CONNECTICUT HOUSING FINANCE AUTHORITY

Unlocking Solutions, Building Strong Communities.

Low-Income Housing Tax Credit

Compliance Manual

INTRODUCTORY MEMORANDUM FROM CHFA

TO: Owners and Management Agents

FROM: CHFA Multifamily Asset Management Department

SUBJECT: Low-Income Housing Tax Credit Compliance Monitoring Manual

The Connecticut Housing Finance Authority (CHFA) is pleased to provide you with the Low-Income Housing Tax Credit Compliance Manual for the State of Connecticut. As Housing Credit Agency for Connecticut, CHFA has responsibility for allocation and compliance monitoring for the Low-Income Housing Tax Credit Program as prescribed in Section 42 (m)(1) of the Internal Revenue Code and 1.42-5 of the Treasury Regulations. As permitted in 1.42-5(f) of the Regulations, the Authority has retained Spectrum Enterprises as "Authorized Delegate" to perform many of the required compliance monitoring functions. CHFA retains the responsibility of reporting non-compliance to the Internal Revenue Service.

The Compliance Monitoring Manual is provided as a reference for Low-Income Housing Tax Credit compliance monitoring procedures and, to inform developers, owners and managers of the reporting requirements implemented by CHFA and SPECTRUM. This Manual is not a substitute for existing federal laws and regulations. **As stated in 1.42-5(g) of the Regulations, Compliance with the requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowable. The Authority's obligation to monitor for compliance with the requirements of Section 42 does not make the Authority liable for an owner's noncompliance.**

The Low-Income Housing Tax Credit Program requires a qualified development team that is knowledgeable in both allocation and compliance. *"The price of credits is compliance."* It is essential that owners retain staff with expertise in the program and provide for continuing education. Please direct any questions concerning the Manual or compliance monitoring to SPECTRUM at (207) 805-0035 or visit their web site at www.spectrumlihtc.com. Any additional issues or questions can be referred CHFA at (860)-571-4338 or chfa.org. Together with SPECTRUM, we look forward to working with you to ensure program compliance and provide quality affordable housing to the residents of the State of Connecticut.

Low-Income Housing Tax Credit
Disclaimer

These materials are intended to assist owners in meeting the requirements for complying with Internal Revenue Code Section 42 and Section 1.42-5 of the Regulations thereunder. However, it is important to note that compliance with IRC 42 and the Regulations is solely the responsibility of the owner of the building for which Low-Income Housing Tax Credit is allowable, and the owner is solely responsible for the consequences of any non-compliance. The information contained in this Manual is presented without any representation or warranty whatsoever regarding the accuracy, completeness or currency of the information. The information contained in this Manual is subject to change without notice. CHFA shall not be liable for any loss or damage caused by any inaccuracies in the information contained herein, and suggest you review such information for accuracy prior to implementation.

Prior to implementing any changes in management practices resulting from this manual, Owners should seek council from their tax professionals on all matters related to the Code and Regulations and also have discussions with their investors and syndicators.

CONNECTICUT TAX CREDIT DOCUMENTS

The following items are received by owner's upon allocation of credits.

a. Tax Credit Application
b. Notice of Low-Income Housing Tax Credit Reservation
c. CHFA Carryover Allocation
d. Extended Low-Income Housing Commitment
e. Copies of Original, Executed, Signed 8609s
f. 8823 (Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition) ONLY provided if noncompliance is cited at project.
g. Utility Allowance Documentation, updated annually
(Determined by using appropriate method has defined by the 8823 Guide: Chapter 18, Category 11m OR methods described in this manual pages 2-11 to 2-13)

Form **8609**
(Rev. December 2021)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Allocation and Certification

▶ Go to *www.irs.gov/Form8609* for instructions and the latest information.

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	Check here ▶ ☐ if the eligible basis used in the computation of line 3a was increased under the high-cost area provisions of section 42(d)(5)(B). Enter the percentage to which the eligible basis was increased (see instructions)	**3b**	1 ___ ___%
4	Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-.)	**4**	%
5a	Date building placed in service ▶ ____________		
b	Check here ▶ ☐ if the date of allocation on line 1a is in calendar year 2021 or 2022 and the building is located in a qualified disaster zone (see instructions).		

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 ☐ 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 ☐ Average income ☐ 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 I have examined this form and accompanying 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) ▶ ____________________ First year of the credit period

Form **8823**
(Rev. December 2019)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition

▶ **File a separate Form 8823 for each building that is disposed of or goes out of compliance.**
▶ **Go to *www.irs.gov/Form8823* for the latest information.**

OMB No. 1545-1204

Check here if this is an amended return ▶ ☐

IRS Use Only

1 Building name (if any). Check if line 1 differects from Form 8609 ▶ ☐

Street address

City or town, state, and ZIP code

2 Building identification number (BIN)

3 Owner's name. Check if line 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 . . . ▶

7a 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 (see instructions) . . . ▶

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 applies:	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 including casualty losses (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, average income test) (see instructions)	☐	☐
g	Gross rent(s) exceeds 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 is no longer in compliance nor participating in the section 42 program. (Attach explanation.)	☐	
q	Other noncompliance issues (attach explanation)	☐	☐

12 Additional information for any line above. Attach explanation and check box . . . ▶ ☐

13a Building disposition by ☐ Sale ☐ Foreclosure ☐ Destruction ☐ Other (attach explanation)

b Date of disposition (MMDDYYYY) . . .

c New owner's name

Street address

City or town, state, and ZIP code

d **New owner's** taxpayer identification number ☐ EIN ☐ SSN

14 Name of contact person

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)

General Instructions

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

Future developments. For the latest information about developments related to Form 8823 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/Form8823.*

Purpose of Form

Housing credit agencies use Form 8823 as part of their compliance monitoring responsibilities under section 42(m)(1)(B)(iii) to notify the IRS of any building disposition or noncompliance with the low-income housing tax credit provisions.

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:

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

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.

Line 2. Enter the building identification number (BIN) assigned to the building by the housing credit agency as shown on Form 8609.

Lines 3, 4, 13c, 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.

Line 7d. "Reviewed by agency" includes physical inspection of the property, tenant file inspection, or review of documentation submitted by the owner. Regulations section 1.42-5(c)(2)(iii)(B) provides that a housing credit agency must conduct on-site inspections and low-income certification review of not fewer than the minimum number of low-income units set forth in the table found in Regulations section 1.42-5(c)(2)(iii).

Note: If the only noncompliance issue identified by the physical inspection of the property on line 11c relates to a common area, then the number of units identified on line 7c should be -0-.

Line 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 line 8 for a building disposition. Instead, skip lines 9 through 12, and complete line 13.

Line 9. Enter the date that the noncompliance issue was corrected. If there are multiple issues, enter the date the last correction was made.

Line 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.

Lines 11a through 11p. Check only the "Out of compliance" box if the issue causing the noncompliance remains uncorrected at the end of the correction period. Check both the "Out of compliance" and "Noncompliance corrected" boxes if the noncompliance was corrected within the correction period. Check only the "Noncompliance corrected" box if the noncompliance was previously reported to the IRS on a separate Form 8823.

Line 11c. Housing credit agencies must use either (a) the local health, safety, and building codes (or other habitability standards); or (b) the Uniform Physical Condition 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 (that is, 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 "Revised Dictionary of Deficiency Definitions" found at *www.hud.gov*. 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. Physical damage to low-income housing credit projects caused by casualty events and that render residential rental units or buildings, or common areas associated with the property, unsuitable for occupancy is reported as noncompliance with the UPCS or local standards. While no credit is allowable during the time the property is being restored by reconstruction or replacement, section 42(j)(4)(E) provides relief from the credit recapture provisions; that is, the recapture provisions are not applied when there is 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.

Line 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.

Line 11e. For buildings placed in service after July 30, 2008, report any federal grant used to finance any costs that were included in the eligible basis of any building. Report changes in common areas when they become commercial, when fees are charged for facilities, etc. 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.

Line 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.

In 2018, Congress revised section 42(g) to add a third minimum set-aside: the average income test. See section 42(g)(1)(C) for more information about the requirements of the average income test.

Line 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.A. 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 loss of the low-income housing credit.

Individuals with questions about the accessibility requirements can obtain the Fair Housing Act Design Manual through *www.huduser.org.*

Line 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.

Line 11k. Section 42(h)(6) requires owners of low-income housing credit properties to enter into an extended use agreement with the state agency that allocated the credits to the project. Building owners must agree to a long-term commitment beginning on the first day of the 15-year compliance period and ending on the later of (1) the date specified by the state agency in the agreement, or (2) the date that is 15 years after the close of the 15-year compliance period.

The extended use agreement must (1) specify that the applicable fraction for the building for each year in the extended use period will not be less than the applicable fraction specified in the extended use agreement and prohibit the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under section 42, (2) allow individuals (whether prospective, present, or former occupants) who meet the income limitations applicable to the building under section 42(g) the right to enforce in state court the requirements and prohibitions under section 42 (h)(6)(B)(i) throughout the extended use period, (3) prohibit the disposition to any person of any portion of the building unless all of the building is disposed of to that person, (4) prohibit the refusal to lease to section 8 voucher holders because of the status of the prospective tenant as such a holder, and (5) provide that the agreement is binding on all successors of the taxpayer. The extended use agreement must be recorded as a restrictive covenant with respect to the property under state law.

Noncompliance should be reported if an extended use agreement is not executed and recorded as a restrictive covenant with respect to the property under state law or the owner failed to correct the noncompliance within the 1-year correction period provided by section 42(h)(6)(J). The 1-year correction period begins when the agency notifies the owner in writing that an extended use agreement is not recorded as a restrictive covenant with respect to the property under state law. A copy of the notification letter should be included as an attachment to Form 8823 when filed with the IRS.

Line 11q. Check this box for noncompliance events other than those listed on lines 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 (that is, 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 . . . . 1 hr., 35 min.

Preparing and sending the form to the IRS . . . . 1 hr., 51 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 send your comments to *www.irs.gov/FormComments*. Or you can write to the Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. **Do not** send the form to this address. Instead, see *Where To File,* earlier.

CONNECTICUT COMPLIANCE MANUAL
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INTRODUCTION

Tax Credit Overview

1.1 The Low-Income Housing Tax Credit (LIHTC)

The Tax Reform Act of 1986 established a tax credit for low-income rental housing that was directly based on the number of low-income tenants residing in the complex. Section 252 of the Act and Section 42 of the Internal Revenue Code (IRC) govern the Low-Income Housing Tax Credit (LIHTC) program that began in 1987 and received permanent authorization with the Omnibus Budget Reconciliation Act of 1993. The LIHTC program provides incentives for investment of equity capital in the development of affordable single family or multifamily rental housing. The credit is a dollar-for-dollar reduction in tax liability to investors in exchange for equity participation in the construction or acquisition and rehabilitation of rental housing units that will remain income and rent restricted for an extended period of time.

Credits at 9% or 4%

Credits are allocated based on a federal economic formula of 9% until December 31, 2013 for non-federally subsidized projects or below market rate interest deals, i.e., “conventional” developments, or approximately 4% if the project is federally subsidized or given an interest subsidy, such as tax-exempt bonds or Rural Development. The acquisition credit for existing buildings is approximately 4%. Developers may be for-profit or nonprofit. Investors, often represented by limited partnerships, apply the tax credits to reduce their income tax liabilities.

Qualified Allocation Plan

Connecticut’s Qualified Allocation Plan (QAP) includes guidelines for the competitive ranking of applications. The amount of credits given to each state is based on population, indexed for inflation, with a minimum of $2 million. Connecticut may also have credits from previously unallocated or returned credits or by using the credits originally allocated to other states that failed to use them. The latter are referred to as credits from the “National Pool.”

Many recognize the tax credit’s influence on development, but its effect on management must also not be minimized. In order for properties to qualify initially for the LIHTC and to continue to receive the credit without risk of recapture, management must at minimum, follow all tax credit regulations throughout a 15-year compliance period. From a management perspective, a thorough understanding of the tax regulations governing this program is imperative.

1.2 Purpose of the Tax Credit Compliance Manual

Purpose of the Manual

This manual is intended to help owners and managers of LIHTC projects in the State of Connecticut fulfill their obligations in maintaining compliance pursuant to Section 42 of the IRC. The General Explanation of the Tax Reform Act of 1986 (the "Blue Book") [Section 8], IRC Section 42 regulations [Section 9], and excerpts from HUD Handbook 4350.3 REV-1 change 4 [Sections 22-24] are included in this manual for reference. Additionally, Connecticut's requirements for owners of a tax credit property are delineated in the Extended Low-Income Housing Commitment (ELIHC), as well as in the LIHTC Procedures, Qualified Allocation Plan, and other documents of the Connecticut Housing Finance Authority (CHFA).

Reference for owners and managers

Owners are responsible for being aware of all applicable federal and state rules and regulations that govern their properties.

Note: Owners are encouraged to consider joining trade associations, participate in LIHTC trainings and keep themselves informed, aware and involved.

This manual focuses on the responsibilities of owners and managers of LIHTC projects from the beginning of the lease up period through the end of the compliance period. Subjects discussed include:

- Owner's recordkeeping requirements
- Occupancy regulations
- Properly evaluating tenant income, assets and eligibility at move-in and at re-certification
- Determining the maximum gross rent for units
- Regulatory considerations when leasing vacant units

Sample forms, including those required for tenant certification procedures, are provided in Section 6 of this manual. "Required" forms are specified in the instructions for that section. Upon approval, other income or asset verification

Note: Rules and interpretations are subject to change . If you are not sure your information is up to date , contact CHF A or their authorized agent .

forms may be substituted for those provided in this manual.

In the State of Connecticut, CHFA is the housing credit agency administering LIHTC allocations. CHFA is dedicated to providing quality affordable housing and is committed to helping owners of LIHTC properties understand and fulfill their obligations under the program. This manual is intended as a reference to promote a better understanding of the LIHTC program.

Credit Period

Credits given over a 10-year period

Note: Properties must be in continuous compliance with all rules and regulations to be eligible for credits.

1.3 Credit Period

Once an LIHTC allocation has been finalized for a property, the tax credits can be claimed annually on a building-by-building basis over a 10-year period, beginning either with

(a) the taxable year in which the building is placed in service, or
(b) at the election of the taxpayer (owner), the succeeding taxable year.

The election under subparagraph (b), once made, is irrevocable. No credits are given if the building does not comply with IRS regulations for meeting initial compliance. This means that eligible households must occupy the required number of units throughout the ten-year credit period plus an additional five (5) year term (see “Compliance Period”). The housing units designated for the LIHTC must also be rent-restricted for a specific period of time.

Compliance Period

Compliance required for 15 years. Plus an additional 15 years for extended use.

1.4 Compliance Period

The tax credit program requires fifteen (15) years of continuous compliance, but allows the credit to be taken over a ten (10) year period. Beginning with 1990 allocations (and no later than 1991) state housing credit agencies began the requirement of extended low-income housing commitments that are recorded in local land records. Owners of these developments must agree to commit to an additional 15-year low-income use of the project beyond the initial 15-year compliance period. It is important for management to understand that such projects are committed to a minimum 30-year time frame of compliance with tax credit eligibility requirements.

If a building is not initially qualified by the end of the first year of the credit period, tax credits associated with unqualified units will earn two thirds credit over the compliance period.

Extended low-income use period

Note: Noncompliance after the 15th year is not reported via 8823 to the IRS. However, it can impact any future developments with your state allocating agency. Take your extended use requirement seriously!

The Extended Low-Income Housing Commitment binds the owner and any successors to maintain specific occupancy and affordability requirements for the projects. The agreement may list the exact number and size of units that must be low–income at designated income levels (including state deep skew set-asides), provisions for allowing staff units, and special needs groups to be served.

The extended use period may terminate for any building if:

(a) acquired by foreclosure, or

(b) the housing credit agency is unable to find a buyer to fulfill the owner's qualified contract request. See Section 42 (h)(6)(f).

Section 42 also provides that each individual state has the power to impose additional requirements over and above the federal standards to better address local housing needs inclusive of extending the period for which the property is kept as affordable housing. CHFA has used this authority to provide for an extended use period of more than thirty (30) years that is not subject to prior termination in certain cases, for example, if owners have obtained a higher ranking for their project in the application process by committing to extended affordability.

An additional factor complicating management of tax credit projects is that LIHTC properties are often coupled with subsidy programs (both project-based and tenant-based) that have other government housing regulations. There are times when conflicts between programs arise. Care must be exercised to ensure that the most restrictive of these competing program requirements is met.

Seven Regulation Periods

1.5 Seven Tax Credit Regulation Periods

Since the 1986 enactment of the LIHTC, Congress has changed or amended the laws governing the program, yet many changes have not been retroactive. In some cases, the change in regulations brought forth by a technical correction is minor; in others, the effect is substantial. Management must not only be aware of the differences in regulations, but must have full

The years referenced pertain to the allocation year.

knowledge of what tax credit law applies to each particular building and/or project. The relevant law for management/ compliance purposes is that applicable to the year in which tax credits were allocated by the state housing credit agency. Currently, there are seven specific tax credit regulation periods as follows:

I. January 1, 1987 – December 31, 1989
Properties receiving credit allocations during this period based rent on the number of people living in the unit. Rents were subject to change whenever the household composition changed. The Omnibus Reconciliation Act of 1993 allowed owners of these projects a one-time opportunity to either maintain the per person rent formula or elect to change to the formula based on apartment bedroom size used for 1990 and later allocations. The owner had to write to the IRS no later than February 6, 1994 to request this election. Once made, the decision to switch formulas or not was irrevocable. The new rent formula only affected new move-ins on or after the election date. A copy of the election letter must have been provided to CHFA or its Authorized Delegate and must be available during any compliance review. Please note that all properties allocated credit during this time period have now completed their compliance periods.

II. 1990
- Rent is calculated by number of bedrooms in a unit (not retroactive).
- Gross Rent Floor adopted (not retroactive).
- Extended Low-Income Housing Commitment required.

III. 1991
- AFDC Student Rule exception (retroactive).
- FmHA Overage Rule (not retroactive).
- Extension on Initial Compliance with Set-Aside (not retroactive).

IV. August 10, 1993
- Married Students Rule (retroactive).
- Single Parent Student Rule (not retroactive).
- 1987-89 Rent Change Option (special rule).
- Section 8 requirement (retroactive) where projects cannot refuse to lease to Section 8 tenants.

Note: Rule changes and interpretations can be subject to change. Owners are responsible for staying informed. Modifications to this manual are not made with every change.

V. Single Parent Student Rule revised, December 2007 (retroactive) [Section 27]

VI. Housing and Economic Recovery Act of 2008 (HERA)

- Area median income—Effective July 31, 2008 all rural properties are allowed to use the greater of area median income or national non-metro median income for establishing their income limits.

- Another exception is added to the student definition. Effective July 31, 2008 a person who was previously under the care and placement of a foster care program will not be considered a full-time student.

- Effective July 31, 2008 the basic military housing allowance will not be included in the calculation of income for certain qualifying projects. To be a qualifying project the development must be located in a county (or adjacent county) where the number of assigned forces has increased by 20% or more as of June 1, 2008 over December 31, 2005.

VII. American Recovery & Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009 (ARRTA) allows State housing agencies to elect to receive cash grants (as determined under the ARRTA) with respect to a certain portion of the State's low-income housing tax credit (LIHTC) allocation.

The estimate outlay to States is $3,000,000,000 for 2009. Under the ARRTA, State housing agencies must use a grant to make subawards to finance the acquisition or construction of qualified low-income buildings, generally subject to the same requirements (including rent, income, and use restrictions on such buildings) as the LIHTC allocations.

Historically, the Federal tax law has permitted tax payers to claim a LIHTC for certain investments made in low-income housing. These LIHTC amounts have helped to attract private capital to invest in the construction, acquisition, or rehabilitation of qualified low-income housing.

State Housing agencies are authorized to allocate the LIHTCs to qualified low-income housing projects. The amount of LIHTCs that a State housing agency may allocate is generally determined by a Statutory formula.

State housing agencies will be able to make the election to receive cash grants under the ARRTA in a prescribed manner.

The Department of the Treasury will issue a form of application, with documentation detailing the grant requirements.

Additionally, the payment mechanism and compliance procedures will be set forth. Further information will be posted as it becomes available.

Important Compliance Factors

COMPLIANCE ISSUES

2.1 General Compliance

Unlike any other federal housing program, the LIHTC Program is administered by the IRS. The key to the entire tax credit program, as well as an owner's ability to claim the full amount of tax credits allocated to the project, is *continuous compliance* with federal and state LIHTC regulations throughout the compliance period.

Income eligible and rent restricted

The two fundamental components of compliance are as follows:

- Tax credit units must be rented to households that are income eligible at move-in;
- Rent must be restricted according to the maximum limits imposed by using the appropriate formula and income limits.

Note: Keep key documents available to everyone involved in keeping your property in compliance.

These include but are not limited to:

8609s
Regulatory Agreement
Training/Educational Materials

An LIHTC project may have both tax credit units (low-income units) and market (unrestricted rent) units, or it may have 100% tax credit units. The project may also have nonresidential units specified in the LIHTC application and designated in the Extended Low-Income Housing Commitment. The income eligibility and restricted rent requirements apply only to the low-income units. These issues will be discussed in more detail later in this manual.

Each Allocating Agency or their Authorized Delegate must monitor owners to ensure properties are in compliance. The IRS requires that all findings of noncompliance, whether corrected or not, must be reported. A leading cause of noncompliance stems from the owner's failure to inform management of the specific regulatory commitments that have been made. Once credits have been allocated for a property, it is imperative that management be given copies of all regulatory and extended use documents to keep on file, including the Tax Credit Application, IRS Form(s) 8609 [Section 10], and Certificates of Occupancy.

CHFA requires that these documents be inserted into Section 1 of this manual and always be readily available for review by your monitoring agency. The following make up CHFA's regulatory documents:

- Tax Credit Application
- Notice of LIHTC Reservation
- CHFA Carryover Allocation Agreement of LIHTC
- Extended Low-Income Housing Commitment
- Copies of original executed, signed 8609s
- Utility Allowance Documents (updated annually)
- Declaration of Restrictive Covenants for Low-Income Housing Tax Credits
- Limited Partnership Agreement
- Certificate of Occupancy

Additional key issues are as follows:

Allocation year

A. **Allocation year** – As previously stated in Section 1, different compliance regulations are in force depending on the year the tax credit allocation was awarded. The most important compliance issue is that all monitoring/ compliance is based on the year of **allocation**. *The first two numbers of the Building Identification Number is the allocation year.* Maintain a record of this date.

Recordkeeping by building

B. **Compliance by building** – All monitoring/compliance is a **building** issue. Records must be kept by building and by unit number, not by project or alphabetical order by tenant. Every LIHTC building receives a separate IRS Form 8609 and is assigned its own BIN (Building Identification Number). Required annual reports must be submitted by BIN.

Monitoring begins when building places in services

To be eligible for credits, a unit must be rented to an income eligible tenant. It must be occupied on a non-transient basis.

For Rehab: A temporary Certificate of Occupancy can be used as the Placed In Service Date.

C. **Placed-in-service date** (**PIS**)– For the LIHTC, a building's **placed-in-service date** initiates the start of compliance monitoring for that building. Each building has only one placed-in-service date for new construction or rehabilitation credits. It is possible to have the same or different dates for different buildings. For new construction, this date is the certificate of occupancy date—"the date on which the building is ready and available for its specifically assigned function, i.e., the date on which the first unit in the building is certified as being suitable for occupancy in accordance with state or local law." [Section 19] It is the date when the first unit in a building *could* be occupied, not when it *was* occupied. For rehabilitation of an existing building, the owner selects any date within a 24-month period over which rehab expenditures are aggregated. The placed-in-service (PIS) date is recorded on the 8609 form for each building. Be sure you have documentation to back up the PIS date for every building in your project. *It is important to note: If you have Section 8 tenants, as in a HUD project based property, you must certify your tenants income eligible before you can claim the unit as a tax credit unit. You cannot rely on old certifications (previous year) for this purpose. If you will have both acquisition credits and re-hab credits, and you have performed a Tenant Certification for the Acquisition PIS date, you may rely on that certification and are not required to complete another certification for the re-hab PIS date.*

Eligible basis equals allowable development costs

D. **Eligible basis** – "Eligible basis consists of

(1) the cost of new construction,

(2) the cost of rehabilitation, or

(3) the cost of acquisition of existing buildings acquired by purchase… **.** Only the adjusted basis of the depreciable property may be included in the eligible basis. The cost of land is not included in adjusted basis." [General Explanation of the Tax Reform Act]

Note: Market apartments are included in eligible basis. Be sure to include them when completing your end of year reporting.

Eligible basis includes the cost of low-income units, facilities for use by the tenants (e.g., common areas, elevators, corridors, roofs) and other facilities reasonably required by the project. The allocable costs of tenant facilities such as swimming pools, other recreational facilities, and parking areas may be included 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. Costs of the residential rental units in a building which are not low-income units may be included in eligible basis only if such units are not above the average quality standard of the low-income units. Rehabilitation costs may not be included in eligible basis if such expenditures improve any unit beyond comparability with the low-income units. **Eligible basis does not include commercial space.**

Any change in the eligible basis that results in a decrease in the *qualified basis* of the project is noncompliance that must be reported to the IRS. See Section 2.4.

Compliance period begins when credits are claimed

E. **Initial credit period** – Owners may initially claim credits for the year that the building is placed in service or may defer claiming credits until the close of the following year. It is important for management to know when the credits were or will be claimed for the first time because the compliance period runs fifteen (15) years starting with the first year credits are claimed. The owner makes the election for the initial credit period on each building's Form 8609. Once made, the election is irrevocable. Credits may not be claimed until the minimum set-aside is met.

Minimum number of LIHTC units required

F. **Minimum set-aside (MSA)** – Also an irrevocable election, the minimum set-aside establishes both the minimum number of low-income units to be maintained in a project and the applicable income limit for households to qualify for all tax credit units. See discussion in Section 2.2.

Criteria for tax credit unit

G. **Qualified LIHTC unit** – A low-income unit qualifies for the tax credit when the following conditions are met:

- Tenant eligibility verified and certified
- Restricted rent
- Nontransient residency
- Unit suitable for occupancy
- Unit recorded as LIHTC unit
- Tenant eligibility re-certified annually: by third party process for mixed-use properties and by self-certification process for 100% LIHTC properties
- Available to the public on a non-discriminatory basis

Units meeting these requirements may be counted in the **qualified basis** for tax credit purposes (See Section 2.4).

Keep first year records for 21 years

H. **Recordkeeping requirements** – IRS regulations list the LIHTC recordkeeping and record retention requirements for owners to follow to maintain compliance. Project owners and managers should be familiar with this list and understand that required records could be subject to monitoring at any time. In addition, the first year records must be kept for 21 years. It is strongly recommended that these original documents be stored in a secure fireproof and waterproof location.

2.2 Minimum Set-Aside Election

Minimum Set-Aside

The most critical compliance issue for a low-income housing tax credit project is the minimum set-aside (MSA) requirement. In order for an owner to claim tax credits, a project must have a minimum number of qualified tax credit units. The owner must select one of three minimum set-asides, which establishes both the minimum percentage of tax credit units at the project and the income limit used to determine tenant eligibility. The IRS requires the selection and adherence to a minimum set-aside as follows: "A residential rental project providing low-income housing qualifies for the credit only if

20/50, 40/60 or Income Averaging to qualify for credit

(1) 20 percent or more of the aggregate residential rental units in the project are occupied by individuals with incomes of 50 percent or less of the area median gross income, as adjusted for family size, or

(2) 40 percent or more of the aggregate residential rental units in the project are occupied by individuals with incomes of 60 percent or less of the area median gross income, as adjusted for family size."

(3) 40 percent of the units have to be occupied by individuals where The average of the imputed income limitations designated cannot exceed 60 percent of the area median gross income, as adjusted for family size. The designated imputed income limitations must be in 10 percent increments as follows: 20%, 30%, 40%, 50%, 60%, 70%, 80%

The owner specifies the MSA when applying for a tax credit allocation and makes the MSA election on the Form 8609 for each building. This election is irrevocable and sets the applicable income limit for *all* LIHTC units in the project. The minimum set-aside must be met within the initial credit period or the property will not be eligible for tax credits. In addition, the MSA must be maintained for the entire 15-year compliance period or recapture of the credit for all units will result.

Multiple building vs. building-by-building

If a building is identified as part of a **multiple building project** on Line 8b of the Form 8609, the minimum set-aside may be met across all so noted buildings in the project. If the building is not identified as part of a multiple building project, the MSA must be met **within that building**. Properties with several buildings may have buildings noted differently on the form 8609, so management must be aware of the status of **each building.**

Example 2-1: The owner of a 10-building, 100-unit tax credit project has elected the 40/60 minimum set-aside to be met as a *"multiple-building" project,* meaning that 40% of 100, or **40 units project-wide**, must be rented by the end of the initial credit period to tenants who are eligible at the 60% area median gross income limit or no tax credits are available.

Example 2-2: In this case, the owner of the same 10-building, 100-unit tax credit project has elected the 40/60 MSA to be met on a *building-by-building* basis. If the project were comprised of 6 buildings with 12 units each and 4 buildings with 7 units each, 40% of a 12 unit building = 4.8 or 5 units and 40% of a 7 unit building = 2.8 or 3 units. Thus the MSA = (6 buildings x 5) plus (4 buildings x 3) = 30 plus 12 = 42 units. In this example, the MSA must be met by the end of the initial credit period for each building or the building will not be eligible for tax credits. *Management must be aware of the distinction between per building and project-wide MSA.*

Allocation year affects MSA

Depending on the year of allocation, different requirements regarding the MSA apply. For 1987-1990 projects, the MSA had to be met within 12 months of the Placed-in-Service date. For 1991 and later years, the MSA must be met no later than the close of the first year of the credit period for such building. The MSA must be met prior to any credits being claimed, thus if an owner wanted to claim credits at the end of year one, the MSA would have to be met as needed, by building or project, by 12/31 of the first year. If the owner has deferred the first credit year to the year after placing in service, the MSA must be met by 12/31 of the second year after placing in service.

MSA not to be confused with state set-asides

Note: Multiple layers of financing mean multiple layers of rules. Keep Track!

The tax credit MSA should not be confused with other set-asides such as state set-asides that earned extra points in the allocation process and are recorded in the project's ELIHC. States may impose set-asides that require certain units to be rented to the elderly or to large families, or may impose lower income limits than the LIHTC would require. In addition, the MSA should not be confused with HOME fund requirements or subsidy programs such as HUD Section 8 or Rural Development. Always determine the tax credit MSA first and review allocation documents to identify any additional set-asides. Implement a tracking system for all set-asides to ensure compliance with these requirements. Follow the most restrictive set-asides so that the project will remain in compliance with all set-asides.

Income Limits

2.3 Income Limits

Each year, the Department of Housing and Urban Development (HUD) publishes the Section 8 and Multifamily Tax Subsidized Projects (MTSP) area median gross income limits for all states. The IRS requires MTSP income limits, as adjusted for family size, to be used when determining eligibility of LIHTC tenants. The minimum set-aside election establishes whether the 50% or 60% area median gross income (AMGI) limit applies to the project's tax credit units.

