December 2008)
Department of the Treasury
Internal Revenue Service

Annual Statement for Low-Income Housing Credit

▶ **File with owner's federal income tax return.**
▶ **See separate instructions.**

OMB No. 1545-0988

Attachment Sequence No. **36**

Name(s) shown on return | **Identifying number**

Part I Compliance Information

		Yes	No
A	Building identification number (BIN) ▶		
B	This Form 8609-A is for (check the box) ▶ a newly constructed or existing building ☐ section 42(e) rehabilitation expenditures ☐		
C	Do you have in your records the original Form 8609 (or a copy thereof) signed and issued by the housing credit agency for the building in **A**?		
	If "No," see the instructions and stop here—do not go to Part II.		
D	Did the building in **A** qualify as a part of a qualified low-income housing project and meet the requirements of section 42 as of the end of the tax year for which this form is being filed?		
	If "No," see the instructions and stop here—do not go to Part II.		
E	Was there a decrease in the qualified basis of the building in **A** for the tax year for which this form is being filed?		
	If "Yes," see the instructions. If "No," and the entire credit has been claimed in prior tax years, stop here—do not go to Part II.		

Part II Computation of Credit

1	Eligible basis of building	**1**	
2	Low-income portion (smaller of unit fraction or floor space fraction) (if first year of the credit period, see instructions)	**2**	.
3	Qualified basis of low-income building. Multiply line 1 by line 2 (see instructions for exceptions)	**3**	
4	Part-year adjustment for disposition or acquisition during the tax year	**4**	
5	Credit percentage	**5**	.
6	Multiply line 3 or line 4 by the percentage on line 5	**6**	
7	Additions to qualified basis, if any	**7**	
8	Part-year adjustment for disposition or acquisition during the tax year	**8**	
9	Credit percentage. Enter one-third of the percentage on line 5	**9**	.
10	Multiply line 7 or line 8 by the percentage on line 9	**10**	
11	Section 42(f)(3)(B) modification	**11**	
12	Add lines 10 and 11	**12**	
13	Credit for building before line 14 reduction. Subtract line 12 from line 6	**13**	
14	Disallowed credit due to federal grants (see instructions)	**14**	
15	Credit allowed for building for tax year. Subtract line 14 from line 13, but do not enter more than the amount shown on Form 8609, Part I, line 1b	**15**	
16	Taxpayer's proportionate share of credit for the year (see instructions)	**16**	
17	Adjustments for deferred first-year credit (see instructions)	**17**	
18	Taxpayer's credit. Combine lines 16 and 17. Enter here and on Form 8586 (see instructions)	**18**	

Instructions for Form 8609-A

Department of the Treasury
Internal Revenue Service

(Rev. December 2008)

Annual Statement for Low-Income Housing Credit

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

General Instructions

What's New

If you disposed of a building or a certain interest therein, it is no longer necessary in certain circumstances to file Form 8693, Low-Income Housing Credit Disposition Bond, to prevent recapture of the low-income housing credit. If you have already filed Form 8693, you can make an election to discontinue the maintenance of the established account. See *Recapture and building dispositions* for details.

The method used to calculate basis reductions for certain buildings has changed. See *Basis reductions for buildings placed in service after July 30, 2008*, for details.

The method used to calculate the disallowed credit due to federal grants has changed for buildings placed in service after July 30, 2008. See the instructions for line 14 for details.

For buildings placed in service after December 31, 2007, the credit is no longer limited by the alternative minimum tax rules. Form 8586, Low-Income Housing Credit, has been revised to reflect this change. See the instructions for line 18 for information on reporting the credit on Form 8586.

Note. Some of the line numbers on the March 1991 and November 2003 revisions of Form 8609, Low-Income Housing Credit Allocation Certification, and December 2005, December 2006, December 2007, and December 2008 revisions of Form 8609, Low-Income Housing Credit Allocation and Certification, differ from other revisions. In these cases, the line references are shown in parentheses in these instructions.

Purpose of Form

Form 8609-A is filed by a building owner to report compliance with the low-income housing provisions and calculate the low-income housing credit. Form 8609-A must be filed by the building owner for each year of the 15-year compliance period. File one Form 8609-A for the allocation(s) for the acquisition of an existing building and a separate Form 8609-A for the allocation(s) for rehabilitation expenditures.

If the building owner is a partnership, S corporation, estate, or trust (pass-through entity), the entity will complete Form 8609 and Form 8609-A. The entity will attach Form 8609-A to its tax return. If you are a partner, shareholder, or beneficiary in the pass-through entity that owns the building, file only Form 8586, Low-Income Housing Credit, to claim the credit using the information that the entity furnishes you on Schedule K-1.

Recapture of Credit

If the qualified basis of the building has decreased from the qualified basis at the close of the previous tax year, you may have to recapture parts of the credits allowed in previous years. See Form 8611, Recapture of Low-Income Housing Credit.

Recapture and building dispositions. The disposition of a building, or an interest therein, will generate the recapture of the credit. You can prevent the recapture if you follow the procedures below, relative to the date of the disposition of the building or the interest therein.

Building dispositions before July 31, 2008. Disposing of a building or an interest therein during the tax year will generate credit recapture, unless you timely post a satisfactory bond or pledge eligible U.S. Treasury securities as collateral. For details on the rules for posting or pledging, see Rev. Rul. 90-60, 1990-2 C.B. 3, and Rev. Proc. 99-11, 1991-1 C.B. 275.

Note. You may discontinue maintaining a bond or pledging eligible U.S. Treasury securities by making the election described in Rev. Proc. 2008-60, 2008-43 I.R.B. 1006, and if it is reasonably expected that the building will continue to be operated as a qualified low-income building for the remainder of the building's compliance period. See Rev. Proc. 2008-60 for the details on making the election.

Building dispositions after July 30, 2008. Disposing of a building or an interest therein will generate a credit recapture, unless it is reasonably expected that the building will continue to be operated as a qualified low-income building for the remainder of the building's compliance period.

See section 42(j) for more information.

Sale of Building

Upon a change of ownership, the seller should give the new owner a copy of the Form 8609 (Parts I and II complete). This form allows the new owner to substantiate the credit.

Specific Instructions

Part I—Compliance Information

Item A. Enter the building identification number (BIN) from Part I, item E of Form 8609.

Item B. You need to file one Form 8609-A for a newly constructed or existing building. You need to file a separate Form 8609-A for section 42(e) rehabilitation expenditures because such expenditures are treated as creating a new building.

Item C. In order to claim the credit, you must have an original, signed Form 8609 (or copy thereof) issued by a housing credit agency assigning a BIN for the building. This applies even if no allocation is required (as in the case of a building financed with tax-exempt bonds). Check "Yes" to certify that you have the required Form 8609 in your records.

CAUTION *Any building owner claiming a credit without receiving a completed Form 8609 that is signed and dated by an authorized official of the housing credit agency and submitting the completed Form 8609 (Part I and Part II) to the IRS is subject to having the credit disallowed.*

Item D. If "No," stop here and see Form 8611 to find out if you have to recapture part of the credit allowed in prior years.

Item E. If "Yes," see the instructions for line 2 to figure the reduced qualified basis. Also, see Form 8611 to find out if you have to recapture part of the credit allowed in prior years.

If "No," and the entire credit has been claimed in prior tax years (generally this can occur after the 11th year for which the credit has been claimed for the building), do not complete Part II.

Part II—Computation of Credit

Line 1. Generally, the eligible basis of a building for its entire 15-year compliance period is the amount of eligible basis entered on Form 8609, line 7b (Part II, line 1b, on the 1991 revision; line 7 on the 2003, 2005, 2006, 2007, and 2008 revisions).

Basis increases for buildings in certain high-cost areas. In order to increase the credit for buildings in certain high-cost areas, the housing credit agency may increase the eligible basis of buildings located in these areas (after adjustments, if any, for federal subsidies and grants). The agency may make this increase under the high cost area provisions of section 42(d)(5)(B). For buildings placed in service before July 31, 2008, the high cost area provisions under former section 42(d)(5)(C) apply.

Gulf Opportunity (GO) Zone, Rita GO Zone, and Wilma GO Zone. The housing credit agency may increase the eligible basis of buildings in these specific zones if the buildings receive allocations in 2006, 2007, or 2008 and the buildings are placed in service during the period beginning on January 1, 2006, and ending on December 31, 2010. See section 1400N(c)(3) for more information. See Pub. 4492, *Information for Taxpayers Affected by Hurricanes Katrina, Rita, and Wilma,* for a list of the counties and parishes in these specific zones.

Note. This increase cannot cause the credit on line 15 to exceed the credit amount allocated on line 1b, Part I, of Form 8609.