Prior to 2009

VLI=50% limits

HUD's **50 Very Low Income** amounts equal the **50% AMGI** limits for households of one to eight persons. The **60% AMGI** limit equals 120% of the HUD Very Low Income amount for the corresponding family size. Calculate the 60% limits by multiplying the 50% AMGI figures by 1.2

50% x 1.2 =60%

Example 2-3: If the 50% income limit for a 2-person household equaled $25,100, the 60% income limit for a 2-person household would be $25,100 x 1.2 = $30,120. (While HUD rounds figures to the nearest $50 or $100, there is no provision in the code for rounding the 120% calculation up or down.)

After 2008 MTSP table should be utilized for eligibility purposes.

Use new income limits within 45 days

Where State set-asides at lower income percentages are in place, these limits would also need to be calculated. Most Allocating Agencies provide the income limits for any additional set-asides. *When HUD publishes new income limits, owners are required to implement the new income limits no later than 45 days after the effective date.* Be aware that any fluctuations up or down in the income limits will have a corresponding impact on maximum gross rent amounts.

Qualified Basis

2.4 Qualified Basis & Low Income Occupancy

Determines the amount of tax credits the owner can claim each year

The amount of tax credits an owner can claim depends on the number of rent-restricted, qualified LIHTC units in each building of the project. The percentage of TC units (applicable fraction) in the building multiplied against the allowable development costs (eligible basis) establishes the amount for the

Applicable fraction is lesser of unit fraction and floor space fraction

Note: Managers need to know which fraction applies in order to maintain compliance with the Next Available Unit Rule and the Vacant Unit Rule. Do not just assume it is the same fraction every year.

building's qualified basis. The qualified basis multiplied by the project's particular tax credit percentage (9% or 4%) determines the amount of credit an owner can claim each year for the 10-year credit period.

The **applicable fraction** is calculated for each building and is the lesser of:

(a) the unit fraction—the proportion of low income units to all residential rental units in the building, or

(b) the floor space fraction—the proportion of floor space of the low-income units to the floor space of all residential rental units in the building.

Owners have until the end of the initial credit period to establish the project's original low-income occupancy—the applicable fraction for each building. The low-income occupancy achieved by the end of the initial credit period establishes the project's original qualified basis (QB). Once the QB has been initially established and credits are claimed, the QB is locked in and must be maintained for the entire 15-year compliance period or recapture will result. Only low-income units in the original qualified basis are eligible to receive the full tax credit value during the accelerated 10-year credit period. The qualified basis of a building may be increased subsequent to the initial determination only by reason of an increase in the number of low-income units or in the floor space of the low-income units. Credits claimed on such additional qualified basis are determined using 2/3 of the value of the credit which is now "de-accelerated" through year 15.

A decrease in a project's applicable fraction reduces its qualified basis. If a project's qualified basis for a given tax year decreases from the previous year, this results in noncompliance and recapture by the IRS of some or all of the accelerated portion of the project's credits claimed in prior years.

Maximum Gross Rent

2.5 Maximum Gross Rent

Units qualifying for tax credits are subject to a rent restriction formula that sets the maximum gross rent that may be charged. The maximum gross rent may not exceed 30% of the applicable qualifying income limit. Gross rent equals the tenant portion of rent plus the cost of tenant-paid utilities (except telephone, internet, and cable) and any other non-optional charges. If low-income tenants are charged more than

Restricted Rents

the allowable rent, the unit is in noncompliance and recapture of credits may result. Whenever utility costs are paid directly by the tenant, gross rent must include an allowance for utilities. Section 2.6 provides more information regarding utility allowances.

The maximum gross monthly rent is calculated by this formula:

Maximum Gross Rent (including Utilities) =
(Applicable Income Limit divided by 12) x 30%

If the rent calculation ends with a decimal point, always round the amount down since you may never charge more than the maximum. Rounding up would charge more than the maximum allowable rent, resulting in noncompliance.

# Persons		1	2	3	4
Income Limit	50%	13,600	15,550	17,500	19,450
	60%	16,320	18,660	21,000	23,340

# Persons		1	2	3	4
Rents	50%	340	388	437	486
	60%	408	466	525	583

Example 2-4: If the applicable income limit = $17,500, then divide by 12 to get **$1458.33** then multiply by .30 , to get **$437.49**. Round down to **$437** so as not to exceed the maximum. The maximum gross rent including utilities cannot exceed this figure.

A. **1987-89 Projects**
For projects with 1987, 1988, or 1989 tax credit allocations, the unit rent was calculated using the income limit for the actual number of people in the household. Therefore, the maximum rent could increase or decrease based on respective changes in the household composition. The 1987-89 projects have all completed their compliance periods, therefore no property still regulated by Section 42 has rents based on family size.

B. **1990+ Projects**

For 1990 and later allocations, rent is based on unit size, not the number of people in the household. The rent formula

# Bedrooms	0	1	2
Income Limit	1 person	1.5 person`	3 person

uses an imputed family size of 1.5 persons per bedroom to determine the applicable income limit upon which to base rent calculations. For efficiency or studio units which do not have separate bedrooms, the 1 person income limit is used.

# Persons		1	1.5	3
Income Limit	50%	13,600	14,575	17,500
	60%	16,320	17,490	21,000

Example 2-5: To determine which income limit amount to use for the bedroom size rent formula, use the imputed household size of 1.5 persons x the actual number of bedrooms, with an efficiency/studio using the one person income limit.

# Bedrooms		0	1	2
Income Limit	50%	340	363	437
	60%	408	437	525

For the 1.5 person income limit, take the 1 person limit, add to the 2 person limit and divide the answer by 2. Using the limits provided in Example 2-5 above, the income limits and resultant maximum gross rents for the bedroom size formula would be:

C. **Option to Change Pre-1990 Rent Formula**

Owners of pre-1990 projects were given an option to make a one-time irrevocable election by February 6, 1994 to convert to the bedroom size rent formula. If election to the bedroom size formula was made, it could only apply to new move-ins following the date of election while prior tenants remained on the household size rent formula. *The owner was required to provide documentation to their State Monitoring Agency*

or the Authorized Agent that this election to the IRS was made.
As noted above, all pre-1990 projects have now completed their compliance periods.

Note: When completing End of Year Reporting. Do not include subsidies when listing tenant rent.

D. **Rent Subsidies**
Gross rent does not include any housing assistance payments made to an owner to subsidize a tenant's rent, such as from Section 8 or any comparable federal or state rental assistance program to a unit or its occupants. Only the actual rent paid by the tenant, including tenant-paid utilities, is counted toward the maximum gross rent allowable. For example, if the LIHTC maximum gross rent was $350 and the total tenant payment was $250 with Rental Assistance paying an additional $150 subsidy to reach the Basic or Contract Rent of $400, there is no problem. The rent meets tax credit guidelines because the total tenant payment inclusive of utilities does not exceed $350.

E. **Section 8 Rent**
The HUD Section 8 program protects subsidized tenants from ever paying more than 30% of their adjusted gross income for rent. For this reason, in 1989 the IRS ruled that if the tenant portion of rent increases above the LIHTC maximum gross rent, thereby reducing the Section 8 subsidy, the higher rent may be charged.

F. **Rural Development Overage**
In RD 515 projects, overage rents may result when 30% of the tenant income minus the utility allowance exceeds the RD program's Basic Rent. If this overage rent exceeds the maximum LIHTC rent, then the overage cannot always be charged. For 1991 and later year projects, the overage can be charged for amounts that are turned over to RD. In 1987-1990 projects, the overage cannot be charged to the tenant since this provision is not retroactive.

Utility Allowances

Mandatory amenities or services in gross rent

Note: If a tenant is not directly informed a service/amenity is not required as a condition of occupancy, it is presumed to be required and must be included in the gross rent calculations.

2.6 Utility Allowances

The maximum gross rent includes the amount of tenant paid utilities inclusive of costs for heat, lights, air conditioning, water, sewer, oil, and gas, where applicable. Utilities do not include telephone, internet, or cable television. Whenever the tenant directly pays utility costs, a utility allowance must be used to determine the maximum unit rent that may be charged. The utility allowance must be subtracted from the maximum gross rent to calculate the maximum tenant portion of rent.

In addition, any *mandatory* supportive service or amenity charge must be counted as part of the gross rent for these units. Such costs may include parking fees, a telephone if required to open the door or project gate as part of a security system, housekeeping, trash removal, meal service, or other required costs. Charges for *optional* services other than housing do not have to be included in gross rent, but such services must truly be optional. *NOTE: Fees may not be charged for any item that is part of the eligible basis (See Section 2-1).*

Example 2-6: If the maximum gross rent on a unit is $525 and the tenant pays utilities with a utility allowance of $75, the maximum tenant portion of rent allowable is $450 ($525 – $75).

Example 2-7: If the same tenant pays an additional mandatory parking fee of $25 per month, the maximum tenant portion of rent allowable is $425 ($525 – $75 – $25).

Internal Revenue Bulletin 2008-39 was published on 9/29/08. It contains final regulations for 42-10, utility allowances. Utility allowances should be calculated as follows:

(1) Rural Housing Services (RHS) - If a building receives assistance from RHS the applicable utility allowance in the building is the RHS approved UA. Additionally, if any tenant in the building receives RHS rental assistance the applicable US for ALL units in the building (including those occupied by tenants receiving HUD assistance) is the applicable RHS allowance.

(2) HUD regulated buildings - If neither a building nor any tenant receives RHS assistance and the rents and utility allowances are reviewed by HUD on an annual basis, the applicable UA for all units in the building is the HUD utility allowance.

(3) Other buildings - If a building is not subject to either 1

or 2 above, the applicable utility allowance for rent-restricted units in the building is determined under the following methods:

(i) For tenants receiving HUD rental assistance, use the applicable PHA utility allowance.
(ii) For other tenants, (A) the general rule is to use the PHA utility allowance. However, if a local utility company estimate is obtained in accordance with (B) below, that estimate becomes the appropriate utility allowance.

(B) Utility company estimate. The estimate is obtained when an interested party receives, in writing, information from a local utility company providing the estimated cost of that utility.

(C) HUD Utility Schedule Model. May be found at www.huduser.org/datasets/lihtc.html.

(D) Energy consumption model. A building owner may calculate utility estimates using an energy and water and sewage consumption and analysis mode.

(E) Estimates Provided by State Agency's Agent or Private Contractor. A state agency may use an agent or other private contractor to calculate the utility estimates. The agent or contractor must be a properly licensed engineer or a qualified professional. The professional must be (1) approved by the state/local housing credit agency having jurisdiction over the building, and (2) must not be related to the building owner within the meaning of IRC 267(b) or 707(b).

Update utility allowances at least annually and submit with annual reports.

Utility allowances must be updated at least annually since they are included in the maximum allowable rent calculations. Copies of utility allowance documentation must be submitted with CHFA's required annual year-end reports. Realize that any changes in utility allowances have a direct impact on the net chargeable rent to the tenant. *Any new allowance must be implemented within 90 days of the change.*

Additional LIHTC Regulations

2.7 Additional LIHTC Regulations

The following is a list of additional LIHTC regulations.

Recapture may result from renting comparable size units in the BIN to ineligibles while a TC unit is vacant.

A. **Vacant unit rule**

If a low-income unit becomes vacant during the year, the unit remains LIHTC compliant and eligible for the tax credit for purposes of the set-aside requirement and determining the qualified basis provided reasonable attempts are made to rent the unit or the next available comparable or smaller size unit to an eligible household and no other comparable or smaller size units in the project are rented to non-qualifying individuals. See [Section 25] for IRS verification of this rule.

"Reasonable attempts" indicates that efforts toward marketing and renting a unit that is suitable for occupancy must be made. *Under no circumstances can you claim credit on the unit if you violate this rule.* Concurrently, if an owner of three vacant units violates this rule by renting to a non-eligible applicant, credit on all three vacant units will be lost and the units cannot be counted toward the minimum set-aside.

Units that have never been occupied are termed "empty" rather than vacant, and cannot be counted as low-income units. However, they must be included in the building's total unit count for purposes of calculating the applicable fraction.

Owners are required to keep records for each qualified low-income building in the project showing for each year of the compliance period the low-income unit vacancies and data for when, and to whom, the next available units were rented.

B. **Deep Income Targets--Application of the Next Available Unit Rule (NAUR)**

The Connecticut Housing Finance Authority's policy pertaining to the Next Available Unit Rule (NAUR) as applied to "Deep Income Target" set-asides. This rule is provided as guidance for maintaining compliance with Section 42 of the Internal Revenue Code and the Extended Low-Income Housing Commitment.

"Deep Income Targets" are defined as households having a gross income limited at or below 50% Area Median Income adjusted for family size and rent limited to 30% of the applicable imputed income limitation. You will find the specific set-aside(s) outlined in your development's Extended Low-Income Housing Commitment.

For purposes of compliance with the Low-Income Housing Tax Credit (LIHTC) program, a household qualified as a "Deep Income Target" unit automatically meets the income and rent test for both the 20/50 and 40/60 set-asides as defined in IRC Section 42(g)(I). Accordingly, the Next Available Unit Rule (NAUR) shall also apply to the "Deep Income Target" units. That means a "Deep Income Target" unit shall continued to be treated as a qualified unit for tax-credit purposes until such time as the household's income rises above 140% of the applicable income limitation (either 20/50 or 40/60). At such time the NAUR as defined in IRC Section 42(g)(2)(D)(ii) must be followed and the new household must meet the income and rent requirements of a "Deep Income Target" unit.

Please be aware that LIHTC developments must be able to demonstrate continual compliance with the terms and conditions of the Extended Low-Income Housing Commitment. Please refer to your executed Commitment for further clarification on specific requirements pertaining to set-asides, applicable fractions and unit mixes.

Available Unit/140% Rule

Remember: The "Reasonable Attempts" wording is not a part of the Next Available Unit Rule.

C. Available unit rule / 140% rule

If the household income for residents in a qualified unit increases to more than 140% of the current applicable income limit, the unit is considered an "over-income unit" but may continue to be counted as a low-income unit as long as two conditions are met. The unit must continue to be rent restricted and the next comparable size unit in the building must be rented to a qualified low-income tenant. The owner of a low-income building must rent to qualified residents *all* comparable units that are available or that subsequently become available in the same building until the applicable fraction (excluding the over-income units) is restored to the percentage on which the credit is based.

IRS Regulation 1.42-15, effective September 26, 1997, allows over-income tenants who were previously LIHTC eligible to move to a new unit within the same building, because when a current resident moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit [Section 21].

Violating this rule means losing the credits on all 140% units. These units would no longer count toward the MSA.

Relocating tenants

D. Relocating existing tenants

When an existing tenant moves to another unit within the same building, the status of the two units swaps. Thus, if a qualified tenant moves to an 'empty' unit, the new unit ceases to be ‘empty’ and becomes a qualified unit. The original unit will then be deemed ‘empty’.

When the transfer occurs between different buildings in the same project, a similar rule applies as long as the tenant’s income did not exceed 140% of AMI at the most recent certification. Please note that for purposes of this test, if on the 8609 the owner elected to say ‘No’ to line 8b, then the owner has chosen to treat each BIN as a separate project. In this case, a transfer would require a new certification and the tenant would have to be qualified at the time of move-in.

During the initial credit period, existing tenants cannot be relocated for purposes of qualifying more than one LIHTC unit to count toward the minimum set-aside or applicable fraction. *Under no circumstances can one household be used to initially qualify more than one tax credit unit in the project.*

E. **Staff units**

Units occupied by staff

Revenue Ruling 92-61 [Section 13], effective September 9, 1997 allows a unit for a *full-time* staff member to be considered part of a project’s “common area.” Such units are not classified as residential rental units and thus are not included in either the numerator or denominator of the applicable fraction under section 42(c)(1)(B) for purposes of determining the building’s qualified basis.

Revenue Ruling 2004-82 [Section 25] further expanded staff units to include a unit occupied by a full-time security officer for the building if the building owner requires the security officer to live in the unit.

Two options apply:

(1) If the staff unit is a rental unit and is to be counted as part of the qualified basis, then the staff must be income eligible, be certified, and sign a lease the same as any low-income tenant. In this case, if the staff member receives free rent or a rental discount, the imputed value of the rent or discount must be included as income.

(2) If the unit is not a residential rental unit but used as common area by full-time staff, then the staff does not have to be income eligible, certified, leased, or considered

a tenant.

The owner's LIHTC application and the allocation documents should stipulate the number of common area units set-aside for staff. If not, the owner should work with CHFA on amending or clarifying the language in the ELIHC. This revenue ruling does not apply to any building placed in service prior to September 9, 1992 or to any building receiving an allocation of credit prior to that date unless the owner filed a tax return that is consistent with this ruling.

6-month minimum initial lease term required except for SROs or transitional housing for the homeless

F. **Nontransient occupancy**

"Residential rental units must be for use by the general public and all of the units in a project must be used on a nontransient basis….Generally, a unit is considered to be used on a nontransient basis if the initial lease term is six months or greater."

[General Explanation of the Tax Reform Act of 1986]

"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."

[Section 42(i)(3)(B)(i)]

To be in compliance, a six-month minimum lease term is required at initial occupancy of low-income units. A six-month lease addendum should be signed with in-place tenants who do not have six months left on an existing lease when the building is placed in service. The only exceptions to this requirement would be SRO housing rented on a month-by-month (30-day lease) basis or transitional housing for the homeless as specified below.

LIHTC ineligible facilities

G. **General public / fair housing**

All residential rental units in the project must be available for use by the general public. LIHTC properties are subject to Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act, prohibiting discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability.

Know accessibility requirements

Tax credit units may not be provided only for members of a social organization or provided by an employer for its employees. In addition, any residential rental unit that is part of a hospital, nursing home, sanitarium, life-care

facility, dormitory, trailer park, retirement home providing significant services other than housing, or intermediate care facility for the mentally and physically handicapped is not for use by the general public and is not eligible for credit under Section 42.
Housing and Economic Recovery Act of 2008, H.R. 3221 clarifies the general public use test to explicitly allow Credit developments that establish tenancy restrictions for persons with special needs, tenants who are involved in artistic or literary activities, and persons who are members of a specified group under a Federal or state program or policy that supports housing for such a specified group, effective for buildings placed in service before, during, and after date of enactment."

Discrimination Prohibited

The Fair Housing Act also mandates specific design and construction requirements for multifamily housing built after March 13, 1991, to provide accessible housing for individuals with disabilities. Owners are expected to be familiar with accessibility requirements applicable to their projects.

The IRS 8823 Report of Noncompliance form states:

"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."

"Available to the general public" applies to all residential rental units, market and tax credit.

Student status determined on a tax-year basis

No grandfathering due to student status

H. **Students**

Many students are considered to be transient and thus are not LIHTC eligible. The issue with students is only a concern when *everyone* in the household is a full-time student, defined by the IRS as taking 12 credit hours a semester or attending school full-time 5 months per year at an educational institution with regular facilities, other than a correspondence or night school. The IRS has made it clear that student status is to be monitored on a tax-year basis, thus an applicant would not be eligible if the person had been a full-time student for 5 months of the tax year, even if they had graduated prior to applying for an LIHTC unit. Owners and managers should adjust tenant certification procedures to consider student status according to this interpretation. In addition, there is no grandfathering of eligibility because the tenant was not a student when they moved in and later became one. For this reason, tenant student status must be re-verified at annual certifications to confirm continuing eligibility of the household. Failure to verify student status is noncompliance.

Exceptions: A unit would not be disqualified for tax credits if it is occupied as specified in Section 42(i)(3)(D)—

(i) by an individual who is—

I. A student and receiving assistance under title IV of the Social Security Act,

II. A student previously under the care and placement responsibility of the State agency responsible for administering foster care.

III. 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 (foster care), or

IV. A student 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) and the children are not dependents of another individual other than the parents, or

II. married and (entitled to) file a joint return.

The single parent exception was changed as noted above in December, 2007.

Section (i)(II) was established with the Housing Assistance Tax Act of 2008.

I. **Section 8 certificates / vouchers**

Section 42 states that LIHTC properties may not refuse Section 8 certificate or voucher holders simply on the basis of their Section 8 status. However, this does not assure tenant selection, because applicants eligible for Section 8 may have incomes exceeding LIHTC income limits, may have negative references, may not be able to afford the rent with vouchers in some situations, or the unit rent may exclude certificate holders due to a conflict with the local Fair Market Rent.

Note: Do not leave vacant units dirty, in disrepair or otherwise uninhabitable because you have other units ready for rent. The unit you leave uninhabitable is not credit worthy!

J. Suitability of unit

A unit must be suitable for occupancy in accordance with state or local codes in order for credits to be claimed. If the unit is not habitable, no credits can be claimed. In a related situation, the IRS has ruled that should a unit be destroyed due to casualty loss (i.e., fire, flood, or any other disaster) for which credits cannot be claimed while the unit is being replaced, if the unit is restored within a reasonable time within a taxable year, credits can again be claimed and no recapture would occur. Tax credit units that are vacant must be made ready to rent as soon as possible. Otherwise, they would not be considered suitable for occupancy and would not be eligible for credit.

DETERMINING TENANT ELIGIBILITY

3.1 Overview

Tenant Eligibility for LIHTC

Owners must determine and document the eligibility of potential low-income tenants in accordance with LIHTC requirements. A tenant's income eligibility is determined by comparing the household's gross annual anticipated income per HUD guidelines to the LIHTC 50% or 60% area gross median income limits that apply to the project. As previously mentioned in Section 2.7(H) of this manual, student status may also affect the eligibility of a household. Owners must verify the household's income and the student status of all household members and the tenant and owner must certify the accuracy of the verified information. Since household composition, income, and student status may change over time, owners must re-certify the eligibility of tenants in tax credit units annually, on or before the anniversary date of the previous certification.

Income and student status must be considered

3.2 Household Size and Income Limits

Household Size

Section 42 mandates that HUD income limits as adjusted for household size be used in determining income eligibility for the LIHTC. A household can consist of one or more persons. Members do not need to be related to be considered a household. Count all household members and compare to the per person 50%, 60% or AIT income limits currently in effect. Full-time students residing together in a unit do not constitute a household under LIHTC requirements unless one of the exceptions listed in Section 2.7(H) applies.

Certain individuals are not considered members of the household in determining the income limits.

Do NOT count the following in determining income limits:

- Live-in Attendants
- Visitors or Guests
- Foster Children
- Foster Adults

Temporarily absent members who *would* be included in the household size determination include:

Note: Spouses not currently residing with the applicant but who may return are counted as household members. Separation agreements, estrangement and divorce documents must all be on file to exclude income of spouses that are not expected to become members of the household.

Unborn children and children being adopted are counted for income limits

- Children temporarily absent due to placement in a foster home
- Children away at school, but who live with the family during school recesses
- A person confined to a hospital or nursing home per family decision
- A son or daughter on active military duty *only* if this person leaves dependents or a spouse in the unit
- CHFA recognizes unborn children and children in the process of being adopted as household members in determining income limits.

Definition of Income

3.3 Gross Annual Income

The codes states – “Tenant income is calculated in a manner consistent with the determining of annual income under Section 8 of the United States Housing Act of 1937 (“Section 8”), not in accordance with the determination of gross income for federal income tax liability.” Annual income includes, with respect to the family all amounts received from all sources by each member of the family who is 18 years of age or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 year of age.

Total Income from all Sources		**=**		**Annual Income**
Gross Earned/ Unearned Income	+	Net Income from Assets	=	Annual Income

For information regarding what annual income includes/excludes and how to calculate annual income, see Section 23 for excerpts from HUD Handbook 4350.3 REV-1, Change 2, 5-6. Note that LIHTC total income is gross annual income, *not* "adjusted" annual income. Allowances used in some government programs, such as childcare allowance and medical expense allowance, are not deducted from the household's annual gross income to determine income eligibility for LIHTC units.

Net Asset Income

3.4 Assets

The net income from assets must be considered when determining the tax eligibility of a household. Asset information for all household members (including minors) should be obtained at the time of application. Information regarding what net family assets include/exclude is provided in [Section 23] excerpts from HUD Handbook 4350.3 REV-1, Change 2, 5-83, Exhibit 5-2.

Cash value of assets and asset income must be verified for entire household

The cash value for all assets and asset income must be verified by the owner obtaining third party documentation as specified by HUD verification procedures. When the value of net family assets exceeds $50,000 and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

If net assets >$50,000 use the greater of actual income or imputed income

If net assets < $50,000 Management may use the Under $50,000 Asset Form.

When the value of net family assets is to be or at below $50,000 households are allowed to self-certify assets and income from those assets by using the Under $50,000 Asset Form.

Assets disposed of for less than fair market value must be considered assets for two years.

At each certification and annual certification, applicants and tenants must declare whether or not an asset has been disposed of for less than fair market value during the two years preceding the date of application or the effective date of the recertification. An asset is considered to be disposed of for less than fair market value if the cash value of the disposed asset exceeds the gross amount the family received by more than $1,000. If it does, for a period of two years owners must include in the total household assets the difference between the cash value of the asset and the amount received. See [Section 23] HUD Handbook excerpts 5-33 for examples of assets disposed of for less than fair market value.

Application Procedure

3.5 Tenant Application Procedure

Because the LIHTC program uses special definitions for income, assets, and household composition, standard property management application forms may not collect sufficient information to determine tenant eligibility. A comprehensive housing application is critical to the accurate identification of full-time student status, all assets, and anticipated income sources to be verified in the determination of tenant eligibility for the LIHTC. *The application must be sufficiently detailed with regard to income, assets, and student status enabling an owner to effectively make a determination of eligibility for this program.*

The **Application for Housing**, included in Section 6 of this manual, is required for use by all tax credit properties in Connecticut. The information furnished on the fully completed application is reviewed along with supplementary historical documents (i.e., most recent 1040 form, divorce decree, etc.) submitted with the application.

Interview Checklist

The application procedure *must* include an interview with all adult household members to review the application and historical documents and clarify any discrepancies or missing information. (For example, if the recent 1040 form and W-2s show two employers, but the application only lists one, question what happened to the second job and confirm its termination.) This interview is documented with the **required Interview Checklist**, also included in [Section 6] which is signed and dated by management and all adult applicants.

One application and interview checklist signed by all co-applicants should be submitted per household.

3.6 Tenant Income Verification

Determination of annual income of individuals and area median gross income adjusted for family size must be made in a manner consistent with HUD Section 8 income definitions and guidelines. HUD Handbook 4350.3 REV-1 is the reference guide to be used for identifying the income/assets to be included or excluded when determining household income and appropriate excerpts from the HUD Handbook 4350.3 REV-1 are included in Section 23 of this manual.

Verifying Income

The anticipated earned income of every prospective household member 18 years of age or older must be verified. Unearned income, assets and asset income of all household members, including minors, must be verified. Verifications must be received by the owner/ management agent prior to the execution of the certification of tenant eligibility and lease. Information concerning acceptable forms of verification, the effective term of verifications, proper verification methods to follow, and how to calculate total income is provided in HUD Handbook 4350.3 REV-1 included in [Section 23]. To summarize:

A. **Effective Term of Verifications**
Third-party verifications are valid for 120 days following receipt. Owners may not rely on verifications that are more than 120 days old. After this time, a new written verification must be obtained.

B. **Verification Methods**
Written third party verifications are preferred. An authorization to release information must be signed by the applicant/tenant and must accompany verification requests. Owners must send verifications directly to the source and the source must return them directly to the owner.

Verifications must not be hand-carried by the applicant/ tenant to or from the source. If written verification is not possible, direct contact with the source, in person or by phone, is acceptable. The owner must document this verbal verification in the tenant file and must obtain all information as requested on the written verification [See Section 23 HUD Handbook 4350.3 REV-1, 5-49].

Note: When calculating income, be conservative. If you decide a lesser number is warranted explain why. Use of telephone clarifications when information is incomplete or vague is encouraged.

C. Differences in Reported Income

Significant differences between the income/asset amounts reported on the application and amounts reported from third party verifications should be explained by the applicant/ tenant and documented in the tenant file utilizing a form such as the Telephone Verification.

Required verification forms are included in Section 6. If forms currently in use at your property are comparable to the forms in this section, you must receive permission from CHFA to continue to use your current forms. Noncompliance will occur if forms in use do not adequately meet LIHTC and HUD certification or verification requirements.

Certification of Income

Note: The purpose of the certification worksheet is to show the math that results in the amounts listed on the Tenant Income Certification. Consider highlighting the figures on the verification that are used.

3.7 Tenant Income Certification

Once all the income and asset information has been Obtained, data should be recorded and computations done on the **Certification Worksheet** found in Section 6. If the total 12-month projected household income is less than or equal to the maximum allowable qualifying income in effect at the time of tenant certification, the household is income eligible for a tax credit unit. If the total household income exceeds the maximum allowable qualifying income, the household can not be certified eligible for a tax credit unit.

Upon receipt of all verifications, owners/managers should review all documentation and calculations. If it is determined that all requirements for eligibility are met, the **Tenant Income Certification Form** found in Section 6 must be filled out and executed along with the lease prior to move-in. All adult members of the household must sign the Certification form. It is preferred that the Certification be executed by tenants and owner/manager no earlier than 5 calendar days prior to move-in and in no event after the execution of the lease.

Lease

3.8 Lease

All tenants occupying tax credit units must be certified and under Lease (as specified in the Code) no later than the date the tenant takes possession of the unit. The lease must be signed by all parties to the agreement by the beginning lease term date to be properly in effect and the unit in compliance.

Note: Leases must be signed in good faith. A number of short tenancies despite a six month lease can raise questions about procedures. If a tenant vacates early, consider including an explanation (if known) in the file.

Note: Only when a tenant receives Section 8 subsidy can the tenant portion of rent exceed the LIHTC maximum rent limit.

While CHFA does not require a model lease to be used by owners, it is recommended that owners have their leases reviewed by legal council in order to confirm that it meets the requirements of the Connecticut State Statues. Some leasing guidelines are listed below.

A. The lease should include, but is not limited to:
   - The legal name of all parties to the agreement and all additional occupants
   - Identification of the unit to be rented (number, street address, etc.)
   - The date the lease becomes effective
   - The term of the lease
   - The amount for rent—If this reflects a contract rent amount which may include a subsidy payment, rather than just the tenant portion of the rent, a lease addendum listing only the tenant share of rent is recommended.
   - The rights and obligations of the parties, including the obligation of the tenant to recertify income annually (or more frequently as required).
   - The lease addendum TC-100B or TC-100B(1) must be attached to or included in the lease
   - Language addressing changes in income, utility allowance, income limits, basic rent (RD or HUD 236 projects), family composition or any other change and its impact on the tenant’s rent
   - Signature dates

B. The tenant portion of rent plus utility allowance and other mandatory fees must not exceed the maximum gross rent allowed by Section 42 of the Code.

C. The initial lease term must be at least 6 months on all tax credit units, except for SRO housing which may have a 30-day lease or transitional housing for the homeless (as specified in Section 2.7(F) of this manual) which provides “temporary housing” and has no lease requirement. Succeeding leases are not subject to a minimum lease term.

The beginning term of the lease and effective date of the certification should be concurrent. Signatures should be no greater than 5 days prior to these dates.

Additionally, the lease should not contain any clauses that would allow termination prior to the six month tax credit requirement.

Recertification

Annual certifications ensure affordable housing units are occupied by income eligible households, and provide a means to ensure compliance with the Next Available Unit Rule and student status.

3.9 Recertification

Recent changes in IRS regulations no longer require annual certifications for properties that are 100% tax credit. Allocating agencies can still require them and CHFA is no exception.

FOR 100% TAX CREDIT AND TAX EXEMPT BOND PROPERTIES:

CHFA requires that recertification of residents be completed on at least an annual basis (though failure to recertify tenants on an annual basis is no longer cause for the issuance of IRS Form 8823). What is required has changed significantly. *Every* LIHTC household is expected to undergo a complete annual recertification *the year following move in.* Subsequent years, require a self-certification. (See forms in Section 6.)

CHFA can require properties that have rented to ineligible households or demonstrated inadequate certification/ documentation procedures to revert to full annual recertification procedures as with properties containing market units.

FOR PROPERTIES WITH MARKET UNITS:

Section 42 states: “The determination of whether the income of a resident exceeds the applicable income limit shall be made at least annually on the basis of the current income of the resident.” While the recert does not determine continued eligibility, it does identify the 140% rule situation, student status, and possible household composition changes. Properties with market units must complete a full annual recertification every year. **Self certifications cannot be used.**

FOR ALL PROPERTIES:

The timing of the recertification is critical. Recertification must be completed within 12 months from the initial certification date, or 12 months from the most recent certification.

Section 8
Qualification

Note: With a Section 8 tenant your annual recertification folder could consist of just two documents. The certification and a Section 8 income verification Form. Be careful to ensure that the information provided is no more than 120 days old.

Note: The EIV (Enterprise Income Verification) is prohibited in the LIHTC program. EIV cannot be used to verify tenant income.

3.10 Qualifying Section 8 Tenants

Additional forms of income verification may be used for tenants who receive housing assistance through the HUD Section 8 program. For these tenants only, acceptable forms of income verification include a signed copy of the appropriate HUD form 50058 or 50059, a letter from the HUD Contract Administrator (e.g., local PHA) stating that the tenant's annual gross income is less than the applicable LIHTC income limit, OR a Section 8 verification form as found in Section 6. These forms may be used as income verification documentation to support the **Tenant Income Certification Form** which must be executed for every LIHTC household.

Proof of tax credit eligibility must be on file for all Section 8 tenants. Section 8 eligibility does not guarantee tax credit eligibility. Student requirements will never be identified or verified by the local PHA. Proof of income eligibility and tax credit eligibility is the responsibility of the owner.

RECORDKEEPING & RECORD RETENTION

Recordkeeping and Retention

4.1 LIHTC Recordkeeping

The LIHTC program requires owners to maintain project records in accordance with program requirements and to provide annual reports to their State Monitoring Agency documenting project occupancy. IRS regulations set forth in 26 CFR Part I - 1.42-5(b) [Section 26-1] specify the tax credit recordkeeping and record retention provisions that owners must follow to maintain compliance. Recordkeeping responsibilities include three types of project records:

- Tenant files
- Monthly unit data tracking
- Project files, including records regarding the use of facilities included in the project's eligible basis

An owner must keep records for each qualified low-income resident by building and unit number throughout the Compliance Period.

Owners must also provide two documents regarding a project's status:

- LIHTC Owner's Compliance Certification; *annually*
- LIHTC Status Report; *annually*

In addition, Unit History information must be gathered and submitted electronically. Owners and managers will be up-dated on changing technology.

Failure of the owner to provide reports in a timely manner when requested is regarded as noncompliance.

4.2 LIHTC Record Retention

The owner must retain the above-described records for the first year of the credit period 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, meaning original files must be retained for **21 years**. All other records are required to be retained for at least **6 years after the due date** (with extensions) for filing the federal income tax return for that year.

NONCOMPLIANCE

5.1 Types of Noncompliance

LIHTC noncompliance may be defined as a period of time the development, specific building, or unit has failed to follow proper procedures. These procedures may be IRS Section 42 requirements, HUD certification procedures, or CHFA regulatory requirements. Noncompliance can lead to recapture of tax credits for a given period of time.

Most noncompliance issues as identified by IRS definitions may be found on the IRS Form 8823 Low-Income Housing Agencies Report of Noncompliance [Section 20]. In general, noncompliance issues can occur for:

A compliance checklist

- Inadequate certification documents
- Failure to obtain and retain proper income
- verifications
- Missing signatures
- Late certifications or certification signature dates
- Lease issues, i.e., not signed, late, or no 6 month term
- Failure to re-certify by the certification anniversary
- date
- Violations of UPCS or local inspection standards
- Failure to submit year-end documentation on time
- Failure to respond to requests for additional
- information
- Incomplete record-keeping
- Failure to properly identify full time students
- Failure to maintain and update utility allowance
- documentation
- Charging unrestricted rents
- Failure to maintain the minimum set-aside
- Any change in the applicable fraction or eligible basis
- that results in a decrease in the qualified basis
- Housing a non-eligible tenant

- An ownership interest is disposed of
- Failure to use the CHFA designated documentation
- and forms
- Failure to satisfy Special Needs Services or additional
- Low-Income Set-Asides for which additional points
- were allocated

While the last two items listed above are not reportable noncompliance under Section 42, CHFA has made it clear that both should be reported to CHFA as acts of noncompliance.

This list is representative and not meant to be all-inclusive.

- Recapture

5.2 Recapture of Tax Credits

The most serious action the IRS can take against an ownership is the recapture of credits previously claimed. Only the IRS determines this course of action. Consequences to issues of reported noncompliance are not governed by the monitoring agency. If the owner discovers at any time that credits were claimed in error, miscalculated, or the basis was incorrectly listed, IRS Form 8611 may be submitted to voluntarily recapture credits.

- Owner Liability

5.3 Liability

Compliance with the regulatory requirements of Section 42 is the responsibility of the owner(s) of the building for which credit is allowable. CHFA's obligation to monitor for compliance and report any issues of noncompliance with Section 42 regulations to the IRS does not make CHFA liable for an owner's noncompliance.

FORMS

6.1 Required and Recommended Forms

NOTE: Don't confuse required forms with required paperwork.

With the possible exception of Section 8 Voucher holders, every tenant file must have an application or recertification update and verifications. You are also required to prove you have interviewed the tenant/applicant to ensure the information you received is adequate and complete.

This section contains a list of **required** and recommended forms. You will note that the Section A forms are now **required** in addition to the annual year end forms in Section B. The combination of these forms sufficiently meets the Section 42 code requirements for recordkeeping and, in striving to reach a consistent standard of accurate tenant file documentation, their use is **mandatory** for all Connecticut LIHTC properties.

In filling out each form, see that every line item is addressed. Make certain that all forms are filled out completely, including returned verification forms. Do not assume that a blank line means "Not Applicable." *Third party verifications should be mailed or faxed to the source, never hand-carried.* Pursue phone verification to clarify any missing or ambiguous information.

Never use correction tape or liquid to revise information on any document. If revision or correction is required, draw a line through the change, then write the correct information above it. All parties must initial each change or correction.

A. Required Forms For Tenant Certification

1. Tenant Application
2. Interview Checklist
3. Tenant Income Certification
4. Unemployed or Zero Income Statement
5. Re-certification Update
6. Certification Worksheet
7. Student Verification (TC-100A)
8. Lease Addendum Mixed Income (TC-100B)
9. Lease Addendum 100% Qualified (TC-100B1)
10. Employment Verification
11. Under $50,000 Asset Certification or Asset Income Verification (Third Party) (TC-100i)
12. Self-Certification (for 100% LIHTC properties)
13. CHFA's Tenant Guide to Section 42 LIHTC

All required forms can be downloaded from the SPECTRUM website at www.Spectrumlihtc.com

B. Annual Year End Forms (including Post Year 15 Projects)

These forms are **required** as of close of every calendar year of the compliance period for each building and must be submitted by April 1. They can be downloaded from the SPECTRUM website, www.spectrumlihtc.com.

1. CHFA Annual Report/Owner's Certification
2. Evidence of LIHTC training within the past three years
3. Utility Allowance Information
4. Software Download / Status Report database

C. Recommended Forms for Tenant Certification

Note: If the corresponding forms currently in use at your property are comparable to the forms in this section, you may continue to use your current forms with permission from CHFA. However, since these forms are being provided at no additional expense as examples of tenant information to request/verify and document for tenant files, noncompliance will occur if the form in use does not adequately meet LIHTC and HUD certification or verification requirements. Should there be any question regarding comprehensiveness of your forms, please submit your forms to SPECTRUM for approval.

Note:
Contact CHFA or their authorized agent if your tenant's circumstances are unusual. They can provide specific forms or inform you what information you need to obtain.

1. Annuity Verification (Third Party)
2. Child Support or Alimony Certification (Third Party & Self Affidavit)
3. Financial Aid Affidavit
4. Household Student Status Verification (Retroactive, Self-Affidavit)
5. Investment Verification (Third Party)
6. Life Insurance Verification (Third Party)
7. No Change in Income Statement (Self-Affidavit)
8. Pension Verification (Third Party)

9. Public Assistance/TANF Verification (Third Party)
10. Real Estate Asset Worksheet
11. Real Estate Verification (Third Party)
12. Section 8 Income Verification (Third Party)
13. Self-Employment Affidavit
14. Social Security/SSI Verification (Third Party)
15. Student verification (Third Party)
16. Telephone Verification/Clarification (Third Party)
17. Unable to Obtain Third Party Verification
18. Unemployed Status Affidavit
19. Unemployment Verification (Third Party)
20. Verification of Terminated Employment (Third Party)
21. Veteran's Pension/Benefits Verification (Third Party)

All required, recommended and End of Year forms can be downloaded from the SPECTRUM Website www.Spectrumlihtc.com

COMPLIANCE MONITORING

7.1 Fulfilling Compliance Obligations

Your compliance monitoring *begins when you place in service.* The IRS requires specific recordkeeping requirements that may be found in Recordkeeping Requirements of Section 42 in Section 4 of this manual. **In order to maintain compliance with Section 42 and Connecticut Requirements, you should immediately notify CHFA when you place in service.** CHFA will help you identify specific submission requirements for your property.

A review of the low income units in the projects set forth in the Low Income Housing Credit Minimum Unit Sample Size Reference Chart (page 7-10) will be conducted for 1/3 of the LIHTC properties annually is required by the IRS. Currently, SPECTRUM Enterprises performs compliance monitoring under contract as the Authorized Delegate for the State of Connecticut. On the SPECTRUM web site, www.spectrumlihtc.com, you will find information regarding yearly submission requirements. You will need to contact SPECTRUM to receive specific details for the yearly submission requirements and to notify SPECTRUM & CHFA of your placed in service dates. You will be placed on the SPECTRUM mailing list and e-mail blast as soon as it is determined you have placed in service, and you will be notified when any required yearly submissions are due. However, if you place in service earlier than targeted and do not contact SPECTRUM & CHFA, you may miss submission deadlines required by the IRS. Information and updates will be posted on the SPECTRUM web site. This information will include but not be limited to forms, industry Web links, and industry information. Additionally, we will be sending notices via email, in an attempt to reduce paper communications.

Yearly submission requirements

What are the yearly submission requirements? In short, an owner is required to submit an annual report and certification [Section 6] and unit history for all tax credits units. Unit history information is collected electronically for the previous year. You may download software and instructions from the SPECTRUM Web site at www.spectrumlihtc.com.

This information is required by law, so it is very important that information submitted is timely and accurate. Failure to submit on time, incomplete submissions, or inaccurate submissions may be determined noncompliant.

An Owner must realize that the *Owner* is required to maintain and submit the records. Managers must realize that the Owner is financially responsible for late submissions or inaccurate submissions. Be advised that CHFA and Spectrum provide compliance monitoring requirement notices to Owners only and management agents upon written request of owners.

Site visit within two years of PIS date

When will SPECTRUM visit the site? By 12/31 of the second year after the last building places in service and at least once every three years thereafter SPECTRUM review will be the lesser of 20% of the low income units in the projects OR the Minimum Unit Sample Size Reference Chart (page 7-10) as a requirement of the Tax Credit Program. You will be notified at least 15 days in advance of the site visit. While we can accommodate emergency situations, audit dates are not negotiable. Our schedules are tight and geographically coordinated. Normal procedures are as follows:

1. A SPECTRUM Monitor will contact Management by phone to inform them of an upcoming on-site review. The monitor will answer any questions or concerns about the review.
2. A Confirmation Letter (see sample below) will be sent to the owner as well as the site verifying the date, time, and requirements for the review.
3. We visit the site, auditing the tenant files, inspecting the LIHTC units and all common areas.
4. An Owner's Report is then written and forwarded to the Owner after review with CHFA, with management copied with permission of the Owner. There is a thirty (30) day period in which to respond. Late submissions will be considered noncompliance. Submissions after an IRS Form 8823 is generated will only be reviewed subject to CHFA's additional review policy.
5. The Owners' responses to the Owner's Report will be reviewed and, after review with CHFA, a notification to the Owner will be sent out informing the Owner of his compliance status. Management is again copied with permission of the Owner. If non-compliance is being reported, an unsigned copy of the generated Form 8823 will be included as an attachment.

Sample confirmation letter

The following is a sample confirmation letter:

[date]

[name]
[address]

Re: LIHTC Compliance Monitoring For **[property name]**

Dear [name] :

This letter is to confirm our scheduled inspection and review of the referenced property on **[Date]** beginning at **[time]**. We will review **(#)** LIHTC files and inspect **(#)** LIHTC units and all common areas. The files and units will be chosen at random upon our arrival. To help prepare for our inspection and review, please comply with all of the following:

1. Ensure that all LIHTC residents are notified of the upcoming site inspection. **Additionally, it is required that an Owner's representative be present at all times during the site inspection, preferably a maintenance staff person familiar with the building systems and also an administrative person familiar to the residents.** Spectrum Monitors **will not** enter a unit or a room in any building unaccompanied. Our time at each property is limited and we ask that you help us maintain our schedule.

2. All common area emergency lighting will be tested during the inspection by throwing the circuit breakers and walking the hallways. Circuit breakers for emergency lighting must be identified, labeled, and accessible at the time of inspection. This system test is the most accurate portrayal of an emergency situation. Please notify any emergency system/security monitoring firm of the time and date of the inspection to avoid unnecessary emergency personnel response. This type of system test will be conducted unless loss of power to the building would automatically bring the fire department. If you have back up power systems and do not rely on battery power, a physical test of the system will not be conducted. Instead we will need a copy of the current inspection and test report showing the system is fully operational. Powered emergency lights and exit signs that don't remain illuminated when power is interrupted must be reported as a major violation of safety and building codes. We strongly encourage you test these systems regularly, and prior to our arrival.

3. The following documents are required for the review. Please make copies of those documents identified as items C - H so we may take them with us. **An Owner's representative familiar with the**

resident files must be present during the file review and is required to sit with the monitor during the review.

A. LIHTC resident files including certifications, verifications, applications and lease agreements;

B. Rent Rolls showing rents charged to LIHTC residents for all years under review (one month for each year);

C. Copies of original 8609's, signed and executed by the owner (first review only), and also Schedule(s) A and form(s) 8586 for the past 3 years.

D. Copy of the project State Tax Credit Extended Low-Income Housing Use Agreement (EUA);

E. Copies of Utility Allowance documentation for all years under review;

F. Copy of a listing of all LIHTC units, organized by BIN (Building Identification Number);

G. A list of all owners for the property including mailing addresses and EIN or Social Security number;

H. A management forms package including: tenant application, income certification, interview/questionnaire, worksheet, employment verification, certification of child support, and other applicable third party verifications.

PLEASE NOTE: Failure to comply with any of these monitoring requirements will hinder the review and will be reported to the IRS as noncompliance. Should you have any questions or concerns, please contact our office directly. Noncompliance with the tax credit program may preclude Owners and Management Agents from participating in future tax credit projects in Connecticut.

Beginning in 2006, SPECTRUM will send one copy of any compliance monitoring reports to an additional person of the Owner's choice. In order to do this, please complete the attached form to designate to whom the additional copy will be sent. If the form is not returned, SPECTRUM will continue to send the compliance monitoring reports only to the Owner.

Thank you for your assistance.

LIHTC Monitoring Specialist

What we expect regarding a file review

Please review the requirements listed in sections two and three of the sample letter. It is essential that these documents are available for the review. No excuses will be accepted. "Failure to comply with these requests will be considered noncompliance and would be reported to the Internal Revenue Service as such."

What expectations does SPECTRUM have regarding file review?

Remember: A BLANK DOES NOT MEAN "NO." Be sure to get answers to all questions on all forms and document the file appropriately.

* Uniformly organized files
* Move-in certifications effective for the LIHTC move-in date and signed not more than 5 days prior to the effective date
* Back-up verification for all certifications
* Annual certification effective on or before the anniversary date
* Student Status identified and/or verified for every certification
* Worksheets showing calculations used on the certification
* A documented tenant interview at move-in
* An application sufficient to determine eligibility for a LIHTC property
* A re-certification update or questionnaire for the annual certifications
* Phone clarifications for any ambiguities or missing information on verifications (NO BLANKS)
* Child support and zero income affidavits addressing historical and anticipated income
* Zero employment affidavits
* Third-party verification of gross Pension benefits, including verification of changes
* Verification of termination of employment where applicable
* All HUD criteria for acceptable forms of verification and what to verify satisfied
* At minimum, a six-month lease in effect for the LIHTC move-in date without an early termination clause prior to six-months
* Utility allowance verification for each year of the credit

Will SPECTRUM look at anything else? SPECTRUM will review your submissions on an annual basis. During the year you are selected for an on-site visit, this will happen

What expectations we have regarding the physical inspection

Note: All items noted during the physical inspection are expected to be addressed, even if they do not rise to the level of a building code violation. You could receive a report of noncompliance for failing to respond to minor inspection items.

Inoperable emergency lights and exit signs are the biggest source of 8823s in Connecticut!

conjunctively. Otherwise, this review is separate from the on-site reviews. Additionally, SPECTRUM will monitor compliance with the ELIHC, the original qualified basis, deep income targeting, next available unit rules, 140% rules, Fair Housing, ADA, and utility allowance requirements.

7.2 Physical Inspection of Units

SPECTRUM uses Uniform Physical Condition Standards (UPCS) and State Building Codes. A review will be the lesser of 20% of the low income units in the projects OR the Minimum Unit Sample Size Reference Chart (page 7-10) as a requirement of the Tax Credit Program. Physical inspections will generally be performed at the same time as file reviews. State physical inspection guidelines are strictly adhered to. The IRS requires reporting of violations. As all properties have knowledge of our arrival there is no excuse for common area violations such as smoke detectors, emergency lights, and fire alarm panels system faults. All must be reported to the IRS as non-compliance unless repaired prior to our leaving the property.

Examples of health and safety findings include:

- Structural and roof problems
- Blockage of fire exits
- Elevators functioning improperly
- Smoke detectors or sprinklers not functioning
- Pest infestation
- Serious electrical, heating, or plumbing problems
- Common area safety lighting problems

Routine violations are those that require correction but do not impair essential services and tenant safeguards.

What expectation does SPECTRUM have regarding the physical inspections?

* All LIHTC residents should be notified of the upcoming site inspection
* An Owner’s representative *must* be present at all times during the site inspection, preferably a maintenance staff person familiar with the building systems and an administrative person familiar to the residents. SPECTRUM Monitors *will not* enter a unit or a room

in any building unaccompanied

* Circuit breakers for emergency lighting *must* be identified, labeled, and accessible at the time of inspection
* All common area emergency lighting will be tested during the inspection by throwing the circuit breakers and walking the hallways. This system test is the most accurate portrayal of an emergency situation. This type of system test will be conducted unless loss of power to the building would automatically bring the fire department or unless the building has a generator back up.
* Since smoke detector, emergency lighting, fire alarm panel system faults, and blocked egress issues in common areas are automatic non-compliance, be sure to inspect all of these systems before our arrival

It is important to note that a site representative capable of keeping up with our inspectors must be present during all times of the inspection. CHFA and SPECTRUM policy forbids any inspector going into any unit or part thereof unaccompanied. Failure to provide assistance will result in a failed unit, possible loss of credit and/or a re-inspection billed to the owner. The IRS requires that unit inspections be performed on the same units that are selected for file review. Units where admittance is not possible for any reason may be failed and/or subject to re-inspection at the owner's expense.

7.3 Owner Responsibilities After the 15th Year

After fifteen years, properties enter their "extended use period" as required under IRS regulations. Issues with compliance during this time are <u>*not*</u> reported to the IRS. However, they <u>*are*</u> reported to CHFA. The principle requirements during the extended use are the same as during the first fifteen years:

*Rent units to income eligible households
*Rents charged to tenants must continue to be restricted.
*Maintain a quality living environment, and safe/ sanitary housing.

1) While there is some easing of the procedural requirements (outlined below) it is imperative owners and managers don't lose sight of the underlying objective of the tax credit

After 15 years:

*Full cert at move in
*Full recert year 2
*Self certifications year 3 and beyond.

Owners are expected to maintain good living conditions at all times. Even after fifteen years.

What changes after 15 years?

Easier certification requirements
* No Vacant Unit Rule
* Fewer student restrictions
* Possibly fewer units inspected

income. With this in mind, the following is a summary of the process for monitoring compliance during the post year fifteen compliance period:

OWNERS MUST:
1) Complete a move in certification for new low income households using the same standards that are expected during the first fifteen years, with one exception. Households can now be comprised entirely of full time students, as long as at least the head of household, or co-head, are not claimed as dependants on another's tax return.
2) Complete an annual certification for existing low income households the year following initial move in. They must use the same standards that are expected during the first fifteen years, with an exception for independent, full time students, and students in kindergarten, elementary and high school. An independent student is one who is not claimed as a dependant on another's tax return.
3) After the second year of occupancy, Owners are required to obtain *self certifications* from every household. The purpose of these certifications is primarily to maintain compliance with deep skews, student status requirements and the NAUR and changes in household composition.
4) Maintain physical conditions consistent with the requirements for the first fifteen years.

Compliance monitoring after fifteen years:

The monitoring agent will continue to monitor once every five years. A review will be the lesser of 20% of the low income units in the projects OR the Minimum Unit Sample Size Reference Chart (page 7-10) as a requirement of the Tax Credit Program. Standards for the physical inspection will be consistent with those applied to properties still within the first 15 years.

Prior to the inspection/review, Owners/management will be notified of the upcoming review.

After the review, a report will be prepared and submitted to the Owner and CHFA for consideration. CHFA or the Owner may request a re-review. If a re-review is requested, the scope of the review will be limited to those areas that were previously found to be deficient. A second report will be prepared and submitted.

7.4 Additional Review Policy

The Authority's Board of Directors reserves the right to impose additional fees at anytime for compliance monitoring or other purposes in implementing the requirements of Section 42 of the Code.

CHFA has adopted the following Additional Review Policy when Owner's request further review following the filing of Form 8823.

1. Section 1.42-5(e)(3) of the LIHTC Compliance Regulations states that if noncompliance or failure to certify is corrected within three (3) years after the end of the correction period, the HCA is required to file Form 8823 with the Service reporting the correction of the noncompliance or failure to certify.
2. Requests to correct noncompliance after the end of the Correction Period described in Section C, will be processed under the Authority's Additional Review Policy.
3. An Additional Review is defined as that process required when an owner submits information to Spectrum or CHFA past the deadline imposed in Section 1.42-5(e)(4) of the Compliance Regulations and in the Spectrum "Forwarding of noncompliance Letter" and after submission of IRS Form 8823 (Low-Income Housing Credit Agencies Report of Noncompliance) by CHFA to the Internal Revenue Service (The Service).
4. Spectrum will charge the owner a fee, as determined by the Authority's Board of Directors, in order to process as Additional Review request. The current fee of $225.00, is based on a minimum of three (3) hours work. Any amount of time beyond the initial three (3) hours will be billed at $75.00 per hour. This fee is subject to adjustment annually by the Authority's Board of Directors.
5. Upon receipt of information that corrects previously reported continuing noncompliance and, upon payment in full for the review, an amended Form 8823 will be submitted to CHFA for execution and forwarding to the IRS. The owner will receive a copy of the Form 8823 submitted to the Service.

Low Income Housing Credit Minimum Unit Sample Size Reference Chart

# Units	Sample	# Units	Sample
1	1	30-34	15
2	2	35-40	16
3	3	41-47	17
4	4	48-56	18
5-6	5	57-67	19
7	6	68-81	20
8-9	7	82-101	21
10-11	8	102-130	22
12-13	9	131-175	23
14-16	10	176-257	24
17-18	11	258-449	25
19-21	12	450-1461	26
22-25	13	>1461	27
26-29	14		

Section 8

General Explanation of Tax Reform Act of 1986 – Blue Book

[JOINT COMMITTEE PRINT]

GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1986

(H.R. 3838, 99TH CONGRESS;
PUBLIC LAW 99-514)

PREPARED BY THE STAFF

OF THE

JOINT COMMITTEE ON TAXATION

MAY 4, 1987

U.S. GOVERNMENT PRINTING OFFICE

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SUMMARY CONTENTS

Property that qualifies for transitional relief from the amendments relating to the rehabilitation tax credit is also excepted from the depreciation changes made by section 201 of the Act.

Revenue Effect

This provision is estimated to increase fiscal year budget receipts by $43 million in 1987, $165 million in 1988, $581 million in 1989, $1,371 million in 1990, and $1,779 million in 1991.

2. Tax credit for low-income rental housing (sec. 252 of the Act and sec. 42 of the Code)[1]

Prior Law

No low-income rental housing tax credit was provided under prior law, but other tax incentives for low-income housing were available. These tax incentives consisted principally of special accelerated depreciation, five-year amortization of rehabilitation expenses, expensing of construction period interest and taxes, and tax-exempt bond financing for multifamily residential rental property.

Reasons for Change

Congress was concerned that the tax preferences for low-income rental housing available under prior law were not effective in providing affordable housing for low-income individuals. Congress believed a more efficient mechanism for encouraging the production of low-income rental housing could be provided through the low-income rental housing tax credit.

The primary tax preferences provided for low-income housing under prior law were tax-exempt bond financing, accelerated cost recovery deductions, five-year amortization of rehabilitation expenditures, and special deductions for construction period interest and taxes. These preferences operated in an uncoordinated manner, resulted in subsidies unrelated to the number of low-income individuals served, and failed to guarantee that affordable housing would be provided to the most needy low-income individuals.

A major shortcoming of the prior-law tax subsidies was that, beyond a minimum threshold requirement of low-income housing units that were required to be served, the degree of subsidy was not directly linked to the number of units serving low-income persons. As a result, there was no incentive to provide low-income units beyond the minimum required. Under the tax credit, however, the amount of the low-income housing tax credit which an owner may receive is directly related to the number of rental units made available to low-income individuals. By providing tax credits which are based on the number of units serving low-income persons, an incen-

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[1] For legislative background of the provision, see: H.R. 3838, as reported by the Senate Committee on Finance on May 29, 1986, sec. 1413; S.Rep. 99-313, pp. 757-768; Senate floor amendment, 132 Cong. Rec. S8146-8158 (June 23, 1986); and H.Rep. 99.841, Vol. II (September 18, 1986), pp. 86-103 (Conference Report).

tive exists to provide a greater number of housing units for more low-income individuals.

Another weakness of the Federal tax subsidies available under prior law was that they were not targeted to persons of truly low-income. For example, a study by the General Accounting Office[2] (GAO) of tax-exempt bond financed residential rental projects found that above-average income renters could qualify under prior law as "low" or "moderate" income for two reasons. First, persons with incomes as high as 80 percent of area median income were eligible to occupy units reserved for low- and moderate-income tenants. This income ceiling was relatively high, particularly when compared with the median income of renters. Second, the Treasury Department did not require household incomes to be adjusted for family size until after 1985. Congress believed that the low-income housing tax credit (as well as tax-exempt bond financing for low-income housing, discussed in Title XIII) should be provided only for households with incomes not exceeding 50 percent or 60 percent of area median income. Congress further believed that these income limits should be adjusted for family size. These provisions better target affordable housing to those persons most in need of assistance.

Another shortcoming of the tax subsidies under prior law was that none limited the rents that could be charged to low-income individuals. The same GAO study found, for example, that while 96 percent of individuals with incomes over 80 percent of area median income (the prior-law ceiling on "low" or " moderate" income) paid rents of less than 30 percent of their income, only 37 percent of individuals with incomes below 80 percent of area median paid rents of less than 30 percent of their income. The low-income housing tax credit limits the rent that may be charged to a low-income te nan t, and therefore ensures that the subsidized housing is affordable to low-income individuals. In return for providing housing at reduced rents, owners of rental housing receive a tax credit designed to compensate them for the rent reduction.

Congress believed that the low-income housing tax credit (and tax-exempt bonds, as retargeted) will more effectively serve both low-income individuals and owners willing to provide affordable low-income housing than the multiple, uncoordinated tax preferences for low-income housing under prior law.

Explanation of Provisions

Overview

The Act provides a tax credit that may be claimed by owners of residential rental property used for low-income housing. The credit is claimed annually, generally for a period of ten years. New construction and rehabilitation expenditures for low-income housing projects placed in service in 1987 are eligible for a maximum nine percent credit, paid annually for ten years. The acquisition cost of existing projects and the cost of newly constructed projects receiv-

[2] United States General Accounting Office, *Report to the Chairman, Joint Committee on Taxation, Rental Housing: Cos/$ and Bene/ii$ of Financing with Tax-Exempt Bonds* (GAO/ RCED-86-2), February 1986.

ing other Federal subsidies placed in service in 1987 are eligible for a maximum four percent credit, also paid annually for ten years. For buildings placed in service after 1987, these credit percentages will be adjusted to maintain a present value of 70 percent and 30 percent for the two types of credits.

The credit amount is based on the qualified basis (defined below) of the housing units serving the low-income tenants. Low-income tenants for purposes of the low-income housing tax credit are defined as tenants having incomes equal to or less than either 50 percent or 60 percent of area median income, adjusted for family size. The qualifying income for a particular property depends on the minimum percentage of units that the owner elects to provide for low-income tenants. Rents that maybe charged families in units on which a credit is claimed may not exceed 30 percent of the applicable income qualifying as "low", also adjusted for family size.

To qualify for the credit, residential rental property must comply continuously with all requirements of the credit throughout a 15-year compliance period. A credit allocation from the appropriate State or local credit authority must be received by the owner of property eligible for the low-income housing tax credit, unless the property is substantially financed with the proceeds of tax-exempt bonds subject to the new private activity bond volume limitation. These provisions are further explained in the following sections.

Credit amount and credit period

The Act provides two separate credit amounts: (1) a 70-percent present value credit for qualified new construction and rehabilitation expenditures (in excess of specified minimum amounts per unit) that are not federally subsidized and (2) a 30-percent present value credit for other qualifying expenditures. Expenditures qualifying for the 30-percent present value credit consist of the cost of acquisition of an existing building (including certain rehabilitation expenditures which are incurred in connection with acquisition and which do not exceed prescribed minimum amounts), and federally subsidized new construction or rehabilitation expenditures.

A taxpayer's credit amount in any taxable year is computed by applying the appropriate credit percentage to the appropriate qualified basis amount in such year, as defined below.[3] Except as described below, both credits are claimed annually over a 10-year period.

The credit period is the 10-year period beginning with the taxable year in which the building is placed in service or, at the election of the taxpayer, the succeeding taxable year. The credit may not be claimed for a taxable year in which the building is not in compliance with all requirements of the credit.