Basis reductions for buildings placed in service before July 31, 2008. The amount of eligible basis entered on Form

8609 does not include the cost of land or the amount of any federal grant received for the building during the first year of the credit period. Do not reduce the eligible basis on line 1 by the amounts of any federal grants received after the first year of the credit period. The calculation for line 14 will reduce the credit by the amount of any federal grants received during the compliance period that did not reduce the eligible basis during the first year of the credit period.

For more details on determining eligible basis, see the instructions for Form 8609, line 7b (Part II, line 1b, on the 1991 revision; line 7 on the 2003, 2005, 2006, 2007, and 2008 revisions).

Basis reductions for buildings placed in service after July 30, 2008. The amount of eligible basis entered on Form 8609 does not include the cost of land or the amount of any costs financed with the proceeds of a federally funded grant. Do not reduce the eligible basis on line 1 by the amounts of any federal grants received after the first year of the credit period. The calculation for line 14 will reduce the credit for any costs financed with the proceeds of a federal grant.

For more details on determining eligible basis, see the instructions for Form 8609, line 7, 2008 revision.

Line 2. Only the portion of the basis on line 1 attributable to the low-income rental units in the building at the close of the tax year qualifies for the credit. This is 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"). This fraction must be shown on line 2 as a decimal carried out to at least four places (for example, $^{50}/_{100}$ = .5000). Low-income units are units occupied by qualifying tenants, while residential rental units are all units, whether or not occupied.

Generally, a unit is not treated as a low-income unit unless it is suitable for occupancy, used other than on a transient basis, and occupied by qualifying tenants. Section 42(i)(3) provides for certain exceptions (for example, units that provide transitional housing for the homeless may qualify as low-income units). See section 42(i)(3) for more details. Also see section 42(g)(2)(D) regarding the available unit rule and Regulations section 1.42-5(c)(1)(ix) regarding the vacant unit rule.

If you dispose of the building, or your entire interest in the building, before the close of the tax year, the low-income portion must be determined on the date you disposed of the building. If you dispose of less than your entire interest in the building, the low-income portion must be determined at the close of the tax year.

First-year modified percentage. For the first year of the credit period, you must use a modified percentage on line 2 to reflect the average portion of a 12-month period that the units in a building were occupied by low-income individuals. Figure the low-income portion as of the end of each full month that the building was in service during the year. Add these percentages together and divide by 12. Enter the result on line 2. For example, if a building was in service for the last 3 full months of your tax year, and was half occupied by low-income tenants as of the end of each of those 3 months, then assuming the smaller fractional amount was the unit fraction, you would enter .1250 on line 2 ([.5 + .5 + .5] ÷ 12 = .1250).

This first year adjustment does not affect the amount of qualified basis on which the credit is claimed in the next 9 tax years. In general, the credit is claimed in those years by reference to the qualified basis at the close of each tax year.

Because the first year credit is not determined solely by reference to the qualified basis at the close of the year, any reduction in credit resulting from the application of the first year adjustment may be claimed in the 11th year. See the instructions for line 17.

Line 3. Generally, multiply line 1 by line 2 to figure the portion of the eligible basis of the building attributable to the low-income residential rental units.

Imputed qualified basis of zero. However, the qualified basis of the building (line 3) is zero if any of the following conditions apply.

- The minimum set-aside requirement elected for the project on Form 8609, line 10c (Part II, line 5c, on the 1991 revision), is not met, or the entire building is out of compliance with the requirements under section 42.
- The deep rent skewed test (15-40 test) elected for the project on Form 8609, line 10d (Part II, line 5d, on the 1991 revision), is violated. The 15-40 test is not 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. If this test is elected, 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 nonmetropolitan median gross income or national non-metropolitan median income).
- You disposed of the building or your entire interest therein during the tax year and did not follow the procedures (described earlier under *Recapture and building dispositions*) to prevent recapture. In addition to using an imputed basis of zero on line 3, you may have to recapture a portion of credits previously taken. File Form 8611 to figure and report the recaptured amount. This paragraph affects only those taxpayers who dispose of the building or their entire interest therein. Those acquiring the building (or any interest therein) are not affected and, if the minimum set-aside requirements are otherwise satisfied, they may take a credit for the fraction of the year the building is owned by them.

Note. If the qualified basis of the building is zero, or if the building has an imputed qualified basis of zero, you may not claim a credit for the building for the tax year. You must enter zero on lines 3 and 16, and skip lines 4 through 15, 17, and 18.

At-risk limitation for individuals and closely held corporations. The basis of property may be limited if you borrowed against the property and are protected against loss, or if you borrowed money from a person who has other than a creditor interest in the property. See section 42(k).

Line 4. If you owned the building (or an interest therein) for the entire year, enter zero on line 4 and go to line 5.

Disposal of building or interest therein. If you disposed of a building or your entire interest therein during the tax year and you followed the procedures (described earlier under *Recapture and building dispositions*) to continue to claim the credit, you may claim a credit based only on the number of days during the tax year for which you owned the building or an interest therein.

Similarly, if you previously had no interest in the building, but you acquired the building or an interest therein during the tax year, you may claim a credit based only on the number of days during the tax year for which you owned the building or an interest therein.

The owner who has owned the building for the longest period during the month in which the change in ownership occurs is deemed to have owned the building for that month. If the seller and new owner have owned the building for the same amount of time during the month of disposition, the seller is deemed to have owned the building for that month.

Example. Both the buyer and the seller are calendar-year taxpayers. The sale takes place on May 25 of a 365-day calendar year. The qualified basis of the low-income building is $20,000. The seller and buyer will each complete a separate Form 8609-A, and enter $20,000 on line 3.

In this situation, the seller is deemed to have owned the building for all 31 days of May. Therefore, the seller owned the building for 151 days of the 365-day tax year, and the buyer owned the building for the remaining 214 days. The seller will multiply $20,000 by 151/365 to get $8,274. The seller will enter $8,274 on line 4 of his Form 8609-A. The buyer will multiply $20,000 by 214/365 to get $11,726. The buyer will enter $11,726 on line 4 of her Form 8609-A.

Pass-through entities. If the building is owned by a pass-through entity, the entity does not need to make any adjustment on line 4, unless the entity either disposes of the building or its entire interest therein, or acquires the building or an interest therein during the tax year (and the entity previously had no interest in the building). Do not make an adjustment on line 4 for changes in the interests of the members of the pass-through entity during the tax year. Instead, the entity must reflect these changes in the amount of credit it passes through to its members.

Line 5. If the agency has made an allocation on Form 8609, enter on line 5 the credit percentage shown on Form 8609, Part I, line 2. This percentage must be shown on line 5 as a decimal carried out to at least four places (for example, 8.13% would be shown on line 5 as .0813).

Buildings placed in service before July 31, 2008. If you were allocated a 70% present value credit percentage for a building that was not federally subsidized (as defined on the date the building was placed in service) and the building later

receives a federal subsidy, your credit percentage is reduced to the 30% present value credit that was in effect during the month the building was placed in service or for the month elected under former section 42(b)(2)(A)(ii), whichever applies. The 30% present value credit applies to the building for the year the federal subsidy was received and for the remainder of the compliance period, whether or not the federal subsidy is repaid. For the definition of federal subsidy that was in effect before July 31, 2008, see section 42(i)(2) (as in effect before July 31, 2008).

Buildings placed in service after July 30, 2008. If you were allocated a 70% present value credit percentage for a building that was not federally subsidized (as defined on the date the building was placed in service) and the building later receives a federal subsidy, your credit percentage is reduced to the 30% present value credit that was in effect during the month the building was placed in service or for the month elected under section 42(b)(1)[(A)](ii), whichever applies. The 30% present value credit applies to the building for the year the federal subsidy was received and for the remainder of the compliance period, whether or not the federal subsidy is repaid. For the definition of federal subsidy that was in effect after July 30, 2008, see section 42(i)(2) (as in effect after July 30, 2008).

Line 6. If you owned the building, or had an interest therein, for the entire tax year, multiply line 3 by line 5. If you had no ownership interest in the building for a portion of the tax year, multiply line 4 by line 5.

Lines 7 Through 12

If you are not claiming a credit for additions to qualified basis on line 7, skip lines 7 through 12 and go to line 13.

CAUTION *You may claim a credit for an addition to qualified basis only if the credit amounts have been allocated by the housing credit agency to cover these additions.*

Line 7. An addition to qualified basis results when there is an increase in the number of low-income units or an increase in the floor space of the low-income units over that which existed at the close of the first year of the credit period (before application of the modified percentage calculation). Credits for an addition to qualified basis are claimed at the reduced credit percentage of two-thirds of the credit percentage (expressed as a decimal carried out to at least four places) on line 5 through the end of the 15-year compliance period.