[3] Congress understood that in certain cases low-income rental housing tax credit projects would be owned indirectly through partnerships. Congress intended that Treasury Department regulations will include rules treating partnerships as if they were tax payers where appropriate to carry out the objectives of the tax credit. Congress intended, for example, that the partnership be treated as the tax payer for purposes of determining whether a building is new (sec. 42(iX4)). Where a partner's interest changes during a taxable year, it is intended that each partner's distributive share of the lax credit be determined under general partnership allocation rules (*see* sec. 706), i.e., by the use of a method prescribed in Treasury Department regulations that takes into account the varying interests of the partners in the partnership during such I.ax· able year.

Credit percentage

For buildings placed in service in 1987, the credit percentages are 9 percent annually over 10 years for the 70-percent present value credit, and 4 percent annually over 10 years for the 30-percent present value credit.

For buildings placed in service after 1987, these credit percentages are to be adjusted monthly by the Treasury Department to reflect the present values of 70 percent and 30 percent at the time the building is placed in service. Treasury's monthly adjustments of the credit percentages are to be determined on a discounted after-tax basis, based on the average of the annual applicable Federal rates (AFR) for mid-term and long-term obligations for the month the building is placed in service. The after-tax interest rate is to be computed as the product of (1) the average AFR and (2) .72 (one minus the maximum individual Federal income tax rate). The discounting formula assumes each credit is received on the last day of each year and that the present value is computed as of the last day of the first year. For example, if 72 percent of the average AFR for a given month were 5.85 percent, the 70-percent and 30-percent present value credit percentages for buildings placed in service in that month would be 8.92 percent and 3.82 percent. (For the 70-percent present value credit, this is derived as $.0892 = (.70)(.0585)/[1.0585-1/(1.0585^{9})]$.) In a project consisting of two or more buildings placed in service in different months, a separate credit percentage may apply to each building.[4]

For buildings originally placed in service after 1987, Congress intended that the taxpayer, with the consent of the housing credit agency, may irrevocably elect to use the credit percentage determined using the above method for the month in which the taxpayer receives a binding commitment for a credit allocation from the credit agency or, in the case of a tax-exempt bond financed project for which no allocation is required, the month in which the tax-exempt bonds are issued.[5]

The credit percentage for rehabilitation expenditures (in excess of a prescribed minimum amount) is determined when rehabilitation is completed and the rehabilitated property is placed in service, but no later than the end of the 24-month period for which such expenditures may be aggregated.[6] These rehabilitation expenditures are treated as a separate new building for purposes of the credit.

The credit percentage for rehabilitation expenditures that are incurred in connection with the acquisition of an existing building (and which do not exceed prescribed minimum amounts) is the same percentage as is used for the acquired building, i.e., the per-

• As discussed below, a credit percentage equal to two-thirds of the credit percentage for the initial qualified basis is applicable to additions to qualified basis.

• A technical amendment may be needed so that the statute reflects this intent and the intent of Congress that such an election would be binding on the taxpayer and all successors in interest.

• Congress intended that the election to determine the credit percentage at the time a binding commitment for a credit allocation is received, described above, also apply in the case of credits attributable to rehabilitation expenditures (in excess of a prescribed minimum amount). A technical amendment may be needed so that the statute reflects this intent.

centage determined when the acquired building is placed in service.

Qualified basis

In general

The qualified basis amounts with respect to which the credit amount is computed are determined as the proportion of eligible basis in a qualified low-income building attributable le to the low-income rental units. This proportion is the lesser of (1) the proportion of low-income units to all residential rental units or (2) the proportion of floor space of the low-income units to the floor space of all residential rental units. Generally, in these calculations, low-income units are those units presently occupied by qualifying tenants, whereas residential rental units are all housing units, whether or not presently occupied.

The qualified basis for each building is determined on the last day of each taxable year, beginning in the taxable year in which the building is placed in service or, if the taxpayer elects, the following taxable year.

Special rules for determining qualified basis

The Treasury Department may provide regulations for projects consisting of two or more buildings. Unless prescribed in regulations, the qualified basis of a project consisting of two or more buildings is determined separately for each building. Common facilities in such a project must be allocated in an appropriate manner to all buildings (whether existing or to be constructed) in the project.

The first year the credit is claimed, the allowable credit amount is determined using an averaging convention to reflect the number of months units comprising the qualified basis were occupied by low-income individuals during the year. For example, if half of the low-income units included in qualified basis were first occupied in October and the remaining half were occupied in December, a calendar year taxpayer would adjust the allowable first-year credit to reflect that these units were occupied on average only one-sixth of the year. To the extent there is such a reduction of the credit amount in the first year, an additional credit in the amount of such reduction is available in the eleventh taxable year. (This first-year adjustment does not affect the amount of qualified basis with respect to which the credit is claimed in subsequent years of the 10-year credit period.)

Additions to qualified basis

The qualified basis of a building may be increased subsequent to the initial determination only by reason of an increase in the number of low-income units or in the floor space of the low-income units (as opposed to by reason of increases in the eligible basis). Credits claimed on such additional qualified basis are determined using a credit percentage equal to two-thirds of the applicable credit percentage allowable for the initial qualified basis. As described below under the description of the State credit ceiling, an allocation of credit authority must be received for credits claimed on additions to qualified basis, in the same manner as for credits claimed on the initial qualified basis. Unlike credits claimed on the initial qualified basis, credits claimed on additions to qualified basis are allowable annually for the portion of the required 15-year compliance period remaining after eligibility for such credits arises, regardless of the year such additional qualified basis is determined. The additional qualified basis is determined by reference to the original adjusted basis (before deductions for depreciation) of the property.

The credit amount on the additional qualified basis is adjusted in the first year such additions are made using an averaging convention to reflect the number of months units comprising the additional qualified basis were occupied by low-income individuals during the year. Any reduction of the credit amount in the first year may not be claimed in a later year. (This first-year adjustment does not affect the amount of additional qualified basis with respect to which the credit is claimed in subsequent years of the compliance period.)

Eligible basis

Eligible basis consists of (1) the cost of new construction, (2) the cost of rehabilitation, or (3) the cost of acquisition of existing buildings acquired by purchase {including the cost of rehabilitation, if any, to such buildings incurred before the close of the first taxable year of the credit period which do not exceed a prescribed minimum amount). Only the adjusted basis of the depreciable property may be included in eligible basis.[7] The cost of land is not included in adjusted basis.

Generally, the eligible basis of a building is determined at the time the building is placed in service. For this purpose, rehabilitation expenditures (in excess of $2,000 per unit) are treated as placed in service at the close of the period for which rehabilitation expenditures are aggregated, not to exceed 24 months. In the case of rehabilitation expenditures incurred in connection with the acquisition of an existing building {and which do not exceed a prescribed minimum amount), the capital expenditures incurred through the end of the first year of the credit period may be included in eligible basis.

For purposes of the low-income housing credit, the term residential rental property generally has the same meaning as residential rental property within Code section 142(d).[8] Thus, residential rental property includes residential rental units, facilities for use by the tenants, and other facilities reasonably required by the project. Eligible basis may include the cost of such facilities and amenities (e.g., stoves, refrigerators, air conditioning units, etc.) only if the included amenities are comparable to the cost of the amenities in the low-income units. Additionally, the allocable cost of tenant facilities, such as swimming pools, other recreational fa-

[7] The adjusted basis is determined by taking into account the adjustments described in section 1016 (other than paragraphs (2) and (3) of sec. 1016(a), relating to depreciation deductions), including, for example, the basis adjustment provided in section 48(q) for any rehabilitation credits allowed under section 38.

[8] See, however, the discussion below on single room occupancy housing as property eligible for the low-income housing credit.

cilities, and parking areas, may be included 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. *(See generally,* Treas. Reg. sec. l.103-8(b)(4)(iii).)

Except as described below, costs of the residential rental units in a building which are not low-income units may be included in eligi- ble basis only if such units are not above the average quality stand- ard of the low-income units. Similarly, rehabilitation expenditures may not be included in eligible basis if such expenditures improve any unit in the building beyond comparability with the low-income units. Units are of comparable quality if the construction or acqui- sition costs are comparable and if such units are provided in a similar proportion for both the low-income and other tenants. Con- gress intended that , at the election of the taxpayer, the cost of a unit which would otherwise be excluded from eligible basis may be included in eligible basis if (1) the excess cost of such unit over the average cost of the low-income units does not exceed 15 percent of the average cost of the low-income units and (2) the excess cost is excluded from eligible basis.[9]

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. No portion of the cost of such nonresidential rental property included in a project may be included in eligible basis. Congress intended that the costs of such a mixed-use facility be allocated according to any reasonable method that properly reflects the proportionate benefit to be derived, directly or indirectly, by the nonresidential rental property and the residential rental units. *(S ee,* e.g., Prop. Treas. Reg. sec. l.103-8(b)(4)(v).)

Certain rehabilitation expenditures.-The qualified basis attributable to rehabilitation expenditures, unless incurred in connection with the acquisition of an existing building, must equal at least $2,000 per low-income unit.[10] The $2,000 minimum is computed as an average based on all qualifying expenditures in the building, rather than on a unit-by-unit determination. Qualified basis is determined in the same fractional manner as for new construction or acquisition costs even if all rehabilitation expenditures are made only to low-income units. Rehabilitation expenditures may be included in eligible basis without a transfer of property. Rehabilitation expenditures may be aggregated only for such expenditures incurred during any 24-month period. Where rehabilitation is limited to a group of units, Treasury may provide regulations treating a group of units as a separate new building.

Where rehabilitation expenditures are paid or incurred by a person (or persons) and the taxpayer acquires the property attributable to such expenditures (or an interest therein) before such property is placed in service, the taxpayer will be treated as having paid or incurred the expenditures *(see* Treas. Reg. sec. l.167(k)-l (b)(l) and (2)). The portion of the basis of the property not attributable to rehabilitation expenditures may not be included in the eli-

• A technical amendment may be needed so that the statute reflects this intent.

[10] See, below, in the case of rehabilitation expenditures incurred in connection with the acqui, sition of an existing building that do not exceed the $2,000 per unit minimum.

gible basis relating to the rehabilitated property, but may be includable in the eligible basis relating to acquisition costs, as described below.

Acquisition of existing buildings.-The cost of acquisition of an existing building may be included in eligible basis and any rehabilitation expenditures to such a building incurred before the close of the first year of the credit period may at the election of the tax.payer also be included in eligible basis, without a minimum rehabilitation requirement. These costs may be included in eligible basis, however, only if the building or a substantial improvement (a capital expenditure of 25 percent or more of the adjusted basis of the building to which five-year rapid amortization was elected or to which ACRS applied (as in effect before the enactment of this Act)) to the building has not been previously placed in service within 10 years and if the building (or rehabilitated property within the building) is not subject to the 15-year compliance period.

A building that is transferred in a transfer where the basis of the property in the hands of the new owner is determined in whole or part by the adjusted basis of the previous owner (for example, by a gift of property) is considered not to have been newly placed in service for purposes of the 10-year requirernent. [11] Further, Congress intended that a building which has been acquired by a governmental unit or certain qualified 501(c)(3) or 501(c X4) organizations would not be treated as placed in service by that governmental unit or organization for purposes of the 10-year requirement if the acquisition occurs more than 10 years from the date the building or a substantial improvement to the building has last been placed in service.[12] Congress also intended that a building acquired by foreclosure by taxpayers other than a governmental unit or 501(c)(3) organization would not be treated as newly placed in service by that taxpayer for purposes of the 10-year requirement if the foreclosure occurs more than 10 years from the date the building or a substantial improvement to the building has last been placed in service and the property is resold within a short period.[13] Any other transfer will begin a new 10-year period.

The Treasury Department may waive the 10-year requirement for any building substantially assisted, financed or operated under the HUD section 8, section 22l(d)(3,) or section 236 programs, or under the Farmers' Horne Administration section 515 program when an assignment of the mortgage secured by property in the project to HUD or the Farmers Home Administration otherwise would occur or when a claim against a Federal mortgage insurance fund would occur.

Federal grants and other subsidies.-Eligible basis may not include in any taxable year the amount of any Federal grant, regardless of whether such grant is included in gross income. A Federal grant includes any grant funded in whole or in part by the Federal government, to the extent funded with Federal funds. Examples of grants which may not be included in eligible basis include grants

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11 Congress intended that inherited properly not be treated as being newly placed in service for purposes of the 10-year requirement. A technical amendment may be **needed** so that the statute reflects this intent.

12 A technical amendment may be needed so that thestatute reflects this intent.

" A technical amendment may be needed so that thestatute reOects this intent.

funded by Community Development Block Grants, Urban Development Action Grants, Rental Rehabilitation Grants, and Housing Development Grants.

If any portion of the eligible basis attributable to new construction or to rehabilitation expenditures is financed with Federal subsidies, the qualified basis is eligible only for the 30-percent present value credit, unless such Federal subsidies are excluded from eligible basis. A Federal subsidy is defined as any obligation the interest on which is exempt from tax under section 103 or a direct or indirect Federal loan, if the interest rate on such loan is less than the applicable Federal rate. A Federal loan under the Farmers' Home Administration section 515 program is an example of such a Federal subsidy, as is a reduced interest rate loan attributable in part to Federal grant funds lent to a building owner.

The determination of whether rehabilitation expenditures are federally subsidized is made without regard to the source of financing for the construction or acquisition of the building to which the rehabilitation expenditures are made. For example, a Federal loan or tax-exempt bond financing that is continued or assumed upon purchase of existing housing is disregarded for purposes of the credit on rehabilitation expenditures. Congress intended that tax-exempt financing or a below market loan to provide construction financing for any building will not be treated as a Federal subsidy if such loan is repaid and any underlying obligation (e.g., tax-exempt bond) is redeemed before the building is placed in service.[14]

Minimum set-aside requirement for low-income individuals

In general

A residential rental project providing low-income housing qualifies for the credit only if (1) 20 percent or more of the aggregate residential rental units in the project are occupied by individuals with incomes of 50 percent or less of area median income, as adjusted for family size, or (2) 40 percent or more of the aggregate residential rental units in the project are occupied by individuals with incomes of 60 percent or less of area median income, as adjusted for family size.[15] (Th is requirement is referred to as the "minimum set-aside" requirement.)

A special set-aside may be elected for projects that satisfy a stricter requirement and that significantly restrict the rents on the low-income units relative to the other residential units in the building (the "deep-rent skewing" set-aside). Projects qualify for this rule only if, as part of the general set-aside requirement, 15 percent or more of all low-income units are occupied by individuals having incomes of 40 percent (rather than 50 percent or 60 percent) or less of area median income, and the average rent charged to tenants in the residential rental units which are not low-income units is at least 300 percent of the average rent charged to low-income tenants for comparable units. Under this special rule, a low-income

[14] A technical amendment may be needed so that the statute reflects this intent.

[15] A special set-aside requirement providing that 25 percent or more of the units are occupied by individuals with incomes of 60 percent or less of area median income is provided for New York City (*see* sec. 142(dX6)).

tenant will continue to qualify as such, as long as the tenant's income does not exceed 170 percent of the qualifying income. Additionally, if a project to which this special set-aside requirement applies ceases to comply with the requirement because of increases in existing tenants' incomes, no penalties are imposed if each available low-income unit is rented to tenants having incomes of 40 percent or less of a rea median income, until the project is again in compliance.[16]

All units comprising the minimum set-aside in a project must be suitable for occupancy and used on a nontransient basis, and are subject to the limitation on gross rent charged to residents of set-aside units. (See the discussion of the gross rent limitation, below.) The owner of each project must irrevocably elect the minimum set-aside requirement (including the deep-rent skewing set-aside described above) at the time the project is placed in service. In the case of a project consisting of a single building, the set-aside requirement must be met within 12 months of the date the building (or rehabilitated property) is placed in service, and complied with continuously thereafter for a period ending 15 years after the first day of the first taxable year in which the credit is claimed.

Special rules apply to projects consisting of multiple buildings placed in service on different dates. Unless prescribed by regulations, the initial building, within 12 months of being placed in service, must meet the set-aside requirement determined only by reference to those units in the initial building. When a second or subsequent building is placed in service, the project must meet the set-aside requirement with respect to the units in all buildings placed-in-service up to that time within 12 months of the date the second or subsequent building is placed in service.[17] The project must comply with this expanded requirement continuously thereafter for a period ending 15 years after the later of (1) the first day of the taxable year in which the expanded requirement is met or (2) if a credit is claimed with respect to the building, the first day of the taxable year in which the credit period begins with such building.[18] Subsequent buildings are subject to separate 15-year compliance periods. After the 15-year period has expired on an initial building, but while other buildings in the same project are still subject to the compliance period, the project must continue to meet the set-aside requirement determined by reference to all buildings in the project or, at the taxpayer's election, all buildings subject to the compliance period.

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[16] Congress intended that for projects electing this stricter set-aside requirement the defmj, tion of gross rent is that used generally for purposes of the low-income credit. A technical amendment may be needed so that the statute reflects this intent.

[17] Congress intended that if within 12 months of the date a first building is placed in service, (1) the first building does not meet the set-aside requirement with respect to the first building and (2) a second building is placed in service, then the project is a qualified low-income project if the set-aside requirement is satisfied with respect. lo both buildings within 12 months of the placed-in-service date of the first building. A technical amendment may be needed so that the statute reflects this intent. Congress intended that similar rules apply by Treasury Department regulations in the case of projects with more than two buildings.

[18] Until the expanded requirement is met, the set-aside requirements determined by reference to all previously existing buildings must be continuously satisfied.

Continuous compliance required

The determination of whether a tenant qualifies for purposes of the low-income set -aside is made on a continuing basis, both with regard to the tenant's income and the qualifying area income, rather than only on the date the tenant initially occupies the unit. An increase in a tenant's income may result, therefore, in a unit ceasing to qualify as occupied by a low-income person. However, a qualified low-income tenant is treated as continuing to be such notwithstanding *de minimis* increases in his or her income. Under this rule, a tenant qualifying when initially occupying a rental unit will be treated as continuing to have such an income provided his or her income does not increase to a level more than 40 percent in excess of the maximum qualifying income, adjusted for family size. If the tenant's income increases to a level more than 40 percent above the otherwise applicable ceiling (or if the tenant's family size decreases so that a lower maximum family income applies to the tenant) that tenant is no longer counted in determining whether the project satisfies the set-aside requirement.[19] No penalty is assessed in such an event, however, provided that each residential rental unit that becomes vacant (of comparable or smaller size to the units no longer satisfying the applicable income requirement) is rented to tenants satisfying the qualifying income until the project is again in compliance. (For a discussion of the rules for complying with the set-aside requirements, see the discussion of the compliance period and penalty for noncompliance, below.)

Vacant units, formerly occupied by low-income individuals, may continue to be treated as occupied by a qualified low-income individual for purposes of the set-aside requirement (as well as for determining qualified basis) provided reasonable attempts are made to rent the unit and no other units of comparable or smaller size in the project are rented to nonqualifying individuals (see the section "Compliance period and penalty for noncompliance," below).

In no case is a unit considered to be occupied by low-income individuals if all of the occupants of such unit are students (as determined under sec. 151(c)(4)), no one of whom is entitled to file a joint income tax return.

Adjustments for family size

As stated above, the Act requires that adjustments for family size be made in determining the incomes used to qualify tenants as having low income. In general, these adjustments are the same as the adjustments presently made under section 8 of the United States Housing Act of 1937. Thus, for a project which qualifies by setting aside 20 percent of the units for tenants having incomes of 50 percent or less of area median income, a family of four generally will be treated as meeting this standard if the family has an income of 50 percent or less of the area median income; a family of three having an income of 45 percent or less generally will qualify; a family of two having an income of 40 percent or less generally

[19] In the case of projects electing the deep-rent skewing set-aside, a tenant's income may increase to 70 percent more than the maximum qualifying income.

will qualify; and, a single individual having an income of 35 percent or less generally will qualify.

Congress was aware that, in certain cases, the use of section 8 guidelines may result in qualifying incomes below the amounts reflected by these percentages because of dollar ceilings that are applied under the section 8 program. Income limits may be adjusted by the Treasury Department for areas with unusually low family income or high housing costs relative to family income in a manner consistent with determinations of very low income families and area median gross income under section 8 to reflect the 50-percent arid 60-percent income levels.

Gross rent limitation

The gross rent paid by families in units included in qualified basis may not exceed 30 percent of the applicable qualifying income, adjusted for family size. Gross rent includes the cost of any utilities, other than telephone. If any utilities are paid directly by the tenant, the maximum rent that maybe paid by the tenant is to be reduced by a utility allowance prescribed by the Treasury Department, after taking into consideration the procedures for making such adjustments under section 8 of the United States Housing Act of 1937.

The gross rent limitation applies only to payments made directly by the tenant. Any rental assistance payments made on behalf of the tenant, such as through section 8 of the United States Housing Act of 1937 or any comparable Federal rental assistance, are not included in gross rent. Congress further intended that any comparable State or local government rental assistance not be included in gross rent. [20]

Low-income unit

A low-income unit includes any unit in a qualified low-income building if the individuals occupying such unit meet the income limitation elected for the project for purposes of the minimum set-aside requirement and if the unit meets the gross rent requirement, as well as meeting all other requirements applicable to units satisfying the minimum set-aside requirement.

Qualified low-income housing projects and qualified low-income buildings

A qualified low-income building is a building subject to the 15-year compliance period and which is part of a qualified low-income housing project.

A qualified low-income housing project is a project that meets the minimum set-aside requirement and other requirements with respect to the set-aside units at all times that buildings comprising the project are subject to the 15-year compliance period. A qualified low-income housing project includes a qualified low-income building containing residential rental units and other property that is functionally related and subordinate to the function of providing

[20] A technical amendment may be needed so that the statute reflects this intent. Such an amendment was included in the versions of H. Con. Res. 395 which passed the House of Repreaentatives and Senate in the 99th Congress.

residential rental units. A project may include multiple buildings having similarly constructed housing units, provided the buildings are located on the same tract of land, are owned by the same person for Federal income tax purposes, and are financed pursuant to a common plan of financing.

Residential rental units must be for use by the general public and all of the units in a project must be used on a nontransient basis. Residential rental units are not for use by the general public, for example, if the units are provided only for members of a social organization or provided by an employer for its employees. Generally, a unit is considered to be used on a nontransient basis if the initial lease term is six months or greater. Additionally, no hospital, nursing home, sanitarium, lifecare facility, retirement home providing significant services other than housing, dormitory, or trailer park may be a qualified low-income project. Factory-made housing which is permanently fixed to real property may be a qualified low-income building (see Treas. Reg. sec. 6a.103A-2(dX4)(i) on factory-made housing).

Unlike the requirements for units in projects financed with tax-exempt bonds, certain single room occupancy housing used on a nontransient basis may qualify for the credit, even though such housing may provide eating, cooking, and sanitation facilities on a shared basis. An example of housing that may qualify for the credit is a residential hotel used on a nontransient basis that is available to all members of the public.

Compliance period and penalty for noncompliance

Qualified residential rental projects must remain as rental property and must satisfy the minimum set-aside requirement, described above, throughout a prescribed compliance period. Low-income units comprising the qualified basis on which additional credits are based are required to comply continuously with all requirements in the same manner as units satisfying the minimum set-aside requirement. Units in addition to those meeting the minimum set-aside requirement on which a credit is allowable also must continuously comply with this requirement.

The Act defines the compliance period for any building as the period beginning on the first day of the first taxable year of the credit period of such building and ending 15 years from such date. The minimum set-aside requirement must be met, in all cases, within 1 year of the date the building (or rehabilitated property) is placed in service.

Within 90 days of the end of the first taxable year for which the credit is claimed and annually for each taxable year thereafter during the compliance period, the taxpayer must certify to the Secretary that the project has continuously complied throughout the year with the set-aside requirement and report the dollar amount of the qualified basis of the building and the maximum applicable percentage and qualified basis permitted to be taken into account by the housing credit agency. Additionally, the certification must include the date (including the taxable year) in which the building was placed in service and any other information required by Treasury.[21]

The penalty for any building subject to the 15-year compliance period failing to remain part of a qualified low-income project (due, for example, to noncompliance with the minimum set-aside requirement or the gross rent requirement or other requirements with respect to the units comprising the set-aside) is recapture of the accelerated portion of the credit, with interest, for all prior years.

Generally, any change in ownership by a taxpayer of a building subject to the compliance period is also a recapture event. An exception is provided if the seller posts a bond with the Treasury Department (in an amount prescribed by Treasury) and provided it can reasonably be expected that such building will continue to be operated as a qualified low-income building for the remainder of the compliance period. For partnerships consisting of more than 35 individual taxpayers, at the partnership's election, no change in ownership will be deemed to occur provided within a 12-month period at least 50 percent (in value) of the original ownership is unchanged.[22]

In the year of a recapture event, no credit is allowable for the taxpayer subject to recapture. Additionally, the accelerated portion of credits paid in earlier years is recaptured with interest, from the date the recaptured amount was claimed, at the overpayment rate established under section 6621. The accelerated portion of the credit in any year is the amount of credits determined for the year, less the amount which would have been determined for the year if all credits had been allowed ratably over the 15-year compliance period (with no further discounting). Because credits on the initial qualified basis of a building are claimed ratably over a IO-year credit period rather than the 15-year compliance period, the amount of credit recaptured for noncompliance during the first 11 years is one-third of the credit determined for the year, plus interest. In the absence of additions to qualified basis and previous recapture events, the credits are recaptured in the following amounts (in addition to interest): one-third for violations after year 1 and before expiration of year 11; four-fifteenths for violations after year 11 but before expiration of year 12; three-fifteenths for violations after year 12 but before expiration of year 13; two-fifteenths for violations after year 13 but before expiration of year 14; and one-fifteenth for violations after year 14 but before expiration of year 15.

Because credits claimed on additions to qualified basis are paid ratably over the remainder of the compliance period (the credit percentage is two-thirds of the otherwise applicable percentage), there is no accelerated portion of credits attributable to additions to qualified basis and, therefore, no recapture of these amounts.

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[21] Congress intended that the penalty under sec. 6652(j) shall apply for failure to provide such information. A technical amendment may be needed so that the statute reflects this intent.

[22] Congress intended that the presence of corporate partners not disqualify the partnership from this special exception provided the partnership is at least 50 percent owned by at least 35 individual taxpayers. A technical amendment may be needed so that the statute reflects this intent.

The penalty for a decrease in the qualified basis of a building, while still remaining part of a qualified low-income project, is recapture of the credits with respect to the accelerated amount claimed for all previous years on the amount of the reduction in qualified basis.

Owners and operators of low-income housing projects on which a credit has been claimed must correct any noncompliance with the set-aside requirement or with a reduction in qualified basis within a reasonable period after the noncompliance is discovered or reasonably should have been discovered. If any noncompliance is corrected within a reasonable period, there is no recapture. Congress did not intend, however, that tenants be evicted to return a project to compliance. Rather, Congress intended that each residential rental unit of comparable or smaller size that becomes vacant while a project is not in compliance must be rented to a tenant having a qualifying income before any units in the project are rented to tenants not so qualifying until the project again is in compliance. In general, therefore, the event that gives rise to the penalty for noncompliance (i.e., recapture or a reduction in the allowable credit) will be rental of a unit to other than a low-income tenant (on other than a temporary basis) during any period when the project does not comply with the set-aside requirement or with the qualified basis amounts on which the credit is computed (or would not qualify as a result of that rental).

An example of how the recapture provisions operate follows:

Example.- Assume credits are claimed for a project based on a qualified basis of 30 percent of the basis of the project being allocable to units occupied by individuals with incomes of 50 percent or less of area median income and, at a later date, a qualified basis of only 25 percent of the basis of the project is allocable to units occupied by individuals with incomes of 50 percent or less of median income due to vacancies filled by tenants with nonqualifying incomes. Because the minimum set-aside requirement is not violated, recapture occurs only on the accelerated portion of the credit amounts allocable to the 5-percent basis of the project no longer eligible for the credit.

If the maximum credit for which a project is eligible increases and subsequently decreases, a last-in, first-out rule is applied in determining which credits are recaptured. For example, consider a building that initially claimed a credit based on a qualified basis of 25 percent of the basis of the building allocable to units occupied by individuals with incomes of 50 percent or less of area median income, and in year 3 began receiving a credit based on an additional 10 percent of the basis of the building (i.e., a total of 35 percent). The credit amount on the additions to qualified basis is computed by reference to two-thirds of the credit percentage. If in year 5 only 30 percent of the basis of the building qualifies, there is no recapture of previous years' credits because there is no accelerated portion of the credit amounts attributable to the 5 percent of the additions to qualified basis claimed since year 3.

Congress intended that there be no recapture for *de minimis* changes in the qualified basis by reason of changes in the floor space fraction.[23] A reduction in qualified basis by reason of a casualty loss is not a recapture event provided such property is restored by reconstruction or replacement within a reasonable period.

State low-income housing credit authority limitation

Generally, any building eligible for the credit must receive an allocation of credit authority from the State or local credit agency in whose jurisdiction the qualifying low-income housing project is located. (An exception is provided for buildings financed with the proceeds of tax-exempt bonds that received an allocation pursuant to the new private activity bond volume limitation.) The aggregate amount of such credits allocated within the State is limited by the State annual low-income credit authority limitation. In all cases, credit allocations are counted against a State's, annual credit authority limitation for the calendar year in which the credits are allocated. Congress intended that credits may be allocated only during the calendar year in which the building or rehabilitated property is placed in service, except in the case of (1) credits claimed on additions to qualified basis and (2) credits allocated in a later year pursuant to an earlier binding commitment made no later than the year in which the building is placed in service.[24] Under this latter exception, for example, a building placed in service in 1987 may receive a binding commitment in 1987 to receive a credit allocation of a specified amount in 1989. In 1989 this amount is subtracted from the State credit authority limitation. The credit period and compliance period with respect to the building begin in the taxable year in which the building is placed in service or, by an irrevocable election of the taxpayer, the succeeding taxable year.

An election by the taxpayer to defer the start of the credit period for one year does not affect when the allocation must occur. (See also, the discussion below for credits claimed on additions to qualified basis). The credit amount allocated to a building applies for the year the allocation is made and for all future years of the compliance period.

Allowable credit authority

General rules.-The annual credit authority limitation for each State is equal to $1.25 for every individual who is a resident of the State (as determined by the most recent estimate of the State's population released by the Bureau of the Census before the beginning of the year to which the limitation applies). For purposes of the credit authority limitation, the District of Columbia and U.S. possessions (e.g., Puerto Rico, the Virgin Islands, Guam, and American Samoa) are treated as States.

Special set-aside for qualified nonprofit organizations.-A portion of each State's credit authority limitation is set aside for exclusive use by qualified nonprofit organizations. This set-aside is equal to $0.125 per resident of the State. This set-aside amount may not be changed by State action, either legislative or gubernatorial. In ad-

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[23] A technical amendment may be needed so that the statute reflects this intent.

[24] A technical amendment may be needed so that the statute reflects this intent. Credits allocated pursuant to an earlier binding commitment are counted against the State's annual credit authority limitation in the calendar year of the allocation.

dition to the special set-aside, qualified nonprofit organization projects may be allocated any additional amount of a State's remaining credit authority.

To qualify for allocations from this set-aside, an organization must be a section 501(c)(3) or 501(c)(4) organization, one of the exempt purposes of which includes the fostering of low-income housing, and the qualifying project with respect to which the credits are allocated must be one in which such organization materially participates (within the meaning of the passive loss rule). Among the operations in which the organization must be involved in on a regular, continuous, and substantial basis, in addition to the continuing operation of the project, is the development of the project.