If you are claiming a credit for additions to qualified basis, you must subtract the original qualified basis of the building at the close of the first year of the credit period (see Form 8609, line 8a (Part II, line 2a, on the 1991 revision)) from the building's qualified basis entered on line 3. Enter the result on line 7. If the result is zero or less, skip lines 8 through 12 and enter the credit from line 6 on line 13.

Line 8. The determinations and calculations you make on line 8 follow the instructions for line 4. Therefore, if you owned the building (or an interest therein) for the entire year, enter zero on line 8 and go to line 9.

Disposal of building or interest therein. If you disposed of a building or your entire interest therein during the tax year, see *Disposal of building or interest therein* in the line 4 instructions; and, wherever line 3 and line 4 are referenced, substitute line 7 and line 8, respectively.

Pass-through entities. If the building is owned by a pass-through entity, see *Pass-through entities* in the line 4 instructions; and, wherever line 4 is referenced, substitute line 8 instead.

Line 9. The credit for additions to the building's qualified basis is determined using two-thirds of the credit percentage allowable for the building's original qualified basis. Therefore, one-third of the credit percentage (expressed as a decimal carried out to at least four places) on line 5 is not allowed. Enter on line 9 one-third of the amount shown on line 5. This amount must be reported on line 9 as a decimal carried out to at least four places (for example, if the credit percentage entered on line 5 is .0813, one-third of that percentage would be expressed as .0271). See section 42(f)(3).

Line 10. If you owned the building, or had an interest therein, for the entire tax year, multiply line 7 by line 9. If you had no ownership interest in the building for a portion of the tax year, multiply line 8 by line 9.

Line 11. Additions to qualified basis must be adjusted to reflect the average portion of the year that the low-income units relating to the increase were occupied. This adjustment is required if the increase in qualified basis of the building exceeds the qualified basis (including additions to qualified basis) of the building in any prior taxable year. To determine this adjustment amount, complete the worksheet on page 4.

Line 14. The eligible basis on line 1 must be reduced by federal grants received. If a reduction does not apply because this is the first year of the credit period (line 1 already reflects the reduction or noninclusion of a federal grant), or no federal grant was received, enter zero on line 14. Otherwise, follow the instructions that apply for the date the building was placed in service.

Buildings placed in service before July 31, 2008. Reduce the eligible basis on line 1 by the amount of any federal grant for the building, or the operation thereof, received during the 15-year compliance period.

Buildings placed in service after July 30, 2008. Reduce the eligible basis on line 1 by the amount of any costs financed by the proceeds of a federal grant.

Regardless of the date the building was placed in service, figure the reduction as follows.

Step 1. Divide the total amount of all federal grants received for the building during the compliance period that did not already reduce the amount of the eligible basis (reported on line 1) by the eligible basis on line 1 of this Form 8609-A. Enter the result as a decimal carried out to at least four places.

Note. If the eligible basis on line 1 of this Form 8609-A was increased by a percentage allowable under section 42(d)(5)(B) (former section 42(d)(5)(C) for buildings placed in service before July 31, 2008), and the increased percentage is reflected on line 3b of Form 8609, then increase the total amount of all federal grants in Step 1 by this percentage increase and divide this amount by the eligible basis on line 1 of this Form 8609-A. For example, if the percentage increase is 130% and all federal grants total $11,000, multiply $11,000 by 1.3000 and divide the result ($14,300) by the eligible basis on line 1.

Step 2. Multiply the decimal amount determined in Step 1 by the credit on line 13. Enter this result on line 14.

Line 16. To determine the amount to enter on line 16, see the information that follows in *1, 2, 3,* and *Special rules*.

1. If the building is owned completely by one taxpayer, enter the line 15 credit (after adjustment for any applicable special rule below) on line 16.

2. If the building is owned by more than one taxpayer, and those taxpayers are not members of a pass-through entity, then the line 15 credit (after adjustment for any applicable special rule below) must be distributed according to each taxpayer's respective ownership interest in the building. For example, if a building is owned by individuals A and B (60% by A and 40% by B), each would complete a separate Part II as follows. Lines 1 through 15 would be the same for each, assuming no part-year adjustments are necessary. However, A would enter 60% of line 15 on line 16, and B would enter 40% of line 15 on line 16. Therefore, enter on line 16 your share of the line 15 credit for the building that relates to your interest in the building. If your interest increases or decreases during the tax year, the change must be taken into account in determining your share of the line 15 credit.

Note. The aggregate credit claimed by the owners of the building cannot exceed the line 15 credit amount for the building.

3. If a pass-through entity is completing Form 8609-A as the sole owner of the building, enter the line 15 credit (after adjustment for any applicable special rule below) on line 16.

Special rules. If a taxpayer is subject to recapture upon the disposition of a building or interest therein because the taxpayer did not follow the procedures (described earlier under *Recapture and building dispositions*) to prevent recapture, no credit is allowed to the taxpayer for that percentage of the interest disposed of by the taxpayer. (However, see *De minimis recapture rule*, later.) The credit allowed to the taxpayer for the tax year is determined by reference to the taxpayer's remaining interest in the building at the close of the tax year. For example, assume that a taxpayer owns 100% of a building for 273 days in a 365-day calendar tax year, and 40% of the building for the remaining 92 days in the tax year (the taxpayer disposed of a 60% interest on the last day of September). If the taxpayer does not follow the procedures to prevent recapture, the taxpayer's credit on

line 16 would be based on 40% of the line 15 credit for the building. Similarly, although a taxpayer might not be subject to recapture upon a disposition of a *de minimis* portion (explained later) of the taxpayer's interest in the building, no credit is allowed to the taxpayer for the percentage of the interest disposed of by the taxpayer. The credit allowed to the taxpayer for the tax year is determined by reference to the taxpayer's remaining interest in the building at the close of the tax year.

If the taxpayer follows the procedures to prevent recapture, the taxpayer is allowed credit for the year both with respect to the ownership interest disposed of by the taxpayer and the interest retained by the taxpayer. For example, again assume that a taxpayer owns 100% of a building for the first 273 days in a 365-day calendar tax year and 40% of the building for the last 92 days of the year. After following procedures, the taxpayer's credit on line 16 would be based upon 273/365 of 100% (or 74.79%) of the line 15 credit for the building plus 92/365 of 40% (or 10.08%) of the line 15 credit amount.

If a taxpayer follows the procedures to prevent recapture upon the disposition of the building or upon a disposition of the taxpayer's entire interest in the building, the taxpayer's line 16 credit amount is determined by multiplying the line 15 credit amount by the percentage interest in the building disposed of by the taxpayer. For example, if a building is owned by individuals A and B (60% by A and 40% by B) and on the last day of the fifth month of the tax year, C buys A's 60% interest in the building and A follows the procedures, then A would enter 60% of line 15 on line 16. (Lines 4 and 8 have already taken into account the 5 months of the tax year that A held an interest in the building.)

De minimis recapture rule. For administrative purposes, the Service has adopted a *de minimis* rule that applies to partners in partnerships (other than partnerships to which section 42(j)(5)(B) applies) owning interests in qualified low-income buildings. The rule allows a partner to elect to avoid or defer recapture resulting from a disposition of interest in a partnership without posting bond (in a situation where it was necessary to post bond to avoid or defer recapture) until the partner has disposed of more than 33⅓ % of the partner's greatest total interest in the qualified low-income building through the partnership. See Rev. Rul. 90-60, 1990-2 C.B. 3, for more information on the *de minimis* rule.

Upon application by the building owner, the IRS may waive any recapture of the low-income housing credit for any *de minimis* error in complying with the minimum set-aside requirements.

Line 17. The first-year credit may have been reduced based on the number of full months the building was in service. The deferred balance of the credit for the first year is allowed in the 11th year. Include it on line 17 as a **positive** amount.

For example, see the example under *First-year modified percentage*, earlier. If this is the 11th year, enter .8750 times the eligible basis of the building (line 1) times the credit percentage (line 5). The factor .8750 is 1.0000 minus .1250, the modified percentage figured for year one in the example.

Line 18. For buildings placed in service after December 31, 2007, the credit is no longer limited by the alternative minimum tax rules. The amount on line 18 will be reported on Form 8586 as follows.

Credit for buildings placed in service before January 1, 2008. Report this amount on line 3 of Form 8586.

Credit for buildings placed in service after December 31, 2007. Report this amount on line 10 of Form 8586.