Credits subject to the credit authority limitation

Generally, credits subject to the State credit authority limitation include any credits attributable to expenditures not financed with tax-exempt bonds subject to the new private activity bond volume limitation.

In the case of a building financed with the proceeds of tax-exempt bonds subject to the bond volume limitation (Code sec. 146), if 70 percent or more of the aggregate basis of the building and land on which the building is located is financed with such proceeds, no portion of the credits attributable to such building is subject to the credit authority limitation.

If less than 70 percent of the aggregate basis of the building and land on which the building is located is financed with tax-exempt bonds subject to the bond volume limitation, only credits attributable to those bond-financed expenditures are not subject to the credit authority limitation.

Allocation of credit authority limitation among the State and other qualified governmental units therein

In general.-Each State's credit authority limitation is allocated among the various governmental units within the State pursuant to three alternative procedures.

Under the first procedure, each State's credit authority limitation is allocated in its entirety to the State housing agency until either the governor or the legislature makes a different allocation. If more than one such agency exists, they are treated as one agency. In the absence of a qualified State agency, no allocation may occur until provided by either the governor or the legislature.

Under the second procedure, the governor of each State is provided authority to allocate the State's credit authority limitation among all of the governmental units and other issuing authorities. This authority and any allocation rules established by the governor terminate as of the effective date of any overriding State legislation.

Under the third procedure, the State legislature may enact a law providing for a different allocation than that provided under the first or second procedures. Under this authority, the State legislature may allocate all or any portion of the State limitation to any governmental unit or other issuing authority in the State.

Congress intended that any allocation procedure established by the governor or State legislature give balanced consideration to the low-income housing needs of the entire State.

Congress desired to clarify that gubernatorial proclamations issued before the date of enactment of the Act (October 22, 1986) or State legislation enacted before that date is recognized for purposes of allocating the credit authority limitations, provided that the proclamation or legislation refers to the low-income housing tax credit authority limitation.

Congress further intended that a State be permitted to allocate available credit authority to a local issuer until a specified date during each year (e.g., November 1) at which time the authority, if unused, may revert to the State for reallocation. Similarly, a State statute may provide discretionary authority to a public official (e.g., the governor) to allocate the State's credit authority limitation. Because the credit authority limitation is an annual amount, however, any authority that has not been used for credits issued before the end of the calendar year expires.

Special rule for constitutional home rule subdivisions.—The Act provides a special allocation rule for certain political subdivisions with home rule powers under a State constitution (Illinois). The home rule subdivisions to which the special allocation rule applies are those home rule subdivisions that are granted home rule powers by the beginning of the calendar year in which the credits are issued pursuant to a State constitution that was adopted in 1970 and became effective on July 1, 1971. In that State, a full portion of the State credit authority limitation is allocated to each home rule subdivision based upon the ratio that the population of that home rule subdivision bears to the population of the entire State. As is true of the other credit authority limitation determinations, this allocation is made using the most recent population estimate from the Bureau of the Census released before the beginning of the calendar year to which the credits relate. The amount so allocated to home rule subdivisions may not be altered by the power to provide a different allocation otherwise granted by the Act to the governor or the State legislature. However, a home rule subdivision may agree to a different allocation.

The portion of a State's credit authority limitation not allocated to constitutional home rule subdivisions then is allocated under essentially the same three procedures described in the previous section. Thus, under the first procedure, the remaining State credit authority limitation is allocated to the State housing agency. Under the second and third procedures described above, the governor or the State legislature may allocate the State limitation other than that allocated to home rule subdivisions to any governmental units (including home rule subdivisions).

For purposes of the rules on State action establishing allocation rules for the credit authority limitation, a mayor of a constitutional home rule subdivision is treated as a governor, and a city council is treated as a State legislature.

Constitutional home rule subdivisions are treated as States for purposes of the credit authority limitation set-aside for qualified nonprofit organizations. Pursuant to their general authority to alter credit allocation, described above, these subdivisions may agree with the State in which they are located to exchange authority to allocate credits for qualified nonprofit organizations for authority to allocate credits for other projects.

Allocation of set-aside amount for qualified non/profit organizations.-As described above, a portion of each States credit authority limitation is set aside exclusively for projects of qualified nonprofit organizations. Although the overall amount of credit authority set aside for these credits may not be reduced by any State action, a State may enact a statute determining which credit authorities in the State may allocate these credits and may allocate the entire set-aside amount to those authorities. Similarly, before any legislation, a governor may determine which authorities may allocate credits under the set-aside. The amount of the remaining credit authority limitation allocated to all other authorities must, of course, be adjusted to take into account any reallocation of the set-aside amount.

Determination of credit amount allocation

A building must receive low-income credit authority from the credit agency in whose jurisdiction the qualifying low-income building is located. The credit agency's remaining authority is reduced by the credit percentage multiplied by the amount of qualified basis granted by the credit agency for the building. The credit agency may grant a smaller credit percentage and a smaller qualified basis amount at the time the allocation is made than the maximum percentage and amount that would otherwise be allowed. Congress intended that the credit agencies reduce the maximum available credit percentage when the financing and rental assistance for a project from all sources is sufficient to provide the continuing operation of the qualifying low-income building without the maximum credit.

A credit agency's credit authority is reduced by the maximum amount of credit granted, whether or not the property ultimately is eligible for this maximum amount, and without regard to the averaging convention used in the first year of the cred it period.

If a building is granted more credits than would be claimed in the first year of the credit period, without regard to the averaging convention, such amounts are not restored to the credit agency's authority. Such amounts may, however, be used in a later year by the owner of the building to the extent the credit determined with respect to the building is increased as a result of additions to qualified basis (but not beyond the amount allocated by the agency, and without regard to the reduced percentage applicable to such additions). (See also, the discussion on additions to qualified basis, above.)

Example 1.-Assume in calendar year 1987 a newly constructed building is placed in service and that the building's qualified basis, before consideration of the credit authority limitation, is determined to be $100,000 in that year. The credit agency may allocate any amount of qualified basis to the building, but the taxpayer may treat as his qualified basis only the lesser of (1) the qualified basis of the building, before consideration of the credit authority limitation, or (2) the qualified basis allocated to the building by the credit .agency. If the credit agency allocated $100,000 of qualified basis and the maximum 9 percent credit percentage to the building, the agency's remaining 1987 credit authority would be reduced by $9,000.

Example 2.-Assume $120,000 in qualified basis and a credit percentage of 9 percent were initially authorized by a credit agency in 1987 for a qualified low-income building and that in 1987, the first year of the credit period, the building's qualified basis was $100,000. The credit agency's remaining 1987 credit authority is reduced by $10,800. If in year two of the credit period the qualified basis of the building increases by up to $20,000 due to an increase in the number of low-income units, additional credits may be claimed with respect to this addition to qualified basis without requiring additional credit authority from the credit agency. The credit percentage applicable to the additional qualified basis is two-thirds of the credit percentage applicable to the initial qualified basis. Credits on the additions to qualified basis may be claimed over the remainder of the compliance period.

If the qualified basis of a building is greater than the qualified basis allocated to it by the credit agency, credits may not be claimed on the excess portion unless additional low-income housing credits are allocated to the building by the credit agency. The credit authority of the credit agency is reduced for the calendar year of any such additional allocations.

Generally, no carryover authority for unused credit authority is permitted. A limited exception is provided for buildings placed in service in 1990, if expenditures of 10 percent or more of total project costs are incurred before January 1, 1989. Credit authority for such property may be carried over from the 1989 credit allocation for the credit agency. Congress intended that, for allocations made after 1987, if a building cannot be placed in service in the year for which the allocation was made for reasons beyond the control of the taxpayer, then upon approval by the Treasury Department, the credit allocation will be valid if the building is placed in service in the succeeding year.[25]

Credit agencies are permitted to enter into binding commitments to allocate future credit authority for years before the sunset date to buildings not yet placed in service by binding contracts or other means.

Should a credit agency issue more credits than its credit authority limitation provides, credits will be denied to those buildings last allocated credits until the credit authority limitation is not exceeded.

Credit administration

Credit agencies allocating credits may not condition allocation of credits to the source of financing for the qualifying low-income building. The Act authorizes the Treasury Department to prescribe regulations that may require credit recipients to pay a reasonable fee to cover administrative expenses of the credit agency. The fact that credits must be allocated on a building-by-building basis does not preclude a credit agency from charging a single fee for process-

•• A technical amendment may be needed so that the statute reflects this intent.

ing credits for a single project with multiple buildings or for multiple projects of a common taxpayer.

Agencies allocating credits must file reports with the Treasury Department containing (1) the maximum applicable percentage and qualified basis of each building, (2) the fees, if any, charged to credit recipients, (3) the aggregate amount of credits issued, and (4) other information required by Treasury. 'l'he time and manner of filing such reports and other information required are to be specified by the Treasury Department.

Transferability

A new owner of a building during its 15-year compliance period is eligible to continue to receive the credit as if the new owner were the original owner, using the same qualified basis and credit percentages as used by the original owner. Rehabilitation expenditures on such property may qualify for a credit in the same manner as rehabilitation expenditures on other qualifying property. The accelerated portion of credits claimed in previous years will be recaptured upon a transfer, subject to the election of the original owner to post a bond. All dispositions of ownership interests in buildings are treated as transfers for purposes of recapture, except for a special rule for certain partnerships. (There is no election for the new owner to assume the recapture liability for prior year credits.)

At-risk limitation

Property with respect to which a low-income housing tax credit is claimed is subject to an at-risk limitation similar to the investment tax credit at-risk rules in the case of nonqualified nonrecourse financing. An exception is provided for lenders related to the buyer of the low-income housing property. Another exception provides that the general investment tax credit at-risk rule, limiting the amount of nonrecourse financing to 80 percent of the credit base of the property, does not apply in the case of the low-income housing tax credit.[26]

A further exception is provided for financing (including seller financing) not in excess of 60 percent of the basis of the property that is lent by 50l(c)(3) and 50l(c)(4) organizations whose exempt purpose includes fostering low-income housing. Further, if the rate of interest for any financing qualifying for this exception is below the applicable Federal rate at the time the financing is incurred, less 1 percentage point, then the qualified basis to which such financing relates shall be reduced to reflect the present value of the payments of principal and interest, using as the discount rate such applicable Federal rate. The credit is recaptured if the financing provided by such organizations is not repaid with interest by the end of the 15-year credit compliance period.

Coordination with other provisions

The credit is subject to the rules of the general business credit, including the maximum amount of income tax liability that may

[26] This exception was enacted in the Omnibus Budget Reconciliation Act of 1986, P.L. 99-509.

be reduced by a general business tax credit in any year. Unused credits for any taxable year may be carried back to each of the 3 preceding taxable years and then carried forward to each of the 15 following taxable years. Congress intended that no credits be carried back to taxable years ending prior to January 1, 1987.[27]

For purposes of the rules in the Act limiting passive loss deductions, the credit (but not losses) is treated as arising from rental real estate activities in which the taxpayer actively participates. Credits may be used to offset tax on up to $25,000 of nonpassive income, subject to a phaseout between $200,000 and $250,000 of adjusted gross income (disregarding passive losses).

The basis of property for purposes of depreciation is not reduced by the amount of low-income credits claimed.

Effective Date

The credit is effective for buildings placed in service after December 31, 1986, and before January 1, 1991, other than (1) property to which the depreciation rules of prior-law apply or (2) property with respect to which any investor is eligible for passive losses under the special transitional exception contained in section 502 of the Act. Congress further intended that no property to which the provision of prior law allowing five-year amortization of rehabilitation expenditures applies may be included in eligible basis.[28] As stated above, all buildings eligible for the credit must be placed in service before January 1, 1991.[29] A building placed in service in 1990 is eligible for the credit, however, only if expenditures of 10 percent or more of the reasonably expected cost of the building are incurred before January 1, 1989. Under a special rule, described above, credit authority for such property placed in service in 1990 may be carried over from the 1989 volume allocation for any credit agency.

Revenue Effect

The low-income rental housing tax credit is estimated to reduce fiscal year budget receipts by $67 million in 1987, $324 million in 1988, $705 million in 1989, $1,011 million in 1990, and $1,139 million in 1991.

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21 A technical amendment may be needed so that the statute reflects this intent.

28 A technical amendment may be needed so that the statute reflects this intent.

•• The Act contains a general rule preventing the allocation of credit authority to buildings placed in service after 1990. Congress intended that tax-exempt bond-financed projects be treated in the same manner as other projects, and are not eligible for the credit if placed in service after 1990. A technical amendment may be needed so that the statute reflects this intent. Such an amendment was included in the versions of H. Con. Res. 395 which passed the House of Representatives and Senate in the 99th Congress.

Section 9

IRC Section 42

"(3) EXPEDITED REFUNDS.—

"(A) IN GENERAL.—If there is an overpayment of tax with respect to a taxable year by reason of paragraph (1), the taxpayer may file an application for a tentative refund of such overpayment. Such application shall be in such manner and form, and contain such information, as the Secretary may prescribe.

"(B) DEADLINE FOR APPLICATIONS.—Subparagraph (A) shall apply only to an application filed before the date which is 1 year after the close of the suspension period to which the application relates.

"(C) ALLOWANCE OF ADJUSTMENTS.—Not later than 90 days after the date on which an application is filed under this paragraph, the Secretary shall—

"(i) review the application;

"(ii) determine the amount of the overpayment; and

"(iii) apply, credit, or refund such overpayment,

in a manner similar to the manner provided in section 6411(b) of such Code.

"(D) CONSOLIDATED RETURNS.—The provisions of section 6411(c) of such Code shall apply to an adjustment under this paragraph in such manner as the Secretary may provide.

"(4) CREDIT ATTRIBUTABLE TO SUSPENSION PERIOD.—

"(A) IN GENERAL.—For purposes of this subsection, in the case of a taxable year which includes a portion of the suspension period, the amount of credit determined under section 41 of such Code for such taxable year which is attributable to such period is the amount which bears the same ratio to the amount of credit determined under such section 41 for such taxable year as the number of months in the suspension period which are during such taxable year bears to the number of months in such taxable year.

"(B) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or 6655 of such Code for any period before July 1, 1999, with respect to any underpayment of tax imposed by such Code to the extent such underpayment was created or increased by reason of subparagraph (A).

"(5) SECRETARY.—For purposes of this subsection, the term 'Secretary' means the Secretary of the Treasury (or such Secretary's delegate)."

SPECIAL RULES FOR TAXABLE YEARS BEGINNING BEFORE OCT. 1, 1990, AND ENDING AFTER SEPT. 30, 1990

Section 7110(a)(2) of Pub. L. 101–239, which set forth the method of determining the amount treated as qualified research expenses for taxable years beginning before Oct. 1, 1990, and ending after Sept. 30, 1990, was repealed by Pub. L. 101–508, title XI, §11402(b)(1), Nov. 5, 1990, 104 Stat. 1388–473.

[Section 1702(d)(1) of Pub. L. 104–188 provided that: "Notwithstanding section 11402(c) of the Revenue Reconciliation Act of 1990 [Pub. L. 101–508, set out as a note under section 45C of this title], the amendment made by section 11402(b)(1) of such Act [repealing section 7110(a)(2) of Pub. L. 101–239, formerly set out as a note above] shall apply to taxable years ending after December 31, 1989."]

STUDY AND REPORT ON CREDIT PROVIDED BY THIS SECTION

Section 4007(b) of Pub. L. 100–647 directed Comptroller General of United States to conduct a study of credit provided by 26 U.S.C. 41 and submit a report of the study not later than Dec. 31, 1989, to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

NEW SECTION 41 TREATED AS CONTINUATION OF OLD SECTION 44F

Section 474(i)(2) of Pub. L. 98–369 provided that: "For purposes of determining—

"(A) whether any excess credit under old section 44F [now 41] for a taxable year beginning before January 1, 1984, is allowable as a carryover under new section 30 [now 41], and

"(B) the period during which new section 30 [now 41] is in effect,

new section 30 [now 41] shall be treated as a continuation of old section 44F (and shall apply only to the extent old section 44F would have applied)."

§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

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)[1] 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—

[1] So in original. No subpar. (A) has been enacted.

(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)[1] 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 taxpayer 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,[2] 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

[2] So in original. Probably should be ''etc.,''.

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 ⅔ 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 as 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;[3] 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 treat-

[3] So in original. The semicolon probably should be a comma.

ed 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 nonlow-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 ⅔ 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[4] 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 McKinney-Vento 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—

[4] So in original. See 2008 Amendment note below.

(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.[5]

(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.

(9) Coordination with low-income housing grants

(A) Reduction in State housing credit ceiling for low-income housing grants received in 2009

For purposes of this section, the amounts described in clauses (i) through (iv) of subsection (h)(3)(C) with respect to any State for 2009 shall each be reduced by so much of such amount as is taken into account in determining the amount of any grant to such State under section 1602 of the American Recovery and Reinvestment Tax Act of 2009.

(B) Special rule for basis

Basis of a qualified low-income building shall not be reduced by the amount of any grant described in subparagraph (A).

(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,

[5] So in original. The period probably should not appear.

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..[6]

(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

[6] So in original.

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,

(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.

(Added Pub. L. 99–514, title II, §252(a), Oct. 22, 1986, 100 Stat. 2189; amended Pub. L. 99–509, title VIII, §8072(a), Oct. 21, 1986, 100 Stat. 1964; Pub. L. 100–647, title I, §§1002(*l*)(1)–(25), (32), 1007(g)(3)(B), title IV, §§4003(a), (b)(1), (3), 4004(a), Nov. 10, 1988, 102 Stat. 3373–3381, 3435, 3643, 3644; Pub. L. 101–239, title VII, §§7108(a)(1), (b)–(e)(2), (f)–(m), (n)(2)–(q), 7811(a), 7831(c), 7841(d)(13)–(15), Dec. 19, 1989, 103 Stat. 2306–2321, 2406, 2426, 2429; Pub. L. 101–508, title XI, §§11407(a)(1), (b)(1)–(9), 11701(a)(1)–(3)(A), (4), (5)(A), (6)–(10), 11812(b)(3), 11813(b)(3), Nov. 5, 1990, 104 Stat. 1388–474, 1388–475, 1388–505 to 1388–507, 1388–535, 1388–551; Pub. L. 102–227, title I, §107(a), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 103–66, title XIII, §13142(a)(1), (b)(1)–(5), Aug. 10, 1993, 107 Stat. 437–439; Pub. L. 104–188, title I, §1704(t)(53), (64), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 105–206, title VI, §6004(g)(5), July 22, 1998, 112 Stat. 796; Pub. L. 106–400, §2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 106–554, §1(a)(7) [title I, §§131(a)–(c), 132–136], Dec. 21, 2000, 114 Stat. 2763, 2763A–610 to 2763A–613; Pub. L. 107–147, title IV, §417(2), (3), Mar. 9, 2002, 116 Stat. 56; Pub. L. 108–311, title II, §207(8), title IV, §408(a)(3), Oct. 4, 2004, 118 Stat. 1177, 1191; Pub. L. 110–142, §6(a), Dec. 20, 2007, 121 Stat. 1806; Pub. L.

110–289, div. C, title I, §§ 3001–3002(b), 3003(a)–(g), 3004(a)–(g), 3007(b), July 30, 2008, 122 Stat. 2878–2884, 2886; Pub. L. 111–5, div. B, title I, § 1404, Feb. 17, 2009, 123 Stat. 352.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(2)(A), is the date of enactment of Pub. L. 110–289, which was approved July 30, 2008.

Section 201(a) of the Tax Reform Act of 1986, referred to in subsec. (c)(2)(B), is section 201(a) of Pub. L. 99–514, which amended section 168 of this title generally.

Section 3 of the Federal Deposit Insurance Act, referred to in subsec. (d)(6)(B), is classified to section 1813 of Title 12, Banks and Banking.

Section 8 of the United States Housing Act of 1937, referred to in subsecs. (d)(6)(C)(i), (g)(2)(B), and (h)(6)(B)(iv), is classified to section 1437f of Title 42, The Public Health and Welfare. Section 8(e)(2) of the Act was repealed by Pub. L. 101–625, title II, § 289(b)(1), Nov. 28, 1990, 104 Stat. 4128, effective Oct. 1, 1991, but to remain in effect with respect to single room occupancy dwellings as authorized by subchapter IV (§ 11361 et seq.) of chapter 119 of Title 42. See section 12839(b) of Title 42.

Sections 221(d)(3), (4) and 236 of the National Housing Act, referred to in subsec. (d)(6)(C)(i), are classified to sections 1715*l*(d)(3), (4) and 1715z–1, respectively, of Title 12, Banks and Banking.

Sections 515, 502(c), and 520 of the Housing Act of 1949, referred to in subsecs. (d)(6)(C)(i), (g)(2)(B)(iv), and (i)(8), are classified to sections 1485, 1472(c), and 1490, respectively, of Title 42, The Public Health and Welfare.

The date of the enactment of this subparagraph, referred to in subsec. (g)(2)(E), is the date of enactment of Pub. L. 100–647, which was approved Nov. 10, 1988.

The date of the enactment of this clause, referred to in subsec. (i)(3)(B)(iii)(I), is date of enactment of Pub. L. 101–239, which was approved Dec. 19, 1989.

The Social Security Act, referred to in subsec. (i)(3)(D)(i)(I), (II), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title IV of the Act is classified generally to subchapter IV (§ 601 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Parts B and E of title IV of the Act are classified generally to parts B (§ 620 et seq.) and E (§ 670 et seq.), respectively, of subchapter IV of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Job Training Partnership Act, referred to in subsec. (i)(3)(D)(i)(III), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, which was classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor, and was repealed by Pub. L. 105–220, title I, § 199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. Pursuant to section 2940(b) of Title 29, references to a provision of the Job Training Partnership Act, effective Aug. 7, 1998, are deemed to refer to that provision or the corresponding provision of the Workforce Investment Act of 1998, Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, and effective July 1, 2000, are deemed to refer to the corresponding provision of the Workforce Investment Act of 1998. For complete classification of the Job Training Partnership Act to the Code, see Tables. For complete classification of the Workforce Investment Act of 1998 to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

Section 1602 of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (i)(9)(A), is section 1602 of Pub. L. 111–5, which is set out as a note below.

PRIOR PROVISIONS

A prior section 42, added Pub. L. 94–12, title II, § 203(a), Mar. 29, 1975, 89 Stat. 29; amended Pub. L. 94–164, § 3(a)(1), Dec. 23, 1975, 89 Stat. 972; Pub. L. 94–455, title IV, § 401(a)(2)(A), (B), title V, § 503(b)(4), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1555, 1562, 1834; Pub. L. 95–30, title I, § 101(c), May 23, 1977, 91 Stat. 132, which related to general tax credit allowed to individuals in an amount equal to the greater of (1) 2% of taxable income not exceeding $9,000 or (2) $35 multiplied by each exemption the taxpayer was entitled to, expired Dec. 31, 1978, pursuant to the terms of: (1) Pub. L. 94–12, § 209(a) as amended by Pub. L. 94–164, § 2(e), set out as an Effective and Termination Dates of 1975 Amendment note under section 56 of this title; (2) Pub. L. 94–164, § 3(b), as amended by Pub. L. 94–455, § 401(a)(1) and Pub. L. 95–30, § 103(a); and (3) Pub. L. 94–455, § 401(e), as amended by Pub. L. 95–30, § 103(c) and Pub. L. 95–600, title I, § 103(b), Nov. 6, 1978, 92 Stat. 2771, set out as an Effective and Termination Dates of 1976 Amendment note under section 32 of this title.

Another prior section 42 was renumbered section 37 of this title.

AMENDMENTS

2009—Subsec. (i). Pub. L. 111–5 added par. (9).

2008—Subsec. (b). Pub. L. 110–289, § 3002(a), redesignated par. (2) as (1), in heading, substituted ''Determination of applicable percentage'' for ''Buildings placed in service after 1987'', in text, substituted ''For purposes of this section, the term 'applicable percentage' means, with respect to any building, the appropriate percentage'' for ''(A) IN GENERAL.—In the case of any qualified low-income building placed in service by the taxpayer after 1987, the term 'applicable percentage' means the appropriate percentage'', ''a new building which is not federally subsidized for the taxable year'' for ''a building described in paragraph (1)(A)'', and ''a building not described in clause (i)'' for ''a building described in paragraph (1)(B)'', added par. (2), and struck out ''For purposes of this section—'' after subsec. heading and former par. (1) which related to buildings placed in service during 1987.

Subsec. (c)(2). Pub. L. 110–289, § 3004(a), struck out concluding provisions which read as follows: ''Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937 (other than assistance under the McKinney-Vento Homeless Assistance Act (as in effect on the date of the enactment of this sentence)).''

Subsec. (d)(2)(B)(ii). Pub. L. 110–289, § 3003(g)(1), substituted ''the date the building was last placed in service,'' for ''the later of—

''(I) the date the building was last placed in service, or

''(II) the date of the most recent nonqualified substantial improvement of the building,''.

Subsec. (d)(2)(D). Pub. L. 110–289, § 3003(e), (g)(2), redesignated cls. (ii) and (iii)(II) as (i) and (ii), respectively, in cl. (ii) struck out at end ''For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), '10 percent' shall be substituted for '50 percent'.'', and struck out former cls. (i) and (iii)(I) which related to the term ''nonqualified substantial improvement'' and application of section 179 for purposes of subpar. (B)(i).

Subsec. (d)(4)(C)(ii). Pub. L. 110–289, § 3003(c), substituted ''shall not exceed the sum of—'' for ''shall not exceed 10 percent of the eligible basis of the qualified low-income housing project of which it is a part.'' and added subcls. (I) and (II).

Subsec. (d)(5)(A). Pub. L. 110–289, § 3003(d), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''If, during any taxable year of the compliance period, a grant is made with respect to any building or the operation thereof and any portion of such grant is funded with Federal funds (whether or not includible in gross income), the eligible basis of such building for such taxable year and all succeeding taxable years shall be reduced by the portion of such grant which is so funded.''

Section 10

IRS Form 8609 With Instructions

Form **8609**
(Rev. May 2018)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Allocation and Certification

▶ Go to *www.irs.gov/Form8609* for instructions and the latest information.

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	Check here ▶ ☐ if the eligible basis used in the computation of line 3a was increased under the high-cost area provisions of section 42(d)(5)(B). Enter the percentage to which the eligible basis was increased (see instructions)	**3b**	1 ___ ___%
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 ☐ 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 ☐ Average income ☐ 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 I have examined this form and accompanying 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) ▶ First year of the credit period

Instructions for Form 8609

Department of the Treasury
Internal Revenue Service

(Rev. July 2018)

Low-Income Housing Credit Allocation and Certification

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

Future Developments

For the latest information about developments related to Form 8609 and its instructions, such as legislation enacted after they were published, go to *IRS.gov/Form8609*.

What's New

Average income test. An average income election has been added to the section 42(g)(1) minimum set-aside requirements by the Consolidated Appropriations Act of 2018 (P.L. 115-141). See *Line 10c* and *Line 10d*, later, for details.

Reminder

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

General Instructions

Purpose of Form

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

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

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

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

1. The allocation is the result of an advance binding commitment by the housing credit agency made not later than the close of the calendar year in which the building is placed in service (see section 42(h)(1)(C));

2. The allocation relates to an increase in qualified basis (see section 42(h)(1)(D));

3. The allocation is made for a building placed in service no later than the second calendar year following the calendar year in which the allocation is made if the building is part of a project in which the taxpayer's basis is more than 10% of the project's reasonably expected basis as of the end of that second calendar year; or

4. The allocation is made for a project that includes more than one building if:

a. The allocation is made during the project period,

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

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

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

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

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

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

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

Filing Requirement

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

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

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

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

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

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

Building Owner's Recordkeeping

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

- A copy of the original Form 8609 received from the housing agency and all related Forms 8609-A (or predecessor Schedules A (Form 8609)), Forms 8586, and any Forms 8611, Recapture of Low-Income Housing Credit.
- If the maximum applicable credit percentage allowable on line 2 reflects an election under section 42(b)(1)(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. Don't include any portion of the original qualified basis when determining this amount.

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

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

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

However, if an allocation is made under section 42(h)(1)(E) or 42(h)(1)(F), the date of allocation is the date the authorized official of the housing credit agency completes, signs, and dates the section 42(h)(1)(E) or 42(h)(1)(F) document used to make the allocation. If no allocation is required (i.e., 50% or greater tax-exempt bond financed building), leave line 1a blank.

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

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

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

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

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

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

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

- The fractional number of low-income units to all residential rental units in the building (the “unit fraction”) or
- The fractional amount of floor space of the low-income units to the floor space of all residential rental units in the building (the “floor space fraction”).

Generally, the term "low-income unit" means any unit in a building if the unit is rent-restricted and the individuals occupying the unit meet the income limitation applicable to the project of which the building is a part. See section 42(i)(3)(A). Generally, a unit isn't treated as a low-income unit unless it's suitable for occupancy and used other than on a transient basis. Section 42(i)(3)(B) 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 certain existing buildings, the eligible basis is its acquisition cost plus capital improvements through the close of the first tax year of the credit period. See the instructions for line 3b and section 42(d) for other exceptions and details.

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

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

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

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

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

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

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

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

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

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

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

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

Part II—First-Year Certification

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

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

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

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

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

Residential rental property may qualify for the credit even though part of the building in which the residential rental units are located is used for commercial use. Don't include the cost of the 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.

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

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

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

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

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

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

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). The minimum set-aside requirement (see the instructions for line 10c) is a project-based test.*

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

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

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

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

You may elect to reduce the eligible basis by the proceeds of any tax-exempt obligation and claim the 70% present value credit on the remaining eligible basis. A minimum applicable percentage of 9% is in effect for new non-federally subsidized buildings placed in service after July 30, 2008, unless the housing credit agency determines a lesser amount is necessary to assure project feasibility. However, if you make this election, you may not claim the 30% present value credit on the portion of the basis that was financed with the tax-exempt obligation.

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

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

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

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

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

- **20-50 Test.** Twenty percent (20%) or more of the residential units in the project must be both rent restricted and occupied by individuals whose income is 50% or less of the area median gross income.
- **40-60 Test.** Forty percent (40%) or more of the residential units in the project must be both rent restricted and occupied by individuals whose income is 60% or less of the area median gross income.
- **Average Income Test.** Forty percent (40%) or more (25% or more in the case of a project described in section 142(d)(6)) of the residential units in the project must be both rent restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. The average of the imputed income limitations designated must not be more than 60% of the area median gross income. The designated imputed income limitation of a unit can only be 20%, 30%, 40%, 50%, 60%, 70%, or 80% of the area median gross income.

CAUTION *The average income test is only available for elections made after March 23, 2018.*

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)).

Rural projects. For purposes of the 20-50, 40-60, average income, 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 is a project-based test and must be met by the close of the first year of the credit period in order to claim any credit for the first year or for any subsequent years.*

Line 10d. The deep rent skewed 15-40 election isn't an additional test for satisfying the minimum set-aside requirements of section 42(g)(1). The 15-40 test is an election that relates to the determination of a low-income tenant's income. Generally, a continuing resident's income may increase up to 140% of the applicable income limit.

- If the 20-50, 40-60, or 25-60 test under the minimum set-aside rules described, earlier, in *Line 10c* has been elected, the applicable income limit generally is 50% or less or 60% or less of the area median gross income (or, when applicable, national non-metropolitan median income).
- If the average income test in *Line 10c* has been elected, the applicable income limit generally is the imputed income limitation designated by the taxpayer with respect to the respective unit. The average of the imputed income limitations designated must not exceed 60% of the area median gross income (or, when applicable, national non-metropolitan median income). Also, the designated imputed income limitation of any unit must be in 10% increments between the range of 20% and 80% of the area median gross income (or, when applicable, national non-metropolitan median income).

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 the deep rent skewed election is made, at least 15% of all low-income units in the project must be occupied at all times during the compliance period by tenants whose income is 40% or less of the area median gross income (or when applicable, national non-metropolitan median income). A deep rent skewed project itself must meet the requirements of section 142(d)(4)(B). Once made, the election is irrevocable.

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

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

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

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 send your comments from *IRS.gov/FormsPubs*. Click on "Help with Forms and Instructions" and then on "Give us feedback." Or you can send your comments to the Internal Revenue Service, Tax Forms and Publications, 1111 Constitution Ave. NW, IR-6526, Washington, DC, 20224. Do not send the tax form to this office. Instead, see *Filing Requirement*, earlier.

Section 11

IRS Final Regulations – Compliance Monitoring

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8859]

RIN 1545-AV44

Compliance Monitoring and Miscellaneous Issues Relating to the Low-Income Housing Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the procedures for compliance monitoring by state and local housing agencies (Agencies) with the requirements of the low-income housing credit; the requirements for making carryover allocations; the rules for Agencies' correction of administrative errors or omissions; and the independent verification of information on sources and uses of funds submitted by taxpayers to Agencies. These final regulations affect owners of low-income housing projects who claim the credit and the Agencies who administer the credit.

DATES: Effective Dates: These regulations are effective January 1, 2001, except that the amendments made to §§1.42-5(c)(5) and (e)(3)(i), and 1.42-13 are effective January 14, 2000, and the amendment made to §1.42-6(d)(4)(ii) is effective January 1, 2000.

Applicability Dates: For dates of applicability of the amendments to §1.42-5, see §1.42-5(h). For date of applicability of the amendment made to §1.42-6, see

§1.42-12(c). For date of applicability of the amendments made to §1.42-13, see §1.42-13(d). For date of applicability of §1.42-17, see §1.42-17(b).

FOR FURTHER INFORMATION CONTACT: Paul Handleman, (202) 622-3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545-1357. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For §1.42-5, the estimated annual burden per respondent varies from .5 hour to 3 hours for taxpayers and 250 to 5,000 hours for Agencies, with an estimated average of 1 hour for taxpayers and 1,500 hours for Agencies. For §1.42-13, the estimated annual burden per respondent varies from .5 hour to 10 hours for taxpayers and Agencies, with an estimated average of 3.5 hours for taxpayers and 3 hours for Agencies. For §1.42-17, the estimated annual burden per respondent varies from .5 hour to 2 hours for taxpayers and .5 hour to 5 hours for Agencies, with an estimated average of 1 hour for taxpayers and 2 hours for Agencies.

Comments concerning the accuracy of these burden estimates and suggestions for reducing these burdens should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On January 8, 1999, the IRS published proposed regulations (REG-114664-97) in the **Federal Register** (64 FR 1143) inviting comments under section 42. A public hearing was held May 27, 1999. Numerous comments have been received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury Decision.

Public Comments

A. <u>Compliance Monitoring</u>

1. <u>Inspection Requirement for New Buildings</u>.

The proposed regulations require that, by the end of the calendar year following the year the last building in a project is placed in service, the Agency conduct on-site inspections of the projects and review the low-income certification, the documentation supporting such certification, and the rent record for each tenant in the project. Most commentators view the requirement for reviewing all tenant records for all buildings in a project as unnecessary and burdensome. Most commentators suggest limiting inspections for new buildings to 20 percent of the project's low-income units. Commentators also suggest extending the time limit for inspecting new buildings to the end of the calendar year following the first year of the credit period or at least until a reasonable time after the Agency issues Form 8609, "Low-Income Housing Credit Allocation Certification." This added flexibility would allow the Agency to combine a physical inspection with a file review of the first year of the credit period.

In response to the comments, the final regulations reduce the inspection burden for new buildings by requiring the Agency to conduct on-site inspections of all new buildings in the project and, for at least 20 percent of the project's low-income units, to inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units. To allow the Agency sufficient time to review the tenant files for the first year of the credit period, the final regulations extend the time limit for inspecting new buildings to the end of the second calendar year following the year the last building in the project is placed in service.

2. <u>Three-year Inspection Requirement</u>.

The proposed regulations require that, at least once every 3 years, each Agency conduct on-site inspections of all buildings in each low-income housing project and, for each tenant in at least 20 percent of the project's low-income units selected by the

Agency, review the low-income certification, the documentation supporting such certification, and the rent record.

Most commentators agree with requiring physical inspections of the buildings at least once every 3 years. However, commentators recommend reviewing tenant income and rent records once every 5 years, which is one of the options under the current compliance monitoring regulations (see §1.42-5(c)(2)(ii)(B) requiring an Agency to review tenant files for 20 percent of the low-income housing projects each year). Commentators also recommend reviewing tenant files either on-site or at other locations, including desk audits.

Although the physical inspection and file review requirements for new buildings are relaxed in the final regulations, the final regulations retain the 3-year inspection cycle for existing buildings. The final regulations do not separate the physical inspection and file review cycles (every 3 years for physical inspections and every 5 years for file reviews) as suggested by commentators because it is administratively complete to do both during the same year. The tenant income and rent restrictions in section 42(g) are equally important as the habitability standards for a low-income unit in section 42(i)(3)(B)(ii). The final regulations adopt the suggestion that the file review may be done wherever the tenant files are maintained.

3. Health, Safety, and Building Code Inspections.

The proposed regulations require the Agency to determine whether the project is suitable for occupancy, taking into account local health, safety, and building codes. Many commentators object to this requirement as too costly and unadministerable because building codes vary considerably within states. Commentators also asked for guidelines as to what constitutes an “inspection.” Some commentators propose defining an inspection as looking at selected units in the building and common areas for visible problems or defects without applying the local health, safety, and building codes standards. One commentator suggests inspections based on a complaint from the local jurisdiction or from a tenant. Some commentators suggest using a uniform physical standard such as the uniform physical condition standards for public housing established by the Department of Housing and Urban Development (HUD) in 24 CFR 5.703.

Section 42(i)(3)(B)(i) excludes from the definition of a “low-income unit” a unit that is not suitable for occupancy. Under section 42(i)(3)(B)(ii), suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes. Recognizing that these codes vary considerably within states, the final regulations require an Agency to determine whether a low-income housing project satisfies these codes, or satisfies the HUD uniform physical condition standards. The HUD standards are intended to ensure that housing is decent, safe, sanitary, and in good repair. Though it would be appropriate that an Agency use HUD’s inspection protocol under 24 CFR 5.705, the final regulations do not mandate use of HUD’s inspection protocol because to do so could increase costs to the Agencies as well as limit their latitude in applying standards consistent with their own operating procedures and practices. The final regulations except a building from the inspection requirement if the building is financed by the

Rural Housing Service (RHS) under the section 515 program, the RHS inspects the building (under 7 CFR part 1930(c)), and the RHS and Agency enter into a memorandum of understanding, or other similar arrangement, under which the RHS agrees to notify the Agency of the inspection results. Irrespective of the physical inspection standard selected by the Agency, a low-income housing project under section 42 must continue to satisfy local health, safety, and building codes.

The proposed regulations limit an Agency's delegation of the physical inspection of a project to only a state or local government unit responsible for making building code inspections. Commentators suggest expanding the delegation of inspections to professional firms. The final regulations remove the delegation limitation and Agencies may delegate the physical inspection requirement to state or local governmental agencies, HUD, or private contractors.

4. Local Reports of Building Code Violations.

The proposed regulations require the owner of a low-income housing project to certify that for the preceding 12-month period the state or local government unit responsible for making building code inspections did not issue a report of a violation for the project. 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 Agency.

A commentator noted that the number of violations attached to the annual owner certification would be considerable because even the highest quality rental housing operations do not have an inspection without a report or notice of some violation. Two commentators suggest attaching reports only for violations that have not been corrected prior to filing the annual owner certification or requiring that owners only attach reports for “major” violations. The commentators suggest defining major violations as violations not corrected within 90 days of the notice of violation or violations where the cost to comply exceeds $2,500. A commentator suggests that Agencies be allowed to distinguish between minor technical violations and serious violations (i.e., lack of heat or hot water, hazardous conditions, and security) in reporting noncompliance.

Though a minor violation will not lead to the disallowance or recapture of section 42 credits, a series of minor violations may be the equivalent of a major violation resulting in disallowance or recapture of credits. Determining the difference between a major and minor violation is subjective. The final regulations do not exclude minor violations from the reporting and recordkeeping requirement. However, to reduce the inspection violation paperwork, the final regulations require that the owner must either attach a statement summarizing the violations or a copy of each violation report to the annual owner certification submitted to the Agency. The owner must state on the certification whether the violation has been corrected. In addition, the final regulations require that the owner retain the original violation report for the Agency’s physical inspection. Retention of the original violation report is not required once the Agency reviews the violation and completes its inspection, unless the violation remains uncorrected.

5. Correction of Noncompliance or Failure to Certify.

The final regulations adopt commentators' suggestion to limit to a 3-year period after the end of the correction period in §1.42-5(e)(4) the requirement that Agencies file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the IRS reporting the correction of the noncompliance or failure to certify.

6. Compliance Monitoring Effective Dates.

Commentators suggest an effective date of at least one year after the final regulations are published in the Federal Register. Commentators also recommend on-site inspections apply only to new buildings allocated section 42 credits after the effective date of the final regulations.

Because the amendments to the compliance monitoring regulations will require amendments to qualified allocation plans, the final regulations relating to compliance generally contain a January 1, 2001, effective date. Thus, the requirements to attach local health, safety, or building code violations to the annual owner certification and to inspect buildings and review tenant files for existing projects are effective January 1, 2001. The inspection requirement and tenant file review for new buildings is effective for buildings placed in service on or after January 1, 2001.

7. Section 8 and Federal Civil Rights Laws.

Two commentators state that insufficient controls are in place to ensure that low-income housing projects adhere to the requirement in section 42(h)(6)(B)(iv) of nondiscrimination against Section 8 voucher or certificate holders. The commentators suggest that the IRS could help compensate for lack of controls by working with HUD to ensure that Section 8 voucher or certificate holders are aware of, and have access to, low-income housing projects. The commentators also suggest that Agencies provide regional HUD offices a list of low-income housing projects in that state, with information that would be helpful for prospective tenants. One commentator suggests that the prohibition on discrimination based on Section 8 status be clarified to exclude policies that bar Section 8 tenants but have no substantial business justification. For example, low-income housing projects should not be permitted to exclude Section 8 voucher or certificate holders through a rule that requires every applicant to have income equal to at least three times the total rent.

The commentators also suggest that the Agencies should be required to develop a plan for educating applicants and owners of projects of the prohibition against discrimination on the basis of Section 8 voucher or certificate status. They recommend that the Agencies should be required to have a procedure for accepting and processing complaints about discrimination against Section 8 voucher or certificate holders. They also recommend that IRS and HUD should work together to study the circumstances under which Section 8 voucher or certificate holders are, or are not, accessing projects.

Section 42(h)(6)(A) provides that no credit shall be allowed by reason of section 42 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. Section 42(h)(6)(B)(iv) defines the term “extended low-income housing commitment” to include any agreement between the taxpayer and the housing credit agency that 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. To help monitor compliance with section 42(h)(6)(B)(iv), the final regulations amend the annual owner certification relating to the extended low-income housing commitment under §1.42-5(c)(1)(xi) to require owners to certify that the owner has not refused to lease a unit in the project to a Section 8 applicant because the applicant holds a Section 8 voucher or certificate.

The IRS has informed HUD of the comments received about preventing discrimination based on Section 8 status. Agencies should provide HUD with publicly available information on section 42 low-income housing projects if HUD requests it.

A commentator also suggests that the compliance monitoring regulations be amended to acknowledge the authority of Title VIII of the 1968 Civil Rights Act, as well as HUD's Title VIII regulations; specify the civil rights obligations of the Agencies; and specify what developers and owners of projects must do to satisfy their civil rights obligations.

To monitor for compliance with the Fair Housing Act, the final regulations amend the annual owner certification relating to the general public use requirement in §1.42-5(c)(1)(v) to require owners to certify that no finding of discrimination under the Fair Housing Act has occurred for the project (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).

B. Sources and Uses of Funds

Section 42(m)(2)(A) requires Agencies to limit the housing credit dollar amount allocated to a project to only the amount necessary for the financial feasibility of a project and its viability as a qualified low-income project through the credit period. The proposed regulations require an Agency to evaluate the housing credit dollar amount at four times: (1) at application for the housing credit dollar amount, (2) the allocation of the housing credit dollar amount, (3) the date the building is placed in service, and (4) after the building is placed in service, but before the Agency issues the Form 8609. Commentators recommend elimination of the evaluation at the placed-in-service date. In practice, Agencies currently evaluate the credit amount at the three other times. The final regulations adopt the recommendation by deleting the fourth time requirement and clarifying that the placed-in-service evaluation may occur not later than the date the Agency issues the Form 8609.

Commentators are concerned that the opinion by a certified public accountant, based upon the accountant's audit or examination, on the financial determinations and certifications required in the proposed regulations, could have significant cost implications, particularly for smaller developers. Commentators suggest limiting the requirement to projects with 25 or more units, or projects with total development costs of $5 million or more.

The third-party validation on financial information was recommended in the report by the General Accounting Office (GAO), "Tax Credits: Opportunities to Improve Oversight of the Low-Income Housing Program," (GAO/GGD/RCED-97-55), dated

March 28, 1997. The GAO report states on page 93 that an accounting firm with a tax credit speciality would charge in the $5,000 to $7,500 range per engagement for tax credit certifications (opinion on total costs, eligible basis, and tax credit amount) prepared on the basis of an audit done in accordance with AICPA audit standards even for projects costing upwards of $5 million to $10 million. As a percentage of development costs, the CPA tax credit certifications represent a minimal cost for validating financial information. However, in recognition that the cost may be burdensome for smaller developers, the final regulations limit the requirement for an audited schedule of costs for projects with more than 10 units.

Two commentators were concerned that the meaning of the term “financial determinations and certifications” is unclear. A CPA would not be able to evaluate what needs to be audited and whether there are relevant and reliable criteria against which the information can be evaluated. To conduct an audit or attestation engagement, CPAs require that the subject matter be defined and that such subject matter be capable of evaluation against reasonable criteria. Reasonable criteria are essential so that CPAs using the same criteria will be able to arrive at similar conclusions.

Another concern expressed by commentators involved uncertainty as to whether the CPA is being asked to report on financial information that is only historical or whether the CPA is also being asked to examine prospective financial information. CPAs can compile or examine and report on certain types of prospective financial information. However, such engagements generally are more costly than audits of historical information because of minimum presentation guidelines required by professional standards as well as increased risk associated with future-oriented information. The commentators believe that if an Agency were to require CPAs to be associated with prospective financial information, the related costs to the taxpayer may far exceed any perceived benefits to the Agency. Accordingly, the final regulations have been revised to specify that the CPA's opinion only relates to historical project costs.

C. Correction of Administrative Errors and Omissions

Commentators recommend filing the corrected allocation document with the current year's Form 8610, "Annual Low-Income Housing Credit Agencies Report," instead of amending the Form 8610 for the year the allocation was made. Because the administrative errors covered by the automatic approval provision will not have an effect on the total amount of credit the Agency allocated to the building(s) or project, commentators view an amended Form 8610 as unnecessary. Agency recordkeeping would be simplified if all corrected allocation documents could be submitted with the current year's Form 8610. The final regulations adopt this recommendation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the burden on taxpayers is minimal and the burden on small entity Agencies is not significant. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Paul F. Handleman, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.42-17 also issued under 26 U.S.C. 42(n); * * *

Par. 2. Section 1.42-5 is amended by:

1. Removing the word “Revenue” in paragraph (b)(1)(iv) and adding “Omnibus Budget” in its place.

2. Adding paragraph (b)(3).

3. Revising paragraphs (c)(1)(v), (c)(1)(vi), (c)(1)(xi), (c)(2)(ii), and (c)(2)(iii).

4. Removing the word “project” in paragraph (c)(1)(x) and adding “building” in its place.

5. Removing the word “and” at the end of paragraph (c)(1)(x).

6. Adding paragraph (c)(1)(xii).

7. Removing the language "paragraph (c)(2)(ii)(A), (B), and (C) of this section" from the first sentence in paragraph (c)(4)(i) and adding "paragraph (c)(2)(ii) of this section" in its place.

8. Removing the language “Farmers Home Administration (FmHA)” in the first sentence in paragraph (c)(4)(i) and adding “Rural Housing Service (RHS), formerly known as Farmers Home Administration,” in its place.

9. Removing the language “FmHA” in paragraph (c)(4)(ii) and adding “RHS” in its place in each place it appears.

10. Removing the language "An Agency chooses the review requirement of paragraph (c)(2)(ii)(A) of this section and some of the buildings selected for review are" from the first sentence in the example in paragraph (c)(4)(iii) and adding "An Agency selects for review" in its place.

11. Removing the language “FmHA” in paragraph (c)(4)(iii) Example and adding “RHS” in its place in each place it appears.

12. Adding paragraph (c)(5).

13. Revising paragraph (d).

14. Removing the language "(c)(2)(ii)(A), (B), or (C) of this section (whichever is applicable)" from paragraph (e)(2) and adding the language "(c)(2)(ii) of this section" in its place.

15. Adding a sentence at the end of paragraph (e)(3)(i).

16. Removing the language "paragraph (e)(3) of this section" in the third sentence in paragraph (f)(1)(i) and adding "paragraphs (c)(5) and (e)(3) of this section" in its place.

17. Adding three sentences at the end of paragraph (h).

The revisions and additions read as follows:

§1.42-5 Monitoring compliance with low-income housing credit requirements.

* * * * *

(b) * * *

(3) Inspection record retention provision. Under the inspection record retention provision, the owner of a low-income housing project 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 paragraph (c)(1)(vi) of this section) for the Agency’s inspection under paragraph (d) of this section. Retention of the original violation reports or notices is not required once the Agency reviews the

violation reports or notices and completes its inspection, unless the violation remains uncorrected.

(c) * * * (1) * * *

(v) All units in the project were for use by the general public (as defined in §1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601 - 3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court;

(vi) The buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the annual certification submitted to the Agency under paragraph (c)(1) of this section. In addition, the owner must state whether the violation has been corrected;

* * * * *

(xi) An extended low-income housing commitment as described in section 42(h)(6) was in effect (for buildings subject to section 7108(c)(1) of the Omnibus

Budget Reconciliation Act of 1989, 103 Stat. 2106, 2308 - 2311 (1989)), including the requirement under section 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 section 13142(b)(4) of the Omnibus Budget Reconciliation Act of 1993, 107 Stat. 312, 438 - 439 (1993)); and

(xii) All low-income units in the project were used on a nontransient basis (except for transitional housing for the homeless provided under section 42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under section 42(i)(3)(B)(iv)).

(2) * * *

(ii) Require that with respect to each low-income housing project--

(A) The Agency must conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service and, for at least 20 percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units; and

(B) At least once every 3 years, the Agency must conduct on-site inspections of all buildings in the project and, for at least 20 percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units; and

(iii) Require that the Agency randomly select which low-income units and tenant records are to be inspected and reviewed by the Agency. The review of tenant records may be undertaken wherever the owner maintains or stores the records (either on-site or off-site). The units and tenant records to be inspected and reviewed must be chosen in a manner that will not give owners of low-income housing projects advance notice that a unit and tenant records for a particular year will or will not be inspected and reviewed. However, an Agency may give an owner reasonable notice that an inspection of the building and low-income units or tenant record review will occur so that the owner may notify tenants of the inspection or assemble tenant records for review (for example, 30 days notice of inspection or review).

* * * * *

(5) Agency reports of compliance monitoring activities. The Agency must report its compliance monitoring activities annually on Form 8610, "Annual Low-Income Housing Credit Agencies Report."

(d) Inspection provision--(1) In general. Under the inspection provision, the Agency must have the right to perform an on-site inspection of any low-income housing project at least through the end of the compliance period of the buildings in the project. The inspection provision of this paragraph (d) is a separate requirement from any tenant file review under paragraph (c)(2)(ii) of this section.

(2) Inspection standard. For the on-site inspections of buildings and low-income units required by paragraph (c)(2)(ii) of this section, the Agency must review

any local health, safety, or building code violations reports or notices retained by the owner under paragraph (b)(3) of this section and must determine--

(i) Whether the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards); or

(ii) Whether the buildings and units satisfy, as determined by the Agency, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703). The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A low-income housing project under section 42 must continue to satisfy these codes and, if the Agency becomes aware of any violation of these codes, the Agency must report the violation to the Service. However, provided the Agency determines by inspection that the HUD standards are met, the Agency is not required under this paragraph (d)(2)(ii) to determine by inspection whether the project meets local health, safety, and building codes.

(3) Exception from inspection provision. An Agency is not required to inspect a building under this paragraph (d) if the building is financed by the RHS under the section 515 program, the RHS inspects the building (under 7 CFR part 1930), and the RHS and Agency enter into a memorandum of understanding, or other similar arrangement, under which the RHS agrees to notify the Agency of the inspection results.

(4) Delegation. An Agency may delegate inspection under this paragraph (d) to an Authorized Delegate retained under paragraph (f) of this section. Such Authorized

Delegate, which may include HUD or a HUD-approved inspector, must notify the Agency of the inspection results.

(e) * * *

(3) * * *

(i) * * * If the noncompliance or failure to certify is corrected within 3 years after the end of the correction period, the Agency is required to file Form 8823 with the Service reporting the correction of the noncompliance or failure to certify.

* * * * *

(h) * * * In addition, the requirements in paragraphs (b)(3) and (c)(1)(v), (vi), and (xi) of this section (involving recordkeeping and annual owner certifications) and paragraphs (c)(2)(ii)(B), (c)(2)(iii), and (d) of this section (involving tenant file reviews and physical inspections of existing projects, and the physical inspection standard) are applicable January 1, 2001. The requirement in paragraph (c)(2)(ii)(A) of this section (involving tenant file reviews and physical inspections of new projects) is applicable for buildings placed in service on or after January 1, 2001. The requirements in paragraph (c)(5) of this section (involving Agency reporting of compliance monitoring activities to the Service) and paragraph (e)(3)(i) of this section (involving Agency reporting of corrected noncompliance or failure to certify within 3 years after the end of the correction period) are applicable January 14, 2000.

Par. 3. Section 1.42-6 is amended by:

1. In paragraph (c)(3), second sentence, remove the language “Annual Low-Income Housing Credit Agencies Report,” and add the language “ ‘Annual Low-Income Housing Credit Agencies Report,' “ in its place.

2. In paragraph (d)(1), first sentence, remove the language “Low-Income Housing Credit Allocation Certification," and add the language “ ‘Low-Income Housing Credit Allocation Certification,' “ in its place.

3. Revising the first sentence in paragraph (d)(4)(ii).

§1.42-6 Buildings qualifying for carryover allocations.

* * * * *

(d) * * *

(4) * * *

(ii) Agency. The Agency must retain the original carryover allocation document made under paragraph (d)(2) of this section and file Schedule A (Form 8610), “Carryover Allocation of the Low-Income Housing Credit,” with the Agency's Form 8610 for the year the allocation is made. * * *

* * * * *

Par. 4. Section 1.42-11 is amended by revising the last sentence in paragraph (b)(3)(ii)(A) to read as follows:

§1.42-11 Provision of services.

* * * * *

(b) * * *

(3) * * *

(ii) * * * (A) * * * For a building described in section 42(i)(3)(B)(iii) (relating to transitional housing for the homeless) or section 42(i)(3)(B)(iv) (relating to single-room occupancy), a supportive service includes any service provided to assist tenants in locating and retaining permanent housing.

* * * * *

Par. 5. Section 1.42-12 is amended by adding paragraph (c) to read as follows:

<u>§1.42-12 Effective dates and transitional rules</u>.

* * * * *

(c) <u>Carryover allocations</u>. The rule set forth in §1.42-6(d)(4)(ii) relating to the requirement that state and local housing agencies file Schedule A (Form 8610), “Carryover Allocation of the Low-Income Housing Credit,” is applicable for carryover allocations made after December 31, 1999.

Par. 6. Section 1.42-13 is amended by:

1. Revising the introductory text of paragraph (b)(3)(iii).

2. Adding paragraphs (b)(3)(vi), (b)(3)(vii), and (b)(3)(viii).

3. Adding a sentence at the end of paragraph (d).

The revisions and additions read as follows:

<u>§1.42-13 Rules necessary and appropriate; housing credit agencies' correction of administrative errors and omissions</u>.

* * * * *

(b) * * *

(3) * * *

(iii) Secretary's prior approval required. Except as provided in paragraph (b)(3)(vi) of this section, an Agency must obtain the Secretary's prior approval to correct an administrative error or omission, as described in paragraph (b)(2) of this section, if the correction is not made before the close of the calendar year of the error or omission and the correction--

* * * * *

(vi) Secretary's automatic approval. The Secretary grants automatic approval to correct an administrative error or omission described in paragraph (b)(2) of this section if--

(A) The correction is not made before the close of the calendar year of the error or omission and the correction is a numerical change to the housing credit dollar amount allocated for the building or multiple-building project;

(B) The administrative error or omission resulted in an allocation document (the Form 8609, "Low-Income Housing Credit Allocation Certification," or the allocation document under the requirements of section 42(h)(1)(E) or (F), and §1.42-6(d)(2)) that either did not accurately reflect the number of buildings in a project (for example, an allocation document for a 10-building project only references 8 buildings instead of 10 buildings), or the correct information (other than the amount of credit allocated on the allocation document);

(C) The administrative error or omission does not affect the Agency's ranking of the building(s) or project and the total amount of credit the Agency allocated to the building(s) or project; and

(D) The Agency corrects the administrative error or omission by following the procedures described in paragraph (b)(3)(vii) of this section.

(vii) <u>How Agency corrects errors or omissions subject to automatic approval</u>. An Agency corrects an administrative error or omission described in paragraph (b)(3)(vi) of this section by--

(A) Amending the allocation document described in paragraph (b)(3)(vi)(B) of this section to correct the administrative error or omission. The Agency will indicate on the amended allocation document that it is making the "correction under §1.42-13(b)(3)(vii)." If correcting the allocation document requires including any additional B.I.N.(s) in the document, the document must include any B.I.N.(s) already existing for buildings in the project. If possible, the additional B.I.N.(s) should be sequentially numbered from the existing B.I.N.(s);

(B) Amending, if applicable, the Schedule A (Form 8610), “Carryover Allocation of the Low-Income Housing Credit,” and attaching a copy of this schedule to Form 8610, “Annual Low-Income Housing Credit Agencies Report,” for the year the correction is made. The Agency will indicate on the schedule that it is making the "correction under §1.42-13(b)(3)(vii)." For a carryover allocation made before January 1, 2000, the Agency must complete Schedule A (Form 8610), and indicate on the schedule that it is making the "correction under §1.42-13(b)(3)(vii)";

(C) Amending, if applicable, the Form 8609 and attaching the original of this amended form to Form 8610 for the year the correction is made. The Agency will indicate on the Form 8609 that it is making the "correction under §1.42-13(b)(3)(vii)"; and

(D) Mailing or otherwise delivering a copy of any amended allocation document and any amended Form 8609 to the affected taxpayer.

(viii) Other approval procedures. The Secretary may grant automatic approval to correct other administrative errors or omissions as designated in one or more documents published either in the **Federal Register** or in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter).

* * * * *

(d) * * * Paragraphs (b)(3)(vi), (vii), and (viii) of this section are effective January 14, 2000.

Par. 7. Section 1.42-17 is added to read as follows:

§1.42-17 Qualified allocation plan.

(a) Requirements--(1) In general. [Reserved]

(2) Selection criteria. [Reserved]

(3) Agency evaluation. Section 42(m)(2)(A) requires that the housing credit dollar amount allocated to a project is not to exceed the amount the 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. In making this determination, the Agency must consider--

(i) The sources and uses of funds and the total financing planned for the project. The taxpayer must certify to the Agency the full extent of all federal, state, and local subsidies that apply (or which the taxpayer expects to apply) to the project. The taxpayer must also certify to the Agency all other sources of funds and all development costs for the project. The taxpayer's certification should be sufficiently detailed to enable the Agency to ascertain the nature of the costs that will make up the total financing package, including subsidies and the anticipated syndication or placement proceeds to be raised. Development cost information, whether or not includible in eligible basis under section 42(d), that should be provided to the Agency includes, but is not limited to, site acquisition costs, construction contingency, general contractor's overhead and profit, architect's and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, syndication and legal fees, and developer fees;

(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 costs of intermediaries. This requirement should not be applied so as to impede the development of projects in hard-to-develop areas under section 42(d)(5)(C); and

(iv) The reasonableness of the developmental and operational costs of the project.

(4) Timing of Agency evaluation--(i) In general. The financial determinations and certifications required under paragraph (a)(3) of this section must be made as of the following times--

(A) The time of the application for the housing credit dollar amount;

(B) The time of the allocation of the housing credit dollar amount; and

(C) The date the building is placed in service.

(ii) Time limit for placed-in-service evaluation. For purposes of paragraph (a)(4)(i)(C) of this section, the evaluation for when a building is placed in service must be made not later than the date the Agency issues the Form 8609, “Low-Income Housing Credit Allocation Certification.” The Agency must evaluate all sources and uses of funds under paragraph (a)(3)(i) of this section paid, incurred, or committed by the taxpayer for the project up until date the Agency issues the Form 8609.

(5) Special rule for final determinations and certifications. For the Agency’s evaluation under paragraph (a)(4)(i)(C) of this section, the taxpayer must submit a schedule of project costs. Such schedule is to be prepared on the method of accounting used by the taxpayer for federal income tax purposes, and must detail the project’s total costs as well as those costs that may qualify for inclusion in eligible basis under section 42(d). For projects with more than 10 units, the schedule of project costs must be accompanied by a Certified Public Accountant’s audit report on the schedule (an Agency may require an audited schedule of project costs for projects with fewer

than 11 units). The CPA's audit must be conducted in accordance with generally accepted auditing standards. The auditor's report must be unqualified.

(6) Bond-financed projects. A project qualifying under section 42(h)(4) is not entitled to any credit unless the governmental unit that issued the bonds (or on behalf of which the bonds were issued), or the Agency responsible for issuing the Form(s) 8609 to the project, makes determinations under rules similar to the rules in paragraphs (a)(3), (4), and (5) of this section.

(b) Effective date. This section is effective January 1, 2001.

Part 602–OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In §602.101, paragraph (b) is amended by revising the entry for 1.42-5 and adding an entry for 1.42-17 to the table in numerical order to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.42-5	1545-1357
* * * * *	
1.42-17	1545-1357
* * * * *	

/s/ Robert E. Wenzel

Acting Commissioner of Internal Revenue

Approved: December 28, 1999

/s/ Jonathan Talisman
Acting Assistant Secretary of the Treasury

Section 12

IRS Revenue Ruling 90-89 (Minimum Set-Aside Requirements)

REVENUE RULE 90-89

1990-2 C.B. 8, 1990-44 I.R.B. 6.