Paperwork Reduction Act Notice. We ask for the information on these forms to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is:

Recordkeeping	7 hr., 38 min.
Learning about the law or the form	1 hr., 47 min.
Preparing and sending the form to the IRS	1 hr., 59 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service at the address listed in the instructions for the tax return with which this form is filed.

Line 11 Worksheet (Keep for Your Records)

1	Enter the qualified basis of the building from line 3 of this tax year's Form 8609-A	**1**	
2	Multiply the amount on line 1 of the previous year's Form 8609-A by the amount on line 2 of that Form 8609-A	**2**	
3	Increased qualified basis. Subtract line 2 above from line 1 above. But if line 2 above is more than zero but less than the original qualified basis of the building entered on Form 8609, line 8a (Part II, line 2a on the 1991 revision), then enter the amount from line 7 of this Form 8609-A instead **Note.** *If line 3 above is zero or less, do not complete the rest of this worksheet. Instead, enter -0- on line 11 of Form 8609-A and go to line 12.*	**3**	
4	Modified percentage. For each month during the tax year, figure the increase, if any, in the low-income portion of the building for that month over the low-income portion of the building at the close of the previous tax year (the amount on line 2 of the previous tax year's Form 8609-A). For example, if the previous tax year's low-income portion of .5000 remained at .5000 for the first 9 months of this tax year and then increased to .7500 for October, November, and December, then subtract .5000 from .7500 to get an increase of .2500 for each month. Add these amounts together, divide by 12, and enter the result. (This amount must be shown as a decimal carried out to at least four places (for example, .2500 + .2500 + .2500 = .7500, divided by 12 = .0625.))	**4**	
5	Increased qualified basis entitled to reduced credit. Multiply line 4 above by Form 8609-A, line 1	**5**	
6	Increased qualified basis not entitled to reduced credit. Subtract line 5 above from line 3 above	**6**	
7	Line 11 modification. Multiply line 6 above by two-thirds of the amount on line 5 of Form 8609-A. Enter the result here and on line 11 of Form 8609-A	**7**	

Form **8586**

Department of the Treasury
Internal Revenue Service (99)

Low-Income Housing Credit

▶ **Attach to your tax return.**

OMB No. 1545-0984

2010

Attachment Sequence No. **36a**

Name(s) shown on return

Identifying number

Part I Buildings Placed in Service Before 2008

1	Number of Forms 8609-A attached for buildings placed in service before 2008 . . . . . ▶ _____		
2	Has there been a decrease in the qualified basis of any buildings accounted for on line 1 since the close of the preceding tax year? ☐ **Yes** ☐ **No** If "Yes," enter the building identification numbers (BINs) of the buildings that had a decreased basis. If you need more space, attach a schedule. **(i)** _____ **(ii)** _____ **(iii)** _____ **(iv)** _____		
3	Current year credit from attached Form(s) 8609-A for buildings placed in service before 2008 (see instructions)	3	
4	Low-income housing credit for buildings placed in service before 2008 from partnerships, S corporations, estates, and trusts	4	
5	Add lines 3 and 4. Estates and trusts, go to line 6; partnerships and S corporations, report this amount on Schedule K; all others, report this amount on Form 3800, line 1d	5	
6	Amount allocated to beneficiaries of the estate or trust (see instructions)	6	
7	Estates and trusts. Subtract line 6 from line 5. Report this amount on Form 3800, line 1d . .	7	

Part II Buildings Placed in Service After 2007

8	Number of Forms 8609-A attached for buildings placed in service after 2007 . . . . . ▶ _____		
9	Has there been a decrease in the qualified basis of any buildings accounted for on line 8 since the close of the preceding tax year? ☐ **Yes** ☐ **No** If "Yes," enter the building identification numbers (BINs) of the buildings that had a decreased basis. If you need more space, attach a schedule. **(i)** _____ **(ii)** _____ **(iii)** _____ **(iv)** _____		
10	Current year credit from attached Form(s) 8609-A for buildings placed in service after 2007 (see instructions)	10	
11	Low-income housing credit for buildings placed in service after 2007 from partnerships, S corporations, estates, and trusts.	11	
12	Add lines 10 and 11. Partnerships and S corporations, report this amount on Schedule K; all others, continue to line 13	12	
13	Low-income housing credit included on line 12 from passive activities (see instructions) . . .	13	
14	Subtract line 13 from line 12	14	
15	Low-income housing credit allowed for 2010 from a passive activity (see instructions) . . .	15	
16	Carryforward of low-income housing credit to 2010 (see instructions)	16	
17	Carryback of low-income housing credit from 2011 (see instructions)	17	
18	Add lines 14 through 17. Estates and trusts, go to line 19; all others, report this amount on Form 3800, line 29d	18	
19	Amount allocated to beneficiaries of the estate or trust (see instructions)	19	
20	**Estates and trusts.** Subtract line 19 from line 18. Report this amount on Form 3800, line 29d .	20	

General Instructions

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

Purpose of Form

Use Form 8586 to claim the low-income housing credit. This general business credit is allowed for each new qualified low-income building placed in service after 1986. Generally, it is taken over a 10-year credit period.

The portion of the low-income housing credit attributable to buildings placed in service after 2007 is not limited by tentative minimum tax and cannot be reported on page 1 of Form 3800. Part II is used to figure this portion of the credit.

Taxpayers that are not partnerships, S corporations, estates, or trusts, and whose only source of this credit is from buildings placed in service before 2008 from those pass-through entities, are not required to complete or file this form. Instead, they can report this credit directly on line 1d of Form 3800, General Business Credit.

Qualified Low-Income Housing Project

The credit cannot exceed the amount allocated to the building. See section 42(h)(1) for details.

The low-income housing credit can only be claimed for residential rental buildings in low-income housing projects that meet one of the minimum set-aside tests. For details, see the Instructions for Form 8609, Part II, line 10c.

Except for buildings financed with certain tax-exempt bonds, you may not take a low-income housing credit on a building if it has not received an allocation from the housing credit agency. No allocation is needed when 50% or more of the aggregate basis of the building and the land on which the building is located is financed with certain tax-exempt bonds. 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" 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)).

Recapture of Credit

There is a 15-year compliance period during which the residential rental building must continue to meet certain requirements. If, as of the close of any tax year in this period, there is a reduction in the qualified basis of the building from the previous year, you may have to recapture a part of the credit you have taken. Similarly, you may have to recapture part of the credits taken in previous years upon certain dispositions of the building or interests therein, unless you follow the procedures to prevent recapture. See *Recapture and building dispositions* in the Instructions for Form 8609-A, Annual Statement for Low-Income Housing Credit, for details. If you must recapture credits, use Form 8611, Recapture of Low-Income Housing Credit. See section 42(j) for details.

Recordkeeping

Keep a copy of this Form 8586 together with all Forms 8609, Schedules A (Form 8609) (and successor Forms 8609-A), and Forms 8611 for 3 years after the 15-year compliance period ends.

Specific Instructions

Line 2. A decrease in qualified basis will result in recapture if the qualified basis at the close of the tax year is less than the qualified basis at the close of the first year of the credit period.

If the reduction in qualified basis at the close of the tax year also results in a violation of the minimum set-aside requirement, then no credit is allowable for the year.

Line 3. The credit for the year is figured on Form 8609-A for each building. Attach a copy of each Form 8609-A you completed for the tax year to Form 8586. Enter on line 3 the total credit from attached Form(s) 8609-A for buildings placed in service before 2008.

Line 6. Allocate the amount on line 5 between the estate or trust and the beneficiaries in the same proportion as income was allocated and enter the beneficiaries' share on line 6.

Line 9. A decrease in qualified basis will result in recapture if the qualified basis at the close of the tax year is less than the qualified basis at the close of the first year of the credit period.

If the reduction in qualified basis at the close of the tax year also results in a violation of the minimum set-aside requirement, then no credit is allowable for the year.

Line 10. The credit for the year is figured on Form 8609-A for each building. Attach a copy of each Form 8609-A you completed for the tax year to Form 8586. Enter on line 10 the total credit for attached Form(s) 8609-A for buildings placed in service after 2007.

Line 13. Enter the amount included on line 12 that is from a passive activity. Generally, a passive activity is a trade or business in which you did not materially participate. Rental activities are generally considered passive activities, whether or not you materially participate. For details, see Form 8582-CR, Passive Activity Credit Limitations (for individuals, estates, and trusts), or Form 8810, Corporate Passive Activity Loss and Credit Limitations (for corporations).

Line 15. Enter the passive activity low-income housing credit allowed for 2010 from Form 8582-CR or Form 8810.

Line 16. Enter any carryforward of the credit to 2010 attributable to buildings placed in service after 2007. Enter any carryforward of the credit to 2010 attributable to buildings placed in service before 2008 on Form 3800, line 6.

Line 17. Enter any carryback if you amend your 2010 return to carry back an unused low-income housing credit from 2011.

Line 19. Allocate the amount on line 18 between the estate or trust and the beneficiaries in the same proportion as income was allocated and enter the beneficiaries' share on line 19.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is:

Recordkeeping	5 hr., 44 min.
Learning about the law or the form	52 min.
Preparing the form	1 hr., 55 min.
Copying, assembling, and sending the form to the IRS	16 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.

Form **8823**
(Rev. November 2009)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition

Note: *File a separate Form 8823 for each building that is disposed of or go*

OMB No. 1545-1204

1 Building name (if any). Check if item 1 differs from Form 8609 ▶ ☐

Street address

City or town, state, and ZIP code

2 Building identification number (BIN)

3 Owner's name. Check if item 3 differs from Form 8609 ▶ ☐

Street address

City or town, state, and ZIP code

4 **Owner's** taxpayer identification number ☐ EIN ☐ SSN

5 Total credit allocated to this BIN . . . . . ▶ $

6 If this building is part of a multiple building project, enter the number of buildings in the project . . . . . ▶

7 a Total number of residential units in this building . . . . . ▶

b Total number of low-income units in this building . . . . . ▶

c Total number of residential units in this building determined to have noncompliance issues . . . . . ▶

d Total number of units reviewed by agency (see instructions) . . . . . ▶

8 Date building ceased to comply with the low-income housing credit provisions (see instructions) (MMDDYYYY) . .

9 Date noncompliance corrected (if applicable) (see instructions) (MMDDYYYY) . . . . . .

10 Check this box if you are filing only to show correction of a previously reported noncompliance problem . . . . . ▶ ☐

11 Check the box(es) that apply:	Out of compliance	Noncompliance corrected
a Household income above income limit upon initial occupancy	☐	☐
b Owner failed to correctly complete or document tenant's annual income recertification	☐	☐
c Violation(s) of the UPCS or local inspection standards (see instructions) (attach explanation)	☐	☐
d Owner failed to provide annual certifications or provided incomplete or inaccurate certifications	☐	☐
e Changes in Eligible Basis or the Applicable Percentage (see instructions)	☐	☐
f Project failed to meet minimum set-aside requirement (20/50, 40/60 test) (see instructions)	☐	☐
g Gross rent(s) exceed tax credit limits	☐	☐
h Project not available to the general public (see instructions) (attach explanation)	☐	☐
i Violation(s) of the Available Unit Rule under section 42(g)(2)(D)(ii)	☐	☐
j Violation(s) of the Vacant Unit Rule under Reg. 1.42-5(c)(1)(ix)	☐	☐
k Owner failed to execute and record extended-use agreement within time prescribed by section 42(h)(6)(J)	☐	☐
l Low-income units occupied by nonqualified full-time students	☐	☐
m Owner did not properly calculate utility allowance	☐	☐
n Owner has failed to respond to agency requests for monitoring reviews	☐	☐
o Low-income units used on a transient basis (attach explanation)	☐	☐
p Building no longer in compliance nor participating in the section 42 program (attach explanation)	☐	
q Other noncompliance issues (attach explanation)	☐	☐

12 Additional information for any item above. Attach explanation and check box . . . . . ▶ ☐

13 a Building disposition by ☐ Sale ☐ Foreclosure ☐ Destruction ☐ Other (attach explanation)

b Date of disposition (MMDDYYYY)

c New owner's name

d **New owner's** taxpayer identification number ☐ EIN ☐ SSN

Street address

14 Name of contact person

City or town, state, and ZIP code

15 Telephone number of contact person
( ) Ext.

Under penalties of perjury, I declare that I have examined this report, including accompanying statements and schedules, and to the best of my knowledge and belief, it is true, correct, and complete.

▶ Signature of authorizing official ▶ Print name and title ▶ Date (MMDDYYYY)

For Paperwork Reduction Act Notice, see instructions.

Cat. No. 12308D Form **8823** (Rev. 11-2009)

General Instructions

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

Purpose of Form

Housing credit agencies use Form 8823 to fulfill their responsibility under section 42(m)(1)(B)(iii) to notify the IRS of noncompliance with the low-income housing tax credit provisions **or** any building disposition.

The housing credit agency should also give a copy of Form 8823 to the owner(s).

Who Must File

Any authorized housing credit agency that becomes aware that a low-income housing building was disposed of or is not in compliance with the provisions of section 42 must file Form 8823.

When To File

File Form 8823 no later than 45 days after **(a)** the building was disposed of or **(b)** the end of the time allowed the building owner to correct the condition(s) that caused noncompliance. For details, see Regulations section 1.42-5(e).

Where To File

File Form 8823 with the:

Internal Revenue Service
P.O. Box 331
Attn: LIHC Unit, DP 607 South
Philadelphia Campus
Bensalem, PA 19020

Specific Instructions

Amended return. If you are filing an amended return to correct previously reported information, check the box at the top of page 1.

Item 2. Enter the building identification number (BIN) assigned to the building by the housing credit agency as shown on Form 8609.

Items 3, 4, 13b, and 13d. If there is more than one owner (other than as a member of a pass-through entity), attach a schedule listing the owners, their addresses, and their taxpayer identification numbers. Indicate whether each owner's taxpayer identification number is an employer identification number (EIN) or a social security number (SSN).

Both the EIN and the SSN have nine digits. An EIN has two digits, a hyphen, and seven digits. An SSN has three digits, a hyphen, two digits, a hyphen, and four digits, and is issued only to individuals.

Item 7d. "Reviewed by agency" includes physical inspection of the property, tenant file inspection, or review of documentation submitted by the owner.

Item 8. Enter the date that the building ceased to comply with the low-income housing credit provisions. If there are multiple noncompliance issues, enter the date for the earliest discovered issue. **Do not** complete item 8 for a building disposition. Instead, skip items 9 through 12, and complete item 13.

Item 9. Enter the date that the noncompliance issue was corrected. If there are multiple issues, enter the date the last correction was made.

Item 10. Do not check this box unless the sole reason for filing the form is to indicate that previously reported noncompliance problems have been corrected.

Item 11c. Housing credit agencies must use either **(a)** the local health, safety, and building codes (or other habitability standards) or **(b)** the Uniform Physical Conditions Standards (UPCS) (24 C.F.R. section 5.703) to inspect the project, but not in combination. The UPCS does not supersede or preempt local codes. Thus, if a housing credit agency using the UPCS becomes aware of any violation of local codes, the agency must report the violation. Attach a statement describing either **(a)** the deficiency and its severity under the UPCS, i.e., minor (level 1), major (level 2), and severe (level 3) or **(b)** the health, safety, or building violation under the local codes. The Department of Housing and Urban Development's Real Estate Assessment Center has developed a comprehensive description of the types and severities of deficiencies entitled "Dictionary of Deficiency Definitions" found at *www.hud.gov/reac* under Library, Physical Inspection, Training Materials. Under Regulations section 1.42-5(e)(3), report all deficiencies to the IRS whether or not the noncompliance or failure to certify is corrected at the time of inspection. In using the UPCS inspection standards, report all deficiencies in the five major inspectable areas (defined below) of the project: (1) Site; (2) Building exterior; (3) Building systems; (4) Dwelling units; and (5) Common areas.

1. Site. The site components, such as fencing and retaining walls, grounds, lighting, mailboxes, signs (such as those identifying the project or areas of the project), parking lots/driveways, play areas and equipment, refuse disposal equipment, roads, storm drainage, and walkways, must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walkways or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulation of garbage and debris, vermin or rodent infestation, or fire hazards.

2. Building exterior. Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

3. Building systems. Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

4. Dwelling units. Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid (if applicable), ceilings, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair. Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water (single room occupancy units need not contain water facilities). If the dwelling unit includes its own bathroom, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste. The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

5. Common areas. The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement, garage/carport, restrooms, closets, utility rooms, mechanical rooms, community rooms, day care rooms, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.

Health and Safety Hazards. All areas and components of the housing must be free of health and safety hazards. These include, but are not limited to: air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have hand rails that are not damaged, loose, missing portions, or otherwise unusable. The housing must have no evidence of infestation by rats, mice, or other vermin. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold as well as odor (e.g., propane, natural, sewer, or methane gas). The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 C.F.R. part 35).