Internal Revenue Service
Revenue Ruling

LOW-INCOME HOUSING CREDIT; MINIMUM SET-ASIDE REQUIREMENTS

Published: October 29, 1990

(See Also Section 142.)

Low-income housing credit; minimum set-aside requirements. For purposes of determining whether a building meets the minimum set-aside requirements of section 42(g)(1) of the Code, the combined income of all occupants of an apartment, whether or not legally related, is compared to the appropriate percentage of the median family income for a family with the same number of members.

ISSUE

For purposes of determining whether a building meets the minimum set-aside requirements of section 42(g)(1) of the Internal Revenue Code, how is the appropriate percentage of the area median gross income determined for occupants of an apartment when those occupants are not legally related?

FACTS

The owner of a newly constructed building wants to qualify the building for the low-income housing credit under section 42(a) of the Code. The owner has elected to qualify under the 40-60 minimum set-aside requirement of section 42(g)(1)(B), under which 40 percent or more of the building's aggregate residential rental units must be occupied by individuals with incomes of 60 percent or less of the area median gross income.

A and B are unrelated individuals who want to rent a two-bedroom apartment in the building. A and B each has income that does not exceed 60 percent of the area median gross income for one individual. However, A and B's combined income exceeds 60 percent of the area median gross income for a two-individual family.

LAW AND ANALYSIS

Section 38(a) of the Code provides for a general business credit against tax that includes the amount of the current year business credit. Section 38(b)(5) provides that the amount of the current year business credit includes the low- income housing credit determined under section 42(a).

Section 42(a) of the Code provides that, for purposes of section 38, the amount of the low-income housing credit determined under section 42 for any tax year in the credit period shall be an amount equal to the 'applicable percentage' of the qualified basis of each qualified low-income building.

Section 42(c)(2) of the Code defines the term 'qualified low-income building' as any building: (A) that is part of a qualified low-income housing project at all times during the period (i) beginning on the first day in the compliance period on which the building is part of such a project, and (ii) ending on the last day of the compliance period with respect to the building, and (B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

Section 42(g)(1) of the Code defines the term 'qualified low-income housing project' as any project for residential rental property if the project meets the requirements of subparagraphs (A) and (B), whichever the taxpayers elects. The election is irrevocable. The project meets the requirements of section 42(g)(1)(A) if 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 area median gross income. The project meets the requirements of section 42(g)(1)(B) if 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 area median gross income. This rule is known as the 'minimum set-aside' requirement. 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-92 (1986), 1986-3 (Vol. 4) C.B. 92.

Section 42(g)(4) of the Code provides, in part, that section 142(d)(2)(B) applies for purposes of determining whether any project is a low- income housing project and whether any unit is a low-income unit. Section 142(d)(2)(B) states that the income of individuals and area median gross income shall be determined in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937 (or, if the program is terminated, under the program as in effect immediately before such termination). Determinations of area median gross income under the preceding sentence are adjusted for family size. The determination of an individual's or family's income for purposes of section 8 of the Housing Act of 1937 may differ materially from that individual's or family's income for federal income tax purposes.

In order to satisfy the minimum set-aside requirements of section 42(g)(1) of the Code, a specified percentage of apartments in a low-income housing project must be occupied by low-income tenants who meet the income limits of section 42(g)(1). Under sections 42(g)(1) and 142(d)(2)(B), tenants are considered low- income by reference to the area median gross income as adjusted for family size. These sections require that the income of all individuals in a family that share an apartment be aggregated and compared to the area median gross income for a family of the same size to determine if the minimum set-aside requirement is satisfied. Similarly, the income of all unrelated individuals who share an apartment should be aggregated and compared to the area median gross income for a family of the same size to determine if the minimum set- aside requirement is satisfied.

In this case, if A and B rent the apartment, that apartment does not count towards satisfying the minimum set-aside requirement of section 42(g)(1)(B) because A and B's combined income exceeds 60 percent of the area median gross income for a two-individual family.

HOLDING

For purposes of determining whether a building meets the minimum set-aside requirements of section 42(g)(1) of the Code, the combined income of all occupants of an apartment, whether or not legally related, is compared to the appropriate percentage of the median family income for a family with the number of members.

DRAFTING INFORMATION

The principal author of this revenue ruling is Paul F. Handleman of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Mr. Handleman on (202) 377-6349 (not a toll-free call).

Rev. Rul. 90-89, 1990-2 C.B. 8, 1990-44 I.R.B. 6.

Section 13

IRS Revenue Ruling 92-61
(Treatment of Resident Manager's Unit)

REVENUE RULE 92-61

1992-2 C.B. 7, 1992-32 I.R.B. 4. Internal Revenue Service
Revenue Ruling

FULL-TIME RESIDENT MANAGER IN BUILDING ELIGIBLE FOR LOW-INCOME HOUSING CREDIT

Published: August 10, 1992

Section 42. Low-Income Housing Credit

(See Also Sections 103, 142; 1.103-8.)

Full-time resident manager in building eligible for low-income housing credit. 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 section 42(d)(1) of the Code, but the unit is excluded from the applicable fraction under section 42(c)(1)(B) for purposes of determining the building's qualified basis.

ISSUE

If a unit in a qualified low-income building is occupied by a full-time resident manager, is the adjusted basis of that unit included in the building's eligible basis under section 42(d)(1) of the Internal Revenue Code and is that unit included in the applicable fraction under section 42(c)(1)(B) for determining the qualified basis of the building? FACTS

At the beginning of 1990, LP, a limited partnership with a calendar tax year, placed in service a newly constructed apartment building that qualified for the low-income housing credit under section 42(a) of the Code. LP elected to meet the 40-60 test of section 42(g)(1)(B), which requires that at least 40 percent of the units in the building be rent-restricted and occupied by tenants whose incomes are 60 percent or less of area median gross income. Throughout 1990, the first year of the building's credit period, 69 of the 70 units in the building were rent-restricted and occupied by tenants whose incomes were 60 percent or less of area median gross income. The remaining unit in the building was occupied by a resident manager who was hired by LP to manage the building and to be on call to attend to the maintenance needs of the other tenants. All of the units in the building meet the same standard of quality and have the same amount of floor space.

LAW AND ANALYSIS

Section 42(a) of the Code provides that the amount of the low-income housing credit determined for any tax year in the credit period is an amount equal to the applicable percentage of the qualified basis of each low-income building.

Section 42(c)(1)(A) of the Code defines the qualified basis of any qualified low-income building for any tax year as an amount equal to the applicable fraction, determined as of the close of the tax year, of the eligible basis of the building, determined under section 42(d)(5).

Sections 42(c)(1)(B) of the Code defines the applicable fraction as the smaller of the unit fraction or the floor space fraction. Section 42(c)(1)(B) defines the unit fraction as the fraction the numerator of which is the number of low-income units in the building and the denominator of which is the number of residential rental units, 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. In general, under section 42(i)(3)(B), a low-income unit is any unit that is rent-restricted and occupied by individuals meeting the income limitation applicable to the building.

Section 42(d)(1) of the Code provides that the eligible basis of a new building is its adjusted basis as of the close of the first tax year of the credit period. Section 42(d)(4)(A) provides that, except as provided in section 42(d)(4)(B), 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 used in common areas or provided as comparable amenities to all residential rental units in the building.

The legislative history of section 42 of the Code states that residential rental property, for purposes of the low-income housing credit, has the same meaning as residential rental property within section 103. The legislative history of section 42 further states that residential rental property thus includes residential rental units, facilities for use by the tenants, and other facilities reasonably required by the project. 2 H.R.Conf.Rep. No. 841, 99th Cong., 2d Sess. II-89 (1986), 1986-3 (Vol. 4) C.B. 89. Under section 1.103- 8(b)(4) of the Income Tax Regulations, facilities that are functionally related and subordinate to residential rental units are considered residential rental property. Section 1.103-8(b)(4)(iii) provides that facilities that are functionally related and subordinate to residential rental units include facilities for use by the tenants, such as swimming pools and similar recreational facilities, parking areas, and other facilities reasonably required for the project. The examples given by section 1.103-8(b)(4)(iii) of facilities reasonably required for a project specifically include units for resident managers or maintenance personnel.

Accordingly, the unit occupied by LP's resident manager is residential rental property for purposes of section 42 of the Code. The adjusted basis of the unit is includible in the building's eligible basis under section 42(d)(1). The inclusion of the adjusted basis of the resident manager's unit in eligible basis will not be affected by a later conversion of that apartment to a residential rental unit.

The term "residential rental unit" has a narrower meaning under section 42 of the Code than residential rental property. As noted above, under the legislative history of section 42, residential rental property includes facilities for use by the tenants and other facilities reasonably required by the project, as well as residential rental units. Under section 1.103-8(b)(4) of the regulations, units for resident managers or maintenance personnel are not classified as residential rental units, but rather as facilities reasonably required by a project that are functionally related and subordinate to residential rental units.

LP's resident manager's unit is properly considered a facility reasonably required by the project, not a residential rental unit for purposes of section 42 of the Code. Consequently, the unit is not included in either the numerator or denominator of the applicable fraction under section 42(c)(1)(B) for purposes of determining the qualifed basis of the building for the first year of the credit period.

Therefore, as of the end of the first year of the credit period, the adjusted basis of the unit occupied by LP's resident manager is included in the building's eligible basis under section 42(d)(1) of the Code, but the unit is excluded from the applicable fraction under section 42(c)(1)(B). Because all of the residential rental units in LP's building are low-income units, the applicable fraction for the building is "one" (69/69, using the unit fraction).

If in a later year of the credit period, the resident manager's unit is converted to a residential rental unit, the unit will be included in the denominator of the applicable fraction for that year. If the unit also becomes a low-income unit in that year, the unit will be included in the numerator of the applicable fraction for that year. In this case, the applicable fraction will also be "one" (70/70, using the unit fraction).

HOLDING

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 section 42(d)(1) of the Code, but the unit is excluded from the applicable fraction under section 42(c)(1)(B) for purposes of determining the building's qualified basis.

EFFECTIVE DATE

The Internal Revenue Service will not apply this revenue ruling to any building placed in service prior to September 9, 1992, or to any building receiving an allocation of credit prior to September 9, 1992, unless the owner files or has filed a return that is consistent with this ruling. Similarly, the Service will not apply this revenue ruling to any building described in section 42(h)(4)(B) of the Code with respect to which bonds were issued prior to September 9, 1992, unless the owner files or has filed a return that is consistent with this ruling.

Rev. Rul. 92-61, 1992-2 C.B. 7, 1992-32 I.R.B. 4.

<u>Section 14</u>

IRS Revenue Ruling 94-57 (Changes in Medium Gross Income)

<u>REVENUE RULE</u> 94-57

1994-2 C.B. 5, 1994-37 I.R.B. 4.

Internal Revenue Service Revenue Ruling

LOW-INCOME HOUSING CREDIT; CHANGES IN AREA MEDIAN GROSS INCOME; TENANT QUALIFICATION; AVAILABLE UNIT RULE

Published August 24, 1994

Section 42. - Low-Income Housing Credit

(See Also § 142(d.)

Low-income housing credit; changes in area median gross income; tenant qualification; available unit rule. This ruling concludes that (1) the income limitation used to initially qualify tenants in a low-income unit fluctuates with changes in area median gross income, and (2) owners must use the curren area median gross income to determine when the available unit rule of section
42(g)(2)(ii) applies. Rev. Rul. 89-24 modified and

superseded. ISSUES

For the low-income housing credit under s 42 of the Internal Revenue Code:

(1) What is the effect of a change in area median gross income (AMGI) on the income limitation used to determine whether a tenant qualifies as a low-income tenant under s 42(g)(1)?

(2) What is the effect of a change in AMGI on the determination of whether any available residential unit must be rented to a new low-income tenant under s 42(g)(2)(D)(ii)?

FACTS

The Project, a single-building, qualified low-income housing project, received a housing credit dollar amount allocation from a housing credit agency (the Agency) in 1990. The Project was placed in service and began its credit period in 1991. When the Project owner first filed the Project's Form 8609, Low-Income Housing Credit Allocation Certification, the Project owner elected the 40-60 test of s 42(g)(1)(B).

In January 1992, the Tenant took initial occupancy of a rent-restricted residential unit in the Project. At the time the Tenant initially occupied the unit, 60 percent of AMGI, as adjusted for family size, in the area in which the Project is located, as defined in Rev. Rul. 89-24, 1989-1
C.B. 24, was $30x and the Tenant's annual income was $29x. Therefore, the unit that the Tenant occupied qualified as a low-income unit under 42(i)(3).

On May 5, 1993, AMGI, as determined in a manner consistent with section 8 of the United States Housing Act of 1937 (H.U.D. section 8), decreased so that 60 percent of AMGI, as adjusted for family size, in the area in which the Project is located was $25x.

On March 30, 1994, the Tenant's annual income was recertified under s1.42- 5(b)(1)(vi) of the Income Tax Regulations at $36x.
On April 1, 1994, another residential unit in the Project, which was not a low-income unit, became vacant. That unit is of comparable size to the unit occupied by the Tenant. As of April 1,
1994, 60 percent of AMGI remained $25x, as adjusted for family size. At all times, the unit occupied by the Tenant remained rent-restricted.

LAW

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 AMGI, as adjusted for family size, 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 AMGI, as adjusted for family size. These requirements are referred to as the minimum set-asides. Section 142(d)(1) contains similar requirements for exempt facility bonds the net proceeds of which are to be used to provide qualified residential rental projects.

Section 42(i)(3)(A) defines the term "low-income unit" as any unit in a building if: (i) the unit is rent-restricted (as defined in s 42(g)(2)), and (ii) the individuals occupying the unit meet the income limitation applicable under s 42(g)(1) to the project of which the building is a part (low- income tenants).

Section 42(g)(2)(D)(i) provides that, except as provided in s 42(g)(2)(D)(ii), notwithstanding an increase in the income of the occupant of a low-income unit above the income limitation applicable under s 42(g)(1), the unit continues 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, however, that if the income of the occupants of the unit increases above 140 percent of the income limitation applicable under s 42(g)(1), a unit ceases to qualify as a low- income unit if any residential 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. Section 142(d)(3) contains similar requirements for exempt facility bonds the net proceeds of which are to be used to provide qualified residential rental projects.

Under s 42(g)(4), s 142(d)(2)(B) applies when determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit. Section 142(d)(2)(B) provides that the income of individuals and AMGI is determined in a manner consistent with determinations of lower income families and AMGI under H.U.D. section 8. Accordingly, the

determinations of lower income families and AMGI under H.U.D. section 8 apply to s 42(g)(1)
and, therefore, to s 42(g)(2) and s

42(i)(3). ANALYSIS

Issue 1. For a unit to be a low-income unit, a low-income tenant must meet the applicable income limitation elected by a project owner under s 42(g)(1) at the time the tenant initially occupies a rent-restricted residential unit in the owner's project. If a tenant initially satisfied the applicable income limitation, the unit remains a low-income unit, except as provided in s 42(g)(2)(D)(ii), notwithstanding an increase in the tenant's income (assuming the unit continues to be rent-restricted). See 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-93 (1986). Similarly, if AMGI decreases in a project's area, a low-income tenant who occupied a residential unit prior to the decrease in AMGI will continue to qualify as a low-income tenant if the tenant qualified as a low-income tenant at the time of the tenant's initial occupancy. Thus, a change in a tenant's income or a change in AMGI occurring subsequent to the tenant's initial occupancy does not cause that tenant to cease to be a low- income tenant as of initial occupancy.

On the other hand, a decrease in AMGI commensurately decreases the income limitation under s 42(g)(1) used to determine whether a tenant initially qualifies as a low-income tenant if the tenant's initial occupancy occurs on or after the effective date of the decrease in AMGI.
Likewise, an increase in AMGI commensurately increases the income limitation under s 42(g)(1) used to determine whether a tenant initially qualifies as a low-income tenant if the tenant's initial occupancy occurs on or after the effective date of the increase in AMGI. Therefore, a tenant that initially occupies a residential unit after the effective date of a change in AMGI (whether AMGI increases or decreases for the area) must qualify based on the AMGI in effect at the time the tenant initially occupies the unit.

Under the facts presented, as of its initial occupancy, the Tenant is a low-income tenant because the Tenant's annual income at the time the Tenant initially occupied a residential unit in the Project, $29x, was less than the income limitation applicable to the Project, $30x, as adjusted for family size. The result would be the same under s 142(d)(1).

Issue 2. Notwithstanding the analysis of Issue 1, if the income of the occupants in a low-income unit increases above 140 percent of the income limitation under s 42(g)(1), that unit ceases to qualify as a low-income unit unless the project owner rents any available residential unit of comparable or smaller size to a new low-income tenant. A decrease in AMGI decreases the income limitation under s 42(g)(1). Accordingly, a decrease in AMGI decreases the income limitation used to calculate whether a project owner must rent any available residential unit of comparable or smaller size to a new low-income tenant under s 42(g)(2)(D)(ii). Likewise, an increase in AMGI increases the income limitation under s 42(g)(2)(D)(ii) used to calculate whether a project owner must rent any available residential unit of comparable or smaller size to a new low-income tenant.

On April 1, 1994, 140 percent of the applicable income limitation for the Project was $35x (1.4 times $25x), as adjusted for family size. Because the Tenant's annual income is $36x, for the Tenant's unit to continue to qualify as a low-income unit, the Project owner must rent the residential unit that became vacant on April 1, 1994, to a tenant whose income does not exceed the applicable income limitation of $25x, as adjusted for family size. The result would be the same under s 142(d)(3).

HOLDINGS

(1) A decrease in AMGI commensurately decreases the income limitation under s 42(g)(1) used to determine whether a tenant initially qualifies as a low-income tenant if the tenant's initial occupancy occurs on or after the effective date of the decrease in AMGI. Likewise, an increase in AMGI commensurately increases the income limitation under s 42(g)(1) used to determine
whether a tenant initially qualifies as a low-income tenant if the tenant's initial occupancy occurs on or after the effective date of the increase in AMGI. This holding would also apply under s
142(d)(1).

(2) A decrease in AMGI decreases the income limitation used to calculate whether a project owner must rent any available residential unit of comparable or smaller size to a new low- income tenant under s 42(g)(2)(D)(ii). Likewise, an increase in AMGI increases the income limitation used to calculate whether a project owner must rent any available residential unit of comparable or smaller size to a new low-income tenant under s 42(g)(2)(D)(ii). This holding would also apply under s 142(d)(3).

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 89-24, 1989-1 C.B. 24, 25, provides that a list of income limits released by the Department of Housing and Urban Development (HUD) may be relied upon until 30 days after the Internal Revenue Service publishes an announcement or notice in the Internal Revenue Bulletin indicating that HUD has released updated income limits. Rev. Rul. 89-24 is modified and superseded. In the future, taxpayers may rely on a list of income limits released by HUD until 45 days after HUD releases a new list of income limits, or until HUD's effective date for this new list, whichever is later. However, under s 7805(b), taxpayers may rely on the income limits in effect prior to May 5, 1993, until 30 days after [FNa1] .

PROSPECTIVE APPLICATION

The Service will not retroactively apply the holdings in this revenue ruling to the extent the holdings in this revenue ruling adversely affect taxpayers.

DRAFTING INFORMATION

The principal author of this revenue ruling is Jeffrey A. Erickson of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Erickson 622-3040 (not a toll-free call).

FNa1. Insert date this revenue ruling is published in the Internal Revenue Bulletin.

Rev. Rul. 94-57, 1994-2 C.B. 5, 1994-37 I.R.B. 4.

Section 15

IRS Revenue Procedure 94-57 (Gross Rent Floor)

Rev. Proc. 94-57, 1994-2 CB 744--IRC Sec(s). 42

August 24, 1994

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, sections 42; 1.42-13(a).)

1. PURPOSE

This revenue procedure informs owners of qualified low-income housing projects and housing credit agencies (Agencies) when the gross rent floor in section 42(g)(2)(A) of the Internal Revenue Code takes effect.

2. BACKGROUND

On May 5, 1993, new area median gross income (AMGI) figures went into effect for the United States Department of Housing and Urban Development programs and other federal programs that use AMGI figures, including the section 42 low-income housing tax credit program. In some areas, the AMGI level fell below previous levels.

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 AMGI, as adjusted for family size, 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 AMGI, as adjusted for family size.

Section 42(g)(2)(A) provides that, under section 42(g)(1), a residential unit is rent- restricted if the gross rent for the unit does not exceed 30 percent of the imputed income limitation applicable to the unit. Under section 42(g)(2)(C), the imputed income limitation applicable to a unit is the income limitation that would apply under section 42(g)(1) to individuals occupying the unit if the number of individuals occupying the unit were as follows: (i) in the case of a unit that does not have a separate bedroom, one individual, or (ii) in the case of a unit that has one or more separate bedrooms, 1.5 individuals for each separate bedroom.

For calculating gross rent on a rent-restricted unit, section 7108(e)(2) of the Revenue Reconciliation Act of 1989, 1990-1 C.B. 214, 220, amended section 42(g)(2)(A) to provide that the amount of the income limitation under section 42(g)(1) applicable for any period is not less than the limitation applicable for the earliest period the building that contains the unit was included in the determination of whether the project is a qualified low-income housing project (the gross rent floor). Section 42(g)(3)(A) provides that, except as otherwise provided in section 42(g)(3), a building is treated as a qualified low-income building only if the project (of which the building is a part) meets the requirements of section 42(g)(1) not later than the close of the first year of the credit period for the building.

Section 42(h)(1)(A) provides that the amount of credit determined under section 42 for any taxable year for any building shall not exceed the housing credit dollar amount allocated to the building under section 42(h). Under section 42(m)(2)(A), the housing credit dollar amount allocated to a project shall not exceed the amount an 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. Section 42(m)(2)(B) provides that in making the determination under section 42(m)(2)(A), an 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 housing credit dollar amounts used for project costs other than the cost of intermediaries, and (iv) the reasonableness of the developmental and operational costs of the project. The gross rent under section 42(g)(2)(A) that a low-income housing project may generate is a source of funds an Agency must consider in making the determination under section 42(m)(2)(A).

Section 42(h)(4)(A) provides that section 42(h)(1) does not apply to the portion of any credit allowable under section 42(a) that is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if (i) the obligation is taken into account under section 146, and (ii) principal payments on the financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide the financing. Section 42(h)(4)(B) provides that for purposes of section 42(h)(4)(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 an obligation described in section 42(h)(4)(A), section 42(h)(1) does not apply to any portion of the credit allowable under section 42(a) for the building. Section 42(m)(2)(D) provides that section 42(h)(4) does not apply to any project unless the governmental unit that issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of section 42(m)(2)(A) and (B). Upon making this determination, an Agency will issue a "determination letter" to a building.

Under section 1.42-13(a) of the Income Tax Regulations, the Secretary may provide guidance through various publications in the Internal Revenue Bulletin to carry out the purposes of section 42.

3. SCOPE

This revenue procedure applies to Agencies and owners of qualified low-income housing projects, as defined by section 42(g)(1).

4. PROCEDURE

Except for a low-income building described in section 42(h)(4)(B) (a bond-financed building), the Internal Revenue Service will treat the gross rent floor in section 42(g)(2)(A) as taking effect on the date an Agency initially allocates a housing credit dollar amount to the building under section 42(h)(1). However, the Service will treat the gross rent floor as taking effect on a building's placed in service date if the building owner designates that date as the date on which the gross rent floor will take effect for the building. An owner must make this designation to use the placed
in service date and inform the Agency that made the allocation to the building no later than the date on which the building is placed in service.

For a bond-financed building, the Service will treat the gross rent floor in section 42(g)(2)(A) as taking effect on the date an Agency initially issues a determination letter to the building. However, the Service will treat the gross rent floor as taking effect on a building's placed in service date if the building owner designates that date as the date on which the gross rent floor will take effect for the building. An owner must make this designation to use the placed in service date and inform the Agency that issued the determination letter to the building no later than the date on which the building is placed in service.

An Agency should establish a procedure that will allow an owner to inform the Agency of this designation no later than the date the owner's building is placed in service.

For the effect of a change in AMGI on the initial qualification of a tenant as a low- income tenant and the available unit rule, see Rev. Rul. 94-57.

5. EFFECTIVE DATE

This revenue procedure is effective for low-income housing projects receiving initial allocations or determination letters issued after * . For those projects that received initial allocations or determination letters prior to this effective date, for purposes of establishing the gross rent floor in section 42(g)(2)(A), owners and Agencies may use a date based on a reasonable interpretation of section 42.

Section 16

CHFA Policy on Annual Recertification for 100% Low-Income Housing Tax Credit and Tax-Exempt Bond Projects.

CHFA has announced new rules that owners of 100% low-income housing developments with LIHTC tax credits must follow in order to qualify for the recertification waiver. Please read the memorandum attached dated May 1, 2009. This memo will provide clarification on what CHFA requires to effectuate the recertification waiver. In addition, the CHFA SELF-CERTIFICATION OF ANNUAL INCOME (LIHTC only) has been provided. This form must be completed for the second annual recertification and all subsequent recertifications in a 100% tax credit project once a waiver has been grante

To: **Distribution List**

May 1, 2009

From: Edmund M. Campion, Jr., Senior Asset Manager

Subject: **CHFA Policy on Annual Recertification for 100% Low-Income Housing Tax Credit and Tax-Exempt Bond Projects**

The Housing and Economic Recovery Act of 2008 (HR 3221) was signed into law by President Bush on July 30, 2008. While HR 3221 makes a number of significant changes to the Low-Income Housing Tax Credit Program, one that is of most interest to current owners and managers of existing projects is the provision that waives the annual tenant recertification requirement for both housing credit and tax-exempt bond financed projects that are 100% low-income, provided no residential unit in the project is occupied by tenants who fail to satisfy the otherwise applicable income limits.

The purpose of this memorandum is fourfold: (1) Communicate that the Connecticut Housing Finance Authority (CHFA) has adopted a modified waiver of annual recertification for housing credit and tax-exempt bond projects that are 100% low-income; (2) Provide CHFA guidance on implementing the waiver for 100% projects; (3) Caution owners that there are risks in adopting the policy; and (4) Advise owners that the waiver applies only to 100% low-income projects. Specifically, owners of mixed-income projects containing market-rate units are not eligible for this waiver and must continue to perform initial certifications and annual recertifications. In addition, Assisted Living projects in the Demonstration Program are not eligible for the waiver.

The waiver of annual recertification change made by HR 3221 was effective for years ending after July 30, 2008. IRS regulations permit Housing Credit and Finance Agencies to adopt standards more stringent than the IRS Code, and CHFA is no exception. The following is a summary of CHFA requirements that an owner must comply with in order to effectuate the recertification waiver:

1. CHFA requires that owners continue to perform the initial tenant certification prior to move-in and one additional recertification upon the first anniversary date of any resident who had moved into the project in the previous year. CHFA is requiring the first anniversary recertification because most cases of fraud are discovered in regard to income and household composition during the time period between the initial certification and first recertification.
2. Regardless of the recertification waiver, CHFA must continue to track student status and changes in household composition and income. Therefore, CHFA is requiring that residents complete a self-certification form. The form is attached to this memorandum and must be completed beginning the year following the first anniversary recertification and for all certifications thereafter. CHFA does not require third party verification of any information on the form.
3. The information obtained from this form must be incorporated into the end of year status report that is submitted to Spectrum.

While many project owners feel that the recertification waiver for 100% projects is a welcome relief, and both a money and time saver, they must be aware that there are significant risks associated with it. The conservative approach would be to continue to do recertifications on 100% projects, despite the waiver provided in HR 3221, for the following reasons:

1. Not doing recertifications and finding out later that over-income tenants had moved in could mean that the property did not qualify for the recertification exemption. Therefore, the owner would have to go back and do all the recertifications for any year in which an over-income tenant moved in. This could result in serious ramifications for the project's credits. In addition, the owner may not know how many units were over the 140% Area Median Income (AMI) Limit and could be subject to tax credit loss or recapture in accordance with the next available unit rule 1.42-15(f).
2. Other affordable housing programs may require recertification, so owners will, at a minimum, still need to do recertifications if required by those programs.

In order to maximize long-term success and mitigate risk, if an owner implements the recertification waiver, the following guidelines are suggested:

1. Owners should establish a baseline point in time when all residents are clearly certified as low-income. This should be done prior to halting recertification. The owner should also identify units currently occupied by residents with incomes in excess of the 140% AMI level.
2. Once the **initial** and **anniversary** certifications of tenant eligibility have been completed, owners should ensure that the tenant approval process for new move-ins is strong and multilayered. Several approvals of all new move-ins will greatly reduce the potential for renting to ineligible households. The initial certification, coupled with strong approval procedures going forward, will minimize the risk of credit loss to a building.
3. Owners should make a decision regarding the level of due diligence to be undertaken to ensure that properties are 100% low-income.

CHFA reserves the right to require owners that have rented to ineligible households, or who have properties that demonstrate inadequate initial certification and documentation procedures, to reinstate the full annual recertification process.

While HR 3221 waives recertification in 100% low-income housing tax credit and tax-exempt bond projects, the change will impact the management of these projects. Prior to implementing any changes in management practices, owners should seek counsel from their tax and legal advisors and have discussion with their investors and syndicators.

As stated in the Code, Section 1.42.5(g), compliance with requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowed. CHFA's obligation to monitor for compliance with the requirements of Section 42 does not make CHFA liable for an owner's noncompliance.

An owner that decides to implement the recertification waiver must do so by notifying CHFA and Spectrum in writing. Any questions regarding the waiver can be directed to Edmund M. Campion, Jr. at (860) 571-4265 or via email at edmund.campion@chfa.org.

Reviewed by: Greg Wentworth, Administrator – Multifamily Housing & Asset Management

SELF-CERTIFICATION OF ANNUAL INCOME (LIHTC Only)

To be completed for the second annual recertification and all subsequent recertifications in 100% tax credit projects or Properties in their Post Year 15 Compliance period.

DEVELOPMENT DATA			
Property Name:		BIN #:	PISD:
Address:	County:	Unit No:	# BR:

SECTION TO BE COMPLETED BY RESIDENT

HOUSEHOLD: Enter all household member name(s) and date(s) of birth below. Also note whether or not any household member is or will be a fulltime student in next 12 months. Continue on separate sheet of paper if necessary.

	Household Member Name	Date of Birth	Fulltime Student Yes/No?
Head			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

* Please attach a completed Housing Student Status Verification form.

INCOME: Enter household income including income from assets of each adult household member. If some members have no income put "Zero." Every adult Household member must sign below to certify their gross annual income anticipated for the next 12 months. See NOTES on second page of this form. Continue on separate sheet of paper if necessary.

	Household Member Name	Total Gross Annual Income & Income from Assets	Signature of Adult(s)
Head			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

Property Name:		Unit #:	
BIN#:		Household Name:	

I agree to notify management IMMEDIATELY if:
- Anyone in my household becomes a fulltime student, and/or
- My household composition changes in any way.

I certify under penalties of perjury that the above information is true and complete to the best of my knowledge. I understand that false or incomplete information is a violation of the terms of my lease and is grounds for eviction. I agree to furnish any additional income or other documentation required by the property owner/management to document my/our household income:

Head of Household Signature	Print Name	Date
Other Household Adult Signature	Print Name	Date
Other Household Adult Signature	Print Name	Date
Other Household Adult Signature	Print Name	Date

NOTES

TYPES OF INCOME: Possible types of income include but are not limited to: wages, salary, tips, bonuses, commissions, military pay, public assistance, Social Security/SSI, retirement benefits, VA benefits, child support, regular gifts, unemployment, and some types of financial aid. Include what you receive now and what you anticipate receiving in the next 12 months. All income listed must be GROSS income (income before taxes and deductions).

INCOME FROM ASSETS: Income from assets must also be included in Total Gross Annual Income. Possible types of assets include, but are not limited to: checking accounts, savings accounts, cash on hand, money market accounts, certificates of deposit, stocks, bonds, 401(k) and real estate. Include the annual interest from these accounts in your total income.

SECTION TO BE COMPLETED BY MANAGEMENT

MOVE-IN DATA:	**CURRENT RECERTIFICATION:**
Original Move-in Date:	Effective Date of Recertification:
Set-aside %:	Total Gross Annual Income:
Total Gross Annual Income:	Tenant Paid Rent:
	Utility Allowance:
	Gross Rent for Unit:
	Maximum Rent Limit:
	Subsidy Portion:
	Subsidy Type:

Signature of Management Representative	Print Name	Date

<u>Section 17a</u>

HOTMA (The Housing Opportunity Through Modernization Act) Sections 102 and 104: Income and Assets Fact Sheet

This sheet provides an overview of the changes related to income reviews and asset limitations from the implementation of HOTMA Section 102 and 104

HOTMA Sections 102 and 104: Income and Assets Fact Sheet

This sheet provides an overview of the changes related to income reviews and asset limitations from the implementation of HOTMA Sections 102 and 104.

Income Definitions—24 CFR 5.609 (a): Income is now defined broadly with an expanded and clarified list of income exclusions. Annual income includes all amounts received from all sources by each adult family member 18 years or older or the head of household or their spouse, plus unearned income by or on behalf of each dependent under 18 years, plus income from assets.

- **Income Exclusions—24 CFR 5.609(b):** See the Income and Exclusions Resource Sheet for the list of all excluded amounts.
- **Student Financial Assistance—24 CFR 5.609(b)(9):** See the Student Financial Assistance Resource Sheet for information on deductions, exclusions, and calculating exclusions.

Income from Assets—24 CFR 5.609(a): In general, income from assets is considered income. If it is possible to calculate actual returns from an asset, the PHA should use that amount. If it is not possible to calculate an actual return on an asset, the PHA must impute income from assets based on the current passbook savings rate as determined by HUD when the family has net assets over $50,000 (adjusted annually by CPI-W). See the Asset Resource Sheet for the list of all excluded amounts.

Calculation of Income—24 CFR 5.609(c): For initial occupancy/assistance and interim reexaminations, the PHA must estimate the family income for the upcoming 12-month period using current income. For all annual reexaminations, the PHA must determine the family income for the previous 12-months **unless** using a streamlined income determination, taking into account any redetermination from an interim reexamination and any unaccounted for income changes.

Interim Income Reexaminations—24 CFR 960.257(b), 982.516(c), and 882.515(b): A family may request an interim reexamination because of family income or composition changes since the last examination. An interim reexamination should be conducted when a family's adjusted income decreases by 10% or more (or lower threshold per HUD or PHA policy). An interim reexamination should also be conducted when a family's adjusted income increases by 10% or more; however, the PHA may not consider any increase in the *earned* income of the family when estimating or calculating whether the family's adjusted income has increased, unless the family has previously received an interim reduction during the certification period. See the Interim Reexaminations Fact Sheet.

This material is based upon work supported, in whole or in part, by Federal award number NAL-C-17-094-05 awarded to NALCAB by the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. Neither the United States Government, nor any of its employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately-owned rights. Reference herein to any individuals, agencies, companies, products, process, services, service by trade name, trademark, manufacturer, or otherwise does not constitute or imply an endorsement, recommendation, or favoring by the author(s), contributor(s),the U.S. Government or any agency thereof. Opinions contained herein are those of the author(s) and do not necessarily reflect the official position of, or a position that is endorsed by, HUD or any Federal agency.

HOTMA Sections 102 and 104: Income and Assets Fact Sheet

Safe Harbor: Income Determinations from Other Programs — 24 CFR 5.609(c)(3): The PHA may determine a family's pre-deduction income based on income determinations made by other means-tested federal public assistance programs within the previous 12-months. PHAs are not required to use this method.

Eliminates the Earned Income Disregard: Only families already participating in EID on the effective date of the final rule may continue receiving the benefits up to 2 years from that date. Families receiving the Jobs Plus Earned Income Disregard pursuant to the FY2022 NOFO or earlier may continue to receive the EID under the terms of the NOFO.

Mandatory Deductions — 24 CFR 5.611 (a)(1)-(a)(2): Changes the mandatory deduction amounts to $480 per dependent and $525 per elderly and disabled family. These amounts are 2024 figures, adjusted annually for inflation and rounded to the next lowest multiple of $25.

Health and Medical Expense Deduction — 24 CFR 5.611(a)(3): Increases the threshold for the deduction of unreimbursed health and medical care expenses plus unreimbursed reasonable attendant care and auxiliary apparatus expenses that enable employment to 10% of annual income.

Permissive Deductions — 24 CFR 5.611(b): A PHA may adopt, through written policies, additional deductions from annual income. PHAs will not be eligible for additional HUD funding based on application of these deductions.

Hardship Exemptions to the Health and Medical Expenses Deduction — 24 CFR 5.611(c)(1)-(c)(2): There are two categories of hardship exemptions to the new 10% threshold for unreimbursed health and medical expenses: a phase-in for families already receiving a deduction for expenses over 3% of their income and a general hardship exemption.

Exemption to Continue the Child Care Expense Deduction — 24 CFR 5.611(d): A family whose eligibility for the child care expense deduction is ending may request a financial hardship exemption to continue the deduction.

Limitation on Assets — 25 CFR 5.618(a): The new rule restricts families from receiving public housing or Section 8 benefits if their net family assets exceed $100,000 (as adjusted annually) or if the family owns real property deemed suitable for the family to live in.

Exclusion from Assets — 24 CFR 5.603(b)(3): There are new exclusions from assets, including related to necessary items of personal property, non-necessary items of personal property when the total value does not exceed $50,000 (as adjusted), and real property that the family does not have the legal authority to sell.

See the Assets, Asset Exclusions, and Limitation on Assets Resource Sheet for a complete list and more information on exclusions and real property.

Additional Resources on HOTMA Sections 102/ 104

- HUD Exchange: HOTMA Income and Assets Training Series

Section 17

IRS Revenue Procedure 94-65 (Documentation of Income from Assets)

Rev. Proc. 94-65, 1994-2 CB 798--IRC Sec(s). 42

October 11, 1994

1. Purpose

This revenue procedure informs housing credit agencies (Agency) and owners of qualified low-income housing projects (owners) when a signed, sworn statement by a low-income tenant will satisfy the documentation requirement of section 1.42-5(b)(1)(vii) of the Income Tax Regulations.

2. Background

Section 1.42-5 provides the minimum requirements that an Agency's compliance monitoring procedure must contain to satisfy its compliance monitoring duties under section 42(m)(1)(B)(iii). Section 1.42-5(b)(1)(vi) provides that an Agency must require an owner to keep records for each qualified low-income building in the project that show for each year in the compliance period the annual income certifications of each low-income tenant per unit. Section 1.42- 5(b)(1)(vii) provides that an Agency must require an owner to keep documents for each qualified low- income building in its project for each year in the compliance period that support each low-income tenant's income certification. The term "low-income tenant" refers to the individuals occupying a rent-restricted unit in a qualified low- income housing project whose annual income satisfies the section 42(g)(1) income limitation elected by the owner of the project. Examples of the documentation required under section 1.42- 5(b)(1)(vii) include 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. A verification of income from a third party is referred to as a "third party verification."

The Internal Revenue Service has determined that an owner may satisfy the documentation requirement of section 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. See H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 544 (1993).

3. Scope

This revenue procedure applies to Agencies and owners of qualified low-income housing projects.

4. Procedure

.01 To determine a tenant's Net Family assets, owners and Agencies must use the definition of "Net Family assets" in 24 CFR 813.102, which provides definitions for the H.U.D. section 8 program.

.02 Except as provided in sections 4.03 and 4.04 of this revenue procedure, an Agency's monitoring procedure may provide that an owner may satisfy the documentation requirement for income from assets in section 1.42-5(b)(1)(vii) for a low-income tenant whose Net Family assets do not exceed $5,000 by annually obtaining a signed, sworn statement that includes the following:

(1) That the tenant's Net Family assets do not exceed $5,000, and

(2) The tenant's annual income from Net Family assets.

.03 An Agency's monitoring procedure, however, 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 annual income from assets to satisfy the documentation requirement in section 1.42- 5(b)(1)(vii).

.04 An Agency's monitoring procedure may continue to require that an owner obtain documentation, other than the statement described in section 4.02 of this revenue procedure, to support a low-income tenant's annual certification of income from assets.

5. Effective Date

This revenue procedure is effective October 11, 1994.

<u>Section 18</u>

IRS Notice 88-80 (Income Determination)

Notice 88-80
1988-30 I.R.B. 28

NOTICE 88-80

LOW-INCOME HOUSING TAX CREDIT -- DETERMINATION OF INCOME FOR PURPOSES
OF SECTION 42(g)(1)

July 25, 1988

The purpose of this Notice is to inform taxpayers that regulations to be issued under section 42(g)(1) of the Internal Revenue Code of 1986 (the 'Code ') (relating to the determination of a qualified low-income housing project) will provide that the income of individuals and area median gross income (adjusted for family size) are to be made in a manner consistent with the determination of annual income and the estimates for median family income under section 8 of the United States Housing Act of 1937 (H.U.D. section 8).

For purposes of H.U.D. section 8, annual income is defined under 24 CFR 813.106 (1987). HUD section 8 median family income estimates (i.e., area median gross income estimates) are based on decennial Census data updated with bureau of the Census P-60 income data and Department of Commerce County Business Patterns employment and earnings data. The determination of annual income and median family income estimates are based on definitions of income that include some items of income that are not included in a taxpayer's gross income for purposes of computing Federal Income Tax liability. Thus, the income of individuals and area median gross income (adjusted for family size) for purposes of section 42(g)(1) of the Code will NOT be made by reference to items of income used in determining gross income for purposes of computing Federal Income Tax liability.

This document serves as an 'administrative pronouncement' as that term is described in section 1.661-3(b)(2) of the Income Tax Regulations and may be relied upon to the same extent as a revenue ruling or revenue procedure.

The principal author of this Notice is Christopher J. Wilson of the Legislation and Regulations Division. For further information regarding this Notice contact Mr. Wilson on (202) 566-4336 (not a toll-free call).

Internal Revenue Service
Notice 88-80

<u>Section 19</u>

IRS Advance Notice 88-116 (Placement in Service)

Internal Revenue Service's Advance Notice

88-116
On the Low-Income Housing Tax Credit,
Issued Oct. 12, 1988
(Placement In Service)

Section 42(n)(1) of the Internal Revenue Code (the "Code") provides, generally, that the State housing credit ceiling under section 42(h) shall be zero for any calendar year after 1989. Thus, in general, all buildings eligible for the low-income housing credit must be placed in service before January 1, 1990. Under section 42(n)(2), however, 1989 credit amounts that are not allocated in 1989 may be applied to a building placed in service in 1990 if such building is constructed, reconstructed, or rehabilitated by the taxpayer and more than 10 percent of the reasonably anticipated cost of such construction, reconstruction, or rehabilitation has been incurred as of January 1, 1989. The purpose of this Notice is to provide guidance to taxpayers under section 42(n) of the Code regarding (1) what costs will be considered construction, reconstruction, or rehabilitation costs; and (2) when such costs will be considered to be incurred. In addition, this Notice provides guidance regarding when a building will be considered to be placed in service for purposes of section 42.

CONSTRUCTION, RECONSTRUCTION OR REHABILITATION COSTS

For purposes of section 42(n), the term construction, reconstruction, or rehabilitation costs means any amount that is (1) properly chargeable to a capital account and (2) incurred before or on January 1, 1989. Amounts are chargeable to a capital account if they are properly includible in computing eligible basis under section 42(d). Amounts treated as an expense and deducted in the year they are paid or incurred or amounts that are otherwise not added to eligible basis do not qualify. For example, the cost of acquisition of an existing building is a qualifying cost. Amounts incurred for taxes and architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction related costs satisfy the definition of construction, reconstruction, or rehabilitation costs if they are included in the eligible basis of the building. Production period interest (within the meaning of section 263A(f)) allocable to the construction, reconstruction, or rehabilitation of a building is a qualifying cost. The cost of land is not a qualifying cost. For purposes of section 42(n), the total anticipated costs of construction, reconstruction, or rehabilitation shall be determined by reference to a reasonable estimate, on or before January 1, 1989, of such amount.

COSTS INCURRED AS OF JANUARY 1, 1989

Construction, reconstruction, or rehabilitation costs are incurred for purposes <Page 450> of this section on the date such expenditures would be considered incurred under an accrual method of accounting, regardless of the method of accounting used by the taxpayer incurring the costs with respect to other items of income and expense.

PLACED IN SERVICE

For purposes of section 42, the term "placed in service" has two definitions--one for buildings and one for rehabilitation expenditures that are treated as a separate new building (section 42(e)(4)(A)). The placed-in-service date for a new or existing building used as residential rental property is the date on which the building is ready and available for its specifically assigned function, i.e., the date on which the first unit in the building is certified as being suitable for occupancy in accordance with state or local law. In general, a transfer of the building results in a new placed-in-service date if, on the date of the transfer, the building is occupied or ready for occupancy.

Under section 42(e)(4)(A) of the Code, rehabilitation expenditures that are treated as a separate new building are placed in service at the close of any 24-month period, over which such expenditures are aggregated. The placed-in-service date of section 42(e)(4)(A) applies even if the building is occupied during the rehabilitation period.

A building may be placed in service even if the rental units in the building are not currently occupied by low-income tenants.

This document serves as an “administrative pronouncement” as that term is described in 1.661-3(b)(2) of the Income Tax Regulations and may be relied upon to the same extent as a revenue ruling or revenue procedure.

Section 20

IRS Form 8586; IRS Form 8611; IRS Form 8823

Form **8586**
(Rev. December 2016)
Department of the Treasury
Internal Revenue Service (99)

Low-Income Housing Credit

▶ Attach to your tax return.
▶ Information about Form 8586 and its instructions is at *www.irs.gov/form8586*.

OMB No. 1545-0984
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, stop here and report this amount on Schedule K. All others, stop here and report this amount on Form 3800, Part III, line 1d, column (c) . . .	**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, Part III, line 1d, column (c) . . .	**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. Estates and trusts, go to line 13. Partnerships and S corporations, stop here and report this amount on Schedule K. All others, stop here and report this amount on Form 3800, Part III, line 4d, column (c) . . .	**12**	
13	Amount allocated to beneficiaries of the estate or trust (see instructions) . . .	**13**	
14	Estates and trusts, subtract line 13 from line 12. Report this amount on Form 3800, Part III, line 4d, column (c) . . .	**14**	

For Paperwork Reduction Act Notice, see General Instructions. Cat. No. 63987I Form **8586** (Rev. 12-2016)

General Instructions

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

Future developments. For the latest information about developments related to Form 8586 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/form8586*.

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.

Taxpayers, other than partnerships, S corporations, estates, or trusts, whose only source of this credit is from those pass-through entities, are not required to complete or file this form. Instead, they can report this credit directly on Form 3800.

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. Estates or trusts. Allocate the low-income housing credit 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.

If the estate or trust is subject to the passive activity rules, include on line 4 any low-income housing credits attributable to buildings placed in service before 2008 from passive activities disallowed for prior years and carried forward to this year. Complete Form 8582-CR, Passive Activity Credit Limitations, to determine the allowed credit that must be allocated between the estate or trust and the beneficiaries. For details, see the Instructions for Form 8582-CR.

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. Estates or trusts. Allocate the low-income housing credit on line 12 between the estate or trust and the beneficiaries in the same proportion as income was allocated and enter the beneficiaries' share on line 13.

If the estate or trust is subject to the passive activity rules, include on line 11 any low-income housing credits attributable to buildings placed in service after 2007 from passive activities disallowed for prior years and carried forward to this year. Complete Form 8582-CR, Passive Activity Credit Limitations, to determine the allowed credit that must be allocated between the estate or trust and the beneficiaries. For details, see the Instructions for Form 8582-CR.

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 . . . . 5 hr., 44 min.
Learning about the law or the form . . . . 52 min.
Preparing and sending the form to the IRS . . . 2 hr., 11 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 **8611** (Rev. December 2013) Department of the Treasury Internal Revenue Service

Recapture of Low-Income Housing Credit

▶ Attach to your return.

▶ Information about Form 8611 and its instructions is at *www.irs.gov/form8611*.

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). However, section 42(j)(5) partnerships must complete lines 1 through 7.*

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**	

For Paperwork Reduction Act Notice, see instructions. Cat. No. 63983Q Form **8611** (Rev. 12-2013)

General Instructions

Section references are to the Internal Revenue Code.

Future Developments

For the latest information about developments related to Form 8611 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/form8611*.

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 applicable fraction. For example, a decrease in qualified basis may exist when units are not occupied by income-qualified tenants under section 42(i)(3)(A)(ii), units are not rent restricted under section 42(g)(2), units are not suitable for occupancy as described in section 42(i)(3)(B)(ii), or the project no longer meets the minimum set aside requirements of section 42(g)(1).

Building dispositions. 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 33 1/3% in the aggregate of your ownership interest in a building you held through a partnership, or you disposed of an ownership interest in a building 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; or
- 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. However, section 42(j)(5) partnerships must complete lines 1 through 7.

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 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. Figure 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 (defined in section 775) is treated as having fully used all prior year credits.

Line 11. Figure the interest separately for each prior tax year for which a credit is being recaptured. Interest must be figured 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 figure daily compound interest were published in Rev. Proc. 95-17, 1995-1 C.B. 556. The interest rate in effect through December 31, 2013, is shown in Rev. Rul. 2013-16, 2013-40 I.R.B. 275. For periods after December 31, 2013, 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 Form 1040, see the instructions for line 60 (other taxes) in the Instructions for Form 1040. Form 1120 filers report the recapture tax on Form 1120, Schedule J, line 9b.

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. See the Instructions for Form 3800 for details on how to report the carryforward of unused credits.

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.

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, an individual and his or her spouse (and their estates) 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.

Form **8823**
(Rev. September 2015)
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 goes out of compliance.*
▶ Information about Form 8823 is available at *www.irs.gov/form8823.*

OMB No. 1545-1204

Check here if this is an amended return ▶ ☐

IRS Use Only

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 . . . ▶

7a 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 is 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 . . . ▶ ☐

13a 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. 9-2015)

General Instructions

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

Future developments. For the latest information about developments related to Form 8823 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/form8823.*

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:

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

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, 13c, 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.

Items 11a to 11p. Check only the "out of compliance" box if the issue causing the noncompliance remains uncorrected at the end of the correction period. Check both the "out of compliance" and "noncompliance corrected" boxes if the noncompliance was corrected within the correction period. Check only the "noncompliance corrected" box if the noncompliance was previously reported to the IRS on a separate Form 8823.

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 Condition 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 "Revised Dictionary of Deficiency Definitions" found at *www.hud.gov*. 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.

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 costs that were included in the eligible basis 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.A. 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 through *www.huduser.org.*

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 11k. Section 42(h)(6) requires owners of tax credit properties to enter into an extended use agreement with the state agency that allocated the credits to the project. Building owners must agree to a long-term commitment beginning on the first day of the 15-year compliance period and ending on the later of (1) the date specified by the state agency in the agreement or (2) the date which is 15 years after the close of the 15-year compliance period.

The extended use agreement must (1) specify that the applicable fraction for the building for each year in the extended use period will not be less than the applicable fraction specified in the extended use agreement and prohibit the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or any increase in the gross rent with respect to such unit not otherwise permitted under section 42, (2) allow individuals (whether prospective, present, or former occupants) who meet the income limitations applicable to the building under section 42(g) the right to enforce in state court the requirements and prohibitions under section 42(h)(6)(B)(i) throughout the extended use period, (3) prohibit the disposition to any person of any portion of the building unless all of the building is disposed of to that person, (4) prohibit the refusal to lease to section 8 voucher holders because of the status of the prospective tenant as such a holder, and (5) provide that the agreement is binding on all successors of the taxpayer. The extended use agreement must be recorded as a restrictive covenant with respect to the property under state law.

Noncompliance should be reported if an extended use agreement is not executed and recorded as a restrictive covenant with respect to the property under state law or the owner failed to correct the noncompliance within the one-year correction period provided by section 42(h)(6)(J). The one-year correction period begins when the agency notifies the owner in writing that an extended use agreement is not recorded as a restrictive covenant with respect to the property under state law. A copy of the notification letter should be included as an attachment to Form 8823 when filed with the IRS.

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 . . . . 1 hr., 35 min.
Preparing and sending the form to the IRS . . . . 1 hr., 51 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 send your comments to *www.irs.gov/formspubs.* Click on "More Information" and then on "Give us feedback." Or you can send your comments to the Internal Revenue Service, Tax Forms and Publications, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. **Do not** send the form to this address. Instead, see *Where To File,* earlier.

<u>Section 21</u>

IRS 26 CFR Part 1 (Available Unit Rule)

Section 42. — Low-Income Housing Credit

26 CFR 1.42–15: Available unit rule.

T.D. 8732

DEPA RTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Available Unit Rule

AGENCY: Internal Revenue Service (IRS), Treasury.
ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the treatment of low-income housing units in a building that are occupied by individuals whose incomes increase above 140 percent of the income limitation applicable under section 42(g)(1). These regulations affect owners of those buildings who claim the low-income housing tax credit.

DATES: These regulations are effective September 26, 1997.

For dates of applicability of these regulations, see §1.42–15(i). FOR FURTHER INFORMATION CONTACT: David Selig, (202) 622-3040 (not a toll-free number). SUPPLEMENTARYINFORMATION: *Background*

On May 30, 1996, the IRS published a notice of proposed rulemaking in the Federal Register (PS–29–95 at 61 FR 27036 [1997–1 C.B. 862]) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 42(g)(2)(D) of the Internal Revenue Code. A p u b l i c hearing was scheduled for September 17, 1996, pursuant to a notice of public hearing published simultaneously with the notice of proposed rulemaking. However, the IRS received no requests to speak at the public hearing, and no public hearing was held. Written comments responding to the notice were received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision. *Explanation of Revisions and Summary of Comments*

The general rule in section 42(g)(2)- (D)(i) provides that if the income of an occupant of a low-income unit increases above the income limitation applicable under section 42(g)(1), the unit continues to be treated as a low-income unit. This general rule only applies if the occupant's income initially met the income limitation and the unit continues to be rent-restricted. Section 42(g)(2)(D)(ii), however, provides an exception to the general rule in section 42(g)(2)(D)(i). Under this exception, the unit ceases being treated as a low-income unit when two conditions occur. The first condition is that the occup a n t 's income increases above 140 percent of the income limitation applicable under section 42(g)(1), or above 170 percent for a deep rent skewed project described in section 142(d)(4)(B) (applicable income limitation). When this occurs, the unit becomes an over-income unit. The second condition is that a new occupant, whose income exceeds the applicable income limitation (nonqualified resident), occupies any residential unit in the building of a comparable or smaller size (comparable unit). *Rules and Definitions*

One commentator suggested that the available unit rule under the proposed regulations did not clearly indicate whether the aggregate income of all occupants of a unit is taken into account. Accordingly, the final regulations clarify that an over-income unit means a low-income unit in which the aggregate income of the occupants of the unit increases above 140 percent of the applicable income limitation under section 42(g)(1), or above 170 percent of the applicable income limitation for deep rent skewed projects described in section 142(d)(4)(B).

Commentators requested that the final regulations specify whether a comparable unit is measured by floor space or number of bedrooms. The final regulations provide that a comparable unit must be measured by the same method the taxpayer used to determine qualified basis for the credit year in which the comparable unit became available.

Some commentators stated that the provision in the proposed regulations that all available comparable units (not just the "next available" unit) must be rented to qualified residents to continue treating an over-income unit as a low-income unit is inconsistent with the title of section 42(g)(2)(D)(ii). Although the title of that provision uses the term next available unit, the text of the rule provides that if any available comparable unit is occupied by a nonqualified resident, the over-income unit ceases to be treated as a low-income unit. This means that if a building has more than one over-income unit, renting any available comparable unit (a comparably sized or smaller unit) to a qualified resident preserves the status of all over-income units as low-income units. Similarly, if any available comparable unit is rented to a nonqualified resident, all over-income units for which the available unit was a comparable unit lose their status as low-income units; thus, comparably sized or larger over-income units would lose their status as low-income units. In operation, this means that the owner must continue to rent any available comparable unit to a qualified resident until the percentage of low-income units in a building (excluding the over-income units) is equal to the percentage of low-income units on which the credit is based. At that point, failure to maintain the over income units as low-income units has no immediate significance. (However, the failure to maintain an over-income unit as a low-income unit may affect the owner's decision of whether or not to rent a particular available unit at market rate at a later time.) Consequently, the final regulations provide that all available comparable units in the building, not only the next available comparable unit, must be rented to qualified residents to retain the low-income status of the over-income units.

Application of Rules on a Building by Building Basis

The proposed regulations provide that in a project containing more than one low-income building, the available unit rule applies separately to each building. Some commentators suggested that the regulations should permit residents of o v e r-income units to move to available P a rt I. Rulings and Decisions Under the Internal Revenue Code of 1986 units in different buildings within the same low-income housing project without violating the available unit rule. However, because the requirements under section 42 must be satisfied on a building by building basis, the final regulations provide that the available unit rule only permits a current resident to move to another unit within the same building of a low-income housing project.

In addition, in response to requests from several commentators, the final regulations make clear that when a current resident moves to a different unit within the same low-income building, the units exchange status. (See example 2 of §1.42–15(g) of the proposed regulations and §1.42–15(h) of the final regulations.) Thus, the newly occupied unit adopts the status of the vacated unit, and the vacated unit assumes the status the newly occupied unit had immediately prior to its occupancy by the qualifying residents.

Timing Issues

The methods of committing rental units to tenants varies in different jurisdictions. However, it is a common rental practice to have some form of preliminary reservation for a unit prior to the date on which a lease is signed or the unit is occupied. Thus, several commentators have requested clarification that once a unit is reserved for a prospective tenant, it is no longer treated as available for purposes of the available unit rule. Accordingly, the final regulations provide that a unit is not available for purposes of the available unit rule when the unit is no longer available for rent due to a reservation that is binding under local law. Finally, financing arrangements using obligations that purport to be exempt facility bonds under section 142 must meet the requirements of sections 103 and 141 through 150 for interest on the obligations to be excluded from gross income under section 103(a). The requirements under section 142(d) may differ from those under section 42. Accordingly, the final regulations provide that the rules under the final regulations are not intended as an interpretation of the applicable rules under section 142.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information
The principal author of these regulations is David Selig, Office of the A s s i s t a n t Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.
* * * * *
Adoption of Amendments to the Regulations
Accordingly, 26 CFR part 1 is amended as follows:
PART 1—INCOME TAXES
Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows: Authority: 26 U.S.C. 7805 * * *
Section 1.42-15 is also issued under 26 U.S.C. 42(n); * * *
Par. 2. Section 1.42-15 is added to read as follows:
§1.42–15 Available unit rule.
(a) Definitions. The following definitions apply to this section:
Applicable income limitation means the limitation applicable under section 42(g)(1) or, for deep rent skewed projects described in section 142(d)(4)(B), 40 percent of area median gross income.
Available unit rule means the rule in section 42(g)(2)(D)(ii).
Comparable unit means a residential unit in a low-income building that is comparably sized or smaller than an over-income unit or, for deep rent skewed projects described in section 142(d)(4)(B), any low-income unit. For purposes of determining whether a residential unit is comparably sized, a comparable unit must be measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available. *Current resident* means a person who is living in the low-income building.
Low-income unit is defined by section 42(i)(3)(A).
Nonqualified resident means a new occupant or occupants whose aggregate income exceeds the applicable income limitation.
Over-income unit means a low-income unit in which the aggregate income of the occupants of the unit increases above 140 percent of the applicable income limitation under section 42(g)(1), or above 170 percent of the applicable income limitation for deep rent skewed projects described in section 142(d)(4)(B).

Qualified resident means an occupant either whose aggregate income (combined with the income of all other occupants of the unit) does not exceed the applicable income limitation and who is otherwise a low-income resident under section 42, or who is a current resident.
(b) *General section 42(g)(2)(D)(i) rule.*
Except as provided in paragraph (c) of this section, notwithstanding an increase in the income of the occupants of a low income unit above the applicable income limitation, if the income of the occupants initially met the applicable income limitation, and the unit continues to be rent restricted
—
(1) The unit continues to be treated as a low-income unit; and
(2) The unit continues to be included in the numerator and the denominator of the ratio used to determine whether a project satisfies the applicable minimum set aside requirement of section 42(g)(1).
(c) Exception. A unit ceases to be treated as a low-income unit if it becomes an over-income unit and a nonqualified resident occupies any comparable unit that is available or that subsequently becomes available in the same low-income building. In other words, the owner of a low-income building must rent to qualified residents all comparable units that are available or that subsequently become 1997–42 I.R.B. 5 October 20, 1997 available in the same building to continue treating the over-income unit as a low-income unit. Once the percentage of low income units in a building (excluding the over-income units) equals the percentage of low-income units on which the credit is based, failure to maintain the over-income units as low-income units has no immediate significance. The failure to maintain the over-income units as low-income units, however, may affect the decision of whether or not to rent a particular available unit at market rate at a later time. 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).

(d) *Effect of current resident moving within building.* When a current resident moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit. Thus, if a current resident, whose income exceeds the applicable income limitation, moves from an over-income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident.

(e) *Available unit rule applies separately to each building in a project.* In a project containing more than one low-income building, the available unit rule applies separately to each building.

(f*) Result of noncompliance with available unit rule.* If any comparable unit that is available or that subsequently becomes available is rented to a nonqualified resident, all over-income units for which the available unit was a comparable unit within the same building lose their status as low-income units; thus, comparably sized or larger over-income units would lose their status as low-income units.

(g) *Relationship to tax-exempt bond provisions.* Financing arrangements that purport to be exempt-facility bonds under section 142 must meet the requirements of sections 103 and 141 through 150 for interest on the obligations to be excluded from gross income under section 103(a). This section is not intended as an interpretation under section 142.

(h) *Examples.* The following examples illustrate this section:

Example 1. This example illustrates noncompliance with the available unit rule in a low-income building containing three over-income units. On January 1, 1998, a qualified low-income housing project, consisting of one building containing ten identically sized residential units, received a housing credit dollar amount allocation from a state housing credit agency for five low-income units. By the close of 1998, the first year of the credit period, the project satisfied the minimum set-aside requirement of section 42(g)(1)(B). Units 1, 2, 3, 4, and 5 were occupied by individuals whose incomes did not exceed the income limitation applicable under section 42(g)(1) and were otherwise low-income residents under section 42. Units 6, 7, 8, and 9 were occupied by market-rate tenants