Project owners must promptly correct exigent and fire safety hazards. Before leaving the project, the inspector should provide the project owner with a list of all observed exigent and fire safety hazards. Exigent health and safety hazards include: air quality problems such as propane, natural gas, or methane gas detected; electrical hazards such as exposed wires or open panels and water leaks on or near electrical equipment; emergency equipment, fire exits, and fire escapes that are blocked or not usable; and carbon monoxide hazards such as gas or hot water heaters with missing or misaligned chimneys. Fire safety hazards include missing or inoperative smoke detectors (including missing batteries), expired fire extinguishers, and window security bars preventing egress from a unit.

Item 11d. Report the failure to provide annual certifications or the provision of certifications that are known to be incomplete or inaccurate as required by Regulations section 1.42-5(c). As examples, report a failure by the owner to include a statement summarizing violations (or copies of the violation reports) of local health, safety, or building codes; report an owner who provided inaccurate or incomplete statements concerning corrections of these violations.

Item 11e. For buildings placed in service before July 31, 2008, report any federal grant made with respect to any building or the operation thereof during any tax year in the compliance period. For buildings placed in service after July 30, 2008, report any federal grant used to finance any eligible basis costs of any building. Report changes in common areas which become commercial, when fees are charged for facilities, etc. In addition, for buildings placed in service before July 31, 2008, report any below market federal loan or any obligation the interest on which is exempt from tax under section 103 that is or was used (directly or indirectly) with respect to the building or its operation during the compliance period and that was not taken into account when determining eligible basis at the close of the first year of the credit period. For buildings placed in service after July 30, 2008, report any obligation the interest on which is exempt from tax under section 103 that is or was used (directly or indirectly) with respect to the building or its operation during the compliance period and that was not taken into account when determining eligible basis at the close of the first year of the credit period.

Item 11f. Failure to satisfy the minimum set-aside requirement for the first year of the credit period results in the permanent loss of the entire credit.

Failure to maintain the minimum set-aside requirement for any year after the first year of the credit period results in recapture of previously claimed credit and no allowable credit for that tax year. No low-income housing credit is allowable until the minimum set-aside is restored for a subsequent tax year.

Item 11h. All units in the building must be for use by the general public (as defined in Regulations section 1.42-9 and further clarified in section 42(g)(9)), including the requirement that no finding of discrimination under the Fair Housing Act occurred for the building. Low-income housing credit properties are subject to Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act. The Act prohibits

discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. See 42 U.S.C. sections 3601 through 3619.

It also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities. The failure of low-income housing credit properties to comply with the requirements of the Fair Housing Act will result in the denial of the low-income housing tax credit on a per-unit basis.

Individuals with questions about the accessibility requirements can obtain the Fair Housing Act Design Manual from HUD by calling 1-800-245-2691 and requesting item number HUD 11112, or they can order the manual through *www.huduser.org* under Publications.

Item 11i. The owner must rent to low-income tenants all comparable units that are available or that subsequently become available in the same building in order to continue treating the over-income unit(s) as a low-income unit. All units affected by a violation of the available unit rule may not be included in qualified basis. When the percentage of low-income units in a building again equals the percentage of low-income units on which the credit is based, the full availability of the credit is restored. Thus, only check the "Noncompliance corrected" box when the percentage of low-income units in the building equals the percentage on which the credit is based.

Item 11q. Check this box for noncompliance events other than those listed in 11a through 11p. Attach an explanation. For projects with allocations from the nonprofit set-aside under section 42(h)(5), report the lack of material participation by a non-profit organization (i.e., regular, continuous, and substantial involvement) that the housing credit agency learns of during the compliance period.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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. Generally, tax returns and return information are confidential, as required by section 6103.

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

Recordkeeping	11 hr., 43 min.
Learning about the law or the form	3 hr., 16 min.
Preparing and sending the form to the IRS	3 hr., 36 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send Form 8823 to this address. Instead, see *Where To File* on page 2.

Form **8693**
(Rev. February 1997)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Disposition Bond

(For use by taxpayers posting bond under section 42(j)(6))

Attach to your return after receiving IRS approval.

OMB No. 1545–1029

Attachment Sequence No. **91**

Name of taxpayer making disposition | **Identifying number**

Part I Bonding

1 Address of building as shown on Form 8609 (do **not** use P.O. box)

2 Building identification number

3 Date the 15-year compliance period ends

4 Check the box that applies:

This is an ☐ original bond, ☐ strengthening bond, or ☐ superseding bond.

5 Date property interest disposed of

6 Date bond issued

7a Bond is given by _____ ( )
Principal — Telephone number (optional)

_____
Address

as principal and _____
Surety

_____ as surety or sureties.
Address

7b As principal and surety, we are obligated to the United States in the amount of $ _____ . We also jointly and severally obligate our heirs, executors, administrators, successors, and assigns for the payment of this amount.

Part II Signatures

Under penalties of perjury, I declare that I have examined this form and any accompanying statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature of principal	Name (please print)	Date
Signature of principal	Name (please print)	Date
Signature of surety	Name and identifying number (please print)	Date
Signature of surety	Name and identifying number (please print)	Date

Part III Certificate of Corporate Principal (corporations only)

I certify that the person above, who signed on behalf of the principal, was an authorized representative of the corporation.

Signature of secretary of the corporation	Name (please print)	Date

Part IV Approval by IRS (See instructions.)

Bond approved _____ _____
Date — Internal Revenue Service official

General Instructions

Section references are to the Internal Revenue Code.

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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. Generally, tax returns and return information are confidential, as required by section 6103.

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

Recordkeeping . . . . . 13 min.

Learning about the law or the form . . . . . 14 min.

Preparing, copying, assembling, and sending the form to the IRS. . . . . 40 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send Form 8693 to this address. Instead, see **When and Where To File** on page 2.

Purpose of Form

Use Form 8693 to post a bond under section 42(j)(6) to avoid recapture of the low-income housing credit.

The bond ensures payment of the recapture tax imposed under section 42(j). The conditions of the bond are that the principal (i.e., taxpayer):

- Does not attempt to defraud the United States of any tax under section 42(j);
- Files all returns and statements as required by law or regulations;
- Pays all taxes including any penalties and interest charges; and
- Complies with all other requirements of the law and regulations under section 42.

Qualifying Sureties

The company acting as surety must hold a Certificate of Authority from the Department of the Treasury, Financial Management Service. These companies are listed in Treasury Circular 570. You may get a copy of this circular by writing to the Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East West Hwy., Hyattsville, MD 20782, or by calling (202) 874-6850 (not a toll-free number).

A taxpayer may not be a surety for itself, nor may a member of a firm or a partner in a partnership be a surety for the firm or partnership of which he or she is a member or a partner.

Surety Termination

If a surety's certificate of authority is terminated, the surety may be relieved of liability under the bond provided it notifies the principal and the IRS by the date the termination announcement is published in the Federal Register. The notice must be sent by certified mail and must state that the principal has 60 days from the date the termination announcement is published in the Federal Register to get an adequate strengthening or superseding bond with another surety listed in Treasury Circular 570. If notice is given, the principal's rights under the bond will end 60 days after the date the termination announcement is published in the Federal Register.

A qualified surety (or coinsuring surety) may terminate its liability on a bond only if the surety notifies the principal and the IRS at least 60 days before the date the surety wants to terminate its liability. The notice must state that the principal has 60 days from the termination date to obtain an adequate superseding or strengthening bond from another qualified surety (or coinsuring surety).

If the surety does not provide this notice, it remains liable for the amount posted on the bond. If the surety gives notice but does not meet the 60-day notification requirement or fails to include a termination date in the notice, the surety's liability will terminate 60 days after the postmark date on the notice.

Send the IRS copy of the notice to the Internal Revenue Service Center, Philadelphia, PA 19255.

If the principal fails to post a strengthening or superseding bond within 60 days from the date **(a)** the termination announcement is published in the Federal Register or **(b)** on which a surety's liability on a bond terminates, recapture under section 42(j) is required.

Period of Bond

The liability stated on the bond must be for the period of years remaining in the 15-year compliance period of the building plus an additional 58 months. The compliance period begins with the tax year the building was placed in service or the succeeding tax year if the election under section 42(f)(1) is made.

Recordkeeping

Keep a copy of this Form 8693 together with all Forms 8586, 8609, Schedule(s) A (Form 8609), and 8611 for 58 months after the 15-year compliance period ends.

Who Must File

Taxpayers who claimed a low-income housing credit on a residential rental building and later (in a tax year during the 15-year compliance period) disposed of the building or an ownership interest in it must file this form to avoid recapture of the credit claimed. A de minimis rule may apply to certain dispositions of interests in partnerships that own buildings in which a credit was claimed. See Rev. Rul. 90-60, 1990-2 C.B. 3, for additional information.

Partnerships

Section 42(j)(5) partnerships.—Any person holding a power of attorney in a section 42(j)(5) partnership (a partnership with 35 or more partners that has not elected out of the section 42(j)(5) provisions) may post bond as principal on behalf of the partnership. A bond posted on behalf of a partnership must be posted in the partnership's name, with the name of the authorized representative of the partnership posting the bond appearing immediately below the partnership's name.

Partnerships that elected out of the section 42(j)(5) provisions or have fewer than 35 partners.—If partners in partnerships to which section 42(j)(5) does not apply want to post bond, the partners must post bond in their individual capacity as principals.

When and Where To File

Submit the original and one copy of Form 8693 to the Internal Revenue Service Center, Philadelphia, PA 19255, within 60 days after the date of disposition of the building or interest therein. The completed form may be submitted by either the taxpayer or the surety.

When the IRS returns a copy of the approved form, attach a copy of it to your income tax return for the year in which the disposition occurred. Write "FORM 8693 ATTACHED" to the left of the entry space on your income tax return for reporting the recapture of the low-income housing credit.

Specific Instructions

Line 2. Building Identification Number (BIN).—This is the number assigned to the building by the housing credit agency on Part I, item E, of **Form 8609,** Low-Income Housing Credit Allocation Certification.

Line 7b. Amount of Bond.—Use the worksheet below to calculate the bond amount. See Rev. Rul. 90-60 for additional information on the methodology for determining the bond amount.

If the amount is not an even multiple of $100, increase the bond amount to the next higher multiple of $100.

Part III. Certificate of Corporate Principal.—If the principal is a corporation, the authority of the person posting the bond must be certified by the secretary of the corporation by completing Part III. Or the corporation may attach copies of records that will show the authority of the officer signing if the copies are certified by the secretary to be true copies.

Part IV. Approval by the IRS.—The IRS will notify you of the approval or rejection of the bond. If approved, the IRS will send a copy of the approved Form 8693 to the principal shown in Part I. If rejected, the owner must recapture the allowed low-income housing credit. Use **Form 8611,** Recapture of Low-Income Housing Credit.

Worksheet for Computing Bond Amount

1	Total credits taken by you in previous years and any additional credits you anticipate claiming for any year or portion thereof preceding the date of disposition	$
2	Bond factor amount	%
3	Percentage of taxpayer's total interest in the qualified low-income building disposed of	%
4	Bond amount required to be posted (line 1 × line 2 × line 3). Enter here and on line 7b	$

Instructions for Worksheet

Line 1.—Enter the total amount of the credits claimed on the building. See Part I of Forms 8586 you have filed. Include any additional credits you anticipate claiming for any period preceding the date of disposition. Do not include credit amounts previously recaptured, credit amounts for which a bond was previously posted, or credits claimed on additions to qualified basis as determined under section 42(f)(3).

Line 2. Bond Factor Amount.—Enter the bond factor amount corresponding to the month in the compliance period in which the disposition occurred and the first year of the building's credit period. The IRS announces the monthly bond factor amounts quarterly in a revenue ruling published in the Internal Revenue Bulletin.

Line 3.—Enter the ownership interest in the qualified low-income building that you have disposed of. Include ownership interests held both directly and indirectly (e.g., through a partnership).

Form **8611**
(Rev. January 2009)
Department of the Treasury
Internal Revenue Service

Recapture of Low-Income Housing Credit

▶ **Attach to your return.**

Note: ***Complete a separate Form 8611 for each building to which recapture applies.***

OMB No. 1545-1035

Attachment Sequence No. **90**

A Name(s) shown on return		**B** **Identifying number**
C Address of building (as shown on Form 8609)	**D** Building identification number (BIN)	**E** Date placed in service (from Form 8609)
F If building is financed in whole or part with tax-exempt bonds, see instructions and furnish: **(1)** Issuer's name		**(2)** Date of issue
(3) Name of issue		**(4)** CUSIP number

Note: *Skip lines 1–7 and go to line 8 if recapture is passed through from a flow-through entity (partnership, S corporation, estate, or trust).*

1	Enter total credits reported on Form 8586 in prior years for this building	1	
2	Credits included on line 1 attributable to additions to qualified basis (see instructions)	2	
3	Credits subject to recapture. Subtract line 2 from line 1	3	
4	Credit recapture percentage (see instructions)	4	.
5	Accelerated portion of credit. Multiply line 3 by line 4	5	
6	Percentage decrease in qualified basis. Express as a decimal amount carried out to at least 3 places (see instructions)	6	.
7	Amount of accelerated portion recaptured (see instructions if prior recapture on building). Multiply line 5 by line 6. Section 42(j)(5) partnerships, go to line 16. All other flow-through entities (except electing large partnerships), enter the result here and enter each recipient's share in the appropriate box of Schedule K-1. Generally, flow-through entities other than electing large partnerships will stop here. (**Note:** *An estate or trust enters on line 8 only its share of recapture amount attributable to the credit amount reported on its Form 8586.)*	7	
8	Enter recapture amount from flow-through entity (see **Note** above)	8	
9	Enter the unused portion of the accelerated amount from line 7 (see instructions)	9	
10	Net recapture. Subtract line 9 from line 7 or line 8. If less than zero, enter -0-	10	
11	Enter interest on the line 10 recapture amount (see instructions)	11	
12	Total amount subject to recapture. Add lines 10 and 11	12	
13	Unused credits attributable to this building reduced by the accelerated portion included on line 9 (see instructions)	13	
14	**Recapture tax.** Subtract line 13 from line 12. If zero or less, enter -0-. Enter the result here and on the appropriate line of your tax return (see instructions). If more than one Form 8611 is filed, add the line 14 amounts from all forms and enter the total on the appropriate line of your return. Electing large partnerships, see instructions	14	
15	**Carryforward of the low-income housing credit attributable to this building.** Subtract line 12 from line 13. If zero or less, enter -0- (see instructions)	15	

Only Section 42(j)(5) partnerships need to complete lines 16 and 17.

16	Enter interest on the line 7 recapture amount (see instructions)	16	
17	Total recapture. Add lines 7 and 16 (see instructions)	17	

General Instructions

Section references are to the Internal Revenue Code.

Purpose of Form

Use this form if you must recapture part of the low-income housing credit you claimed in previous years because the qualified basis decreased from one year to the next or you disposed of a building, or your interest therein, and you did not follow the procedures that would have prevented recapture of the credit.

Decrease in qualified basis. The decrease may result from a change in the eligible basis, or the building no longer meets the minimum set aside requirements of section 42(g)(1), the gross rent requirements of section 42(g)(2), or the other requirements for the units which are set aside.

Building dispositions. The disposition of a building, or an interest therein, will generate the recapture of the credit. You can prevent the recapture if you follow the procedures below, relative to the date of the disposition of the building or the interest therein.

Building dispositions before July 31, 2008. Disposing of a building or an interest therein during the tax year will generate a credit recapture, unless you timely post a satisfactory bond or pledge eligible U.S. Treasury securities as collateral. For details on the rules for posting or pledging, see Rev. Rul. 90-60, 1990-2 C.B. 3, and Rev. Proc. 99-11, 1999-1 C.B. 275.

Note. You may discontinue maintaining a bond or pledging eligible U.S. Treasury securities by making the election described in Rev. Proc. 2008-60, 2008-43 I.R.B. 1006, and if it is reasonably expected that the building will continue to be operated as a qualified low-income building for the remainder of the building's compliance period. See Rev. Proc. 2008-60 for the details on making the election.

Building dispositions after July 30, 2008. Disposing of a building or an interest therein will generate a credit recapture, unless it is reasonably expected that the building will continue to be operated as a qualified low-income building for the remainder of the building's compliance period.

See section 42(j) for more information.

Note. If the decrease in qualified basis is because of a change in the amount for which you are financially at risk on the building, then you must first recalculate the amount of credit taken in prior years under section 42(k) before you calculate the recapture amount on this form.

To complete this form you will need copies of the following forms that you have filed:

- Form 8586, Low-Income Housing Credit (and Form 3800, General Business Credit, if applicable);
- Form 8609, Low-Income Housing Credit Allocation and Certification (or predecessor, Form 8609, Low-Income Housing Credit Allocation Certification);
- Form 8609-A, Annual Statement for Low-Income Housing Credit (or predecessor, Schedule A (Form 8609), Annual Statement); and
- Form 8611.

Note. Flow-through entities must give partners, shareholders, and beneficiaries the information that is reported in items C, D, E, and F of Form 8611.

Recapture does not apply if:

- You disposed of the building or an ownership interest in it and you satisfy the requirements for avoiding recapture as outlined earlier under *Building dispositions*;
- You disposed of not more than 33⅓ % in the aggregate of your ownership interest in a building that you held through a partnership, or you disposed of an ownership interest in a building that you held through a partnership to which section 42(j)(5) applies or through an electing large partnership;
- The decrease in qualified basis does not exceed the additions to qualified basis for which credits were allowable in years after the year the building was placed in service;
- You correct a noncompliance event within a reasonable period after it is discovered or should have been discovered;
- The qualified basis is reduced because of a casualty loss, provided the property is restored or replaced within a reasonable period.

Recordkeeping

In order to verify changes in qualified basis from year to year, keep a copy of all Forms 8586, 8609, 8609-A (or predecessor, Schedule A (Form 8609)), 8611, and 8693 for 3 years after the 15-year compliance period ends.

Specific Instructions

Note. If recapture is passed through from a flow-through entity (partnership, S corporation, estate, or trust), skip lines 1–7 and go to line 8.

Item F. If the building is financed with tax-exempt bonds, furnish the following information: (1) name of the entity that issued the bond (not the name of the entity receiving the benefit of the financing); (2) date of issue, generally the first date there is a physical exchange of the bonds for the purchase price; (3) name of the issue, or if not named, other identification of the issue; and (4) CUSIP number of the bond with the latest maturity date. If the issue does not have a CUSIP number, enter "None."

Line 1. Enter the total credits claimed on the building for all prior years from all Forms 8586 (before reduction due to the tax liability limit) you have filed. Prior to the December 2006 revision of Form 8586, the credits (before reduction due to the tax liability limit) were reported in Part I. Do not include credits taken by a previous owner.

Line 2 Worksheet (*Line reference is to Form 8609-A (or predecessor, Schedule A (Form 8609).)

a	Enter the amount from line 10*	**a**
b	Multiply **a** by 2	**b**
c	Enter the amount from line 11*	**c**
d	Subtract **c** from **b**	**d**
e	Enter decimal amount figured in step **1** of the instructions for line 14*. If line 14* does not apply to you, enter -0-	**e**
f	Multiply **d** by **e**	**f**
g	Subtract **f** from **d**	**g**
h	Divide line 16* by line 15*. Enter the result here	**h**
i	Multiply **g** by **h**. Enter this amount on line 2. (If more than one worksheet is completed, add the amounts on **i** from all worksheets and enter the total on line 2.)	**i**

Line 2. Determine the amount to enter on this line by completing a separate Line 2 Worksheet (on page 2) for each prior year for which line 7 of Form 8609-A (or predecessor, Schedule A (Form 8609)) was completed.

Line 4. Enter the credit recapture percentage, expressed as a decimal carried to at least 3 places, from the table below:

IF the recapture event occurs in . . .	THEN enter on line 4 . . .
Years 2 through 11	.333
Year 12	.267
Year 13	.200
Year 14	.133
Year 15	.067

Line 6. Enter the percentage decrease in qualified basis during the current year.

For this purpose, figure qualified basis without regard to any additions to qualified basis after the first year of the credit period. Compare any decrease in qualified basis first to additions to qualified basis. Recapture applies only if the decrease in qualified basis exceeds additions to qualified basis after the first year of the credit period.

If you disposed of the building or an ownership interest in it and did not satisfy the requirements for avoiding recapture as outlined earlier under *Building dispositions*, you must recapture all of the accelerated portion shown on line 5. Enter 1.000 on line 6.

Note. If the decrease causes the qualified basis to fall below the minimum set-aside requirements of section 42(g)(1) (the 20-50 test or the 40-60 test), then 100% of the amount shown on line 5 must be recaptured. Enter 1.000 on line 6. If you elected the 40-60 test for this building and the decrease causes you to fall below 40%, you cannot switch to the 20-50 test to meet the set-aside requirements. You must recapture the entire amount shown on line 5.

Line 7. If there was a prior recapture of accelerated credits on the building, do not recapture that amount again as the result of the current reduction in qualified basis. The example below demonstrates how to incorporate into the current (Year 4) recapture the first year (Year 1) accelerated portion as a result of a prior year (Year 2) recapture event.

Line 9. Compute the unused portion of the accelerated amount on line 7 by:

Step 1. Totaling the credits attributable to the building that you could not use in prior years.*

Step 2. Reducing the result of step 1 by any unused credits attributable to additions to qualified basis.

Step 3. Multiplying the result of step 2 by the decimal amount on line 4.

Step 4. Multiplying the result of step 3 by the decimal amount on line 6.

Step 5. Enter the result of step 4 on line 9.

*Generally, this is the amount of credit reported on line 1 of this Form 8611 reduced by the total low-income housing credits allowed on Form 8586 or Form 3800 for each year.

Special rule for electing large partnerships. Enter zero on line 9. An electing large partnership is treated as having fully used all prior year credits.

Line 11. Compute the interest separately for each prior tax year for which a credit is being recaptured. Interest must be computed at the overpayment rate determined under section 6621(a)(1) and compounded on a daily basis from the due date (not including extensions) of the return for the prior year until the earlier of (a) the due date (not including extensions) of the return for the recapture year, or (b) the date the return for the recapture year is filed and any income tax due for that year has been fully paid.

Tables of interest factors to compute daily compound interest were published in Rev. Proc. 95-17, 1995-1 C.B. 556. The interest rate in effect through March 31, 2009, is shown in Rev. Rul. 2008-54, 2008-52 I.R.B. 1352. For periods after March 31, 2009, use the overpayment rate under section 6621(a)(1) in the revenue rulings published quarterly in the Internal Revenue Bulletin.

Note. If the line 8 recapture amount is from a section 42(j)(5) partnership, the partnership will figure the interest and include it in the recapture amount reported to you. Enter "-0-" on line 11 and write "Section 42(j)(5)" to the left of the entry space for line 11.

Line 13. Subtract the amount on line 9 from the total of all prior year unused credits attributable to the building (Step 1 of the line 9 instruction above). Enter the result on line 13.

Line 14.

For information on how to report the recapture tax on...	See the instructions for the...
Form 1040	"Total tax" line in the Instructions for Form 1040
Form 1120	"Other taxes" line in the Instructions for Form 1120

Special rule for electing large partnerships. Subtract the credit shown on Form 8586 from the total of the line 14 amounts from all Forms 8611. Enter the result (but not less than zero) on Form 1065-B, Part I, line 26.

Note. You must also reduce the current year low-income housing credit, before entering it on Schedules K and K-1, by the amount of the reduction to the total of the recapture amounts.

Line 15. Carry forward the low-income housing credit attributable to this building to the next tax year. Report any carryforward attributable to buildings placed in service before 2008 on the carryforward line of Form 3800 for the next tax year. Report any carryforward attributable to buildings placed in service after 2007 on the carryforward line of Form 8586 for the next tax year. See the

Line 7—*Example.* $2,700 of accelerated portion of low-income housing credit spread over a 10-year period and not falling below the minimum set-asides for the building. Also, there was a 20% reduction in qualified basis in Year 2 and 30% in Year 4.

	Year 1	Year 2	Year 3	Year 4*
Low-income housing credit	$270	$216 ($270 × .8 (20% reduction in qualified basis))	$270	$189 ($270 × .7 (30% reduction in qualified basis))
Recapture of Year 1 low-income housing credit		$18 ($270 × .333 × .2 (20% reduction in qualified basis))		$9 ($27 ($270 × .333 × .3 (30% reduction in qualified basis) minus $18 Year 2 recapture))

* You will have to complete the rest of the form to figure the recapture as the result of the current year reduction in basis as it affects the Year 2 and Year 3 credit.

instructions for Forms 8586 and 3800 for details on how to report the carryforward of unused credits.

Lines 16 and 17. Only section 42(j)(5) partnerships complete these lines. This is a partnership (other than an electing large partnership) that has at least 35 partners, unless the partnership elects (or has previously elected) not to be treated as a section 42(j)(5) partnership. For purposes of this definition, a husband and wife are treated as one partner.

For purposes of determining the credit recapture amount, a section 42(j)(5) partnership is treated as the taxpayer to which the low-income housing credit was allowed and as if the amount of credit allowed was the entire amount allowable under section 42(a).

See the instructions for line 11 to figure the interest on line 16. The partnership must attach Form 8611 to its Form 1065 and allocate this amount to each partner on Schedule K-1 (Form 1065) in the same manner as the partnership's taxable income is allocated to each partner.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

Recordkeeping	8 hr., 21 min.
Learning about the law or the form	1 hr.
Preparing and sending the form to the IRS	1 hr., 10 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the IRS at the address listed in the instructions for the tax return with which this form is filed.

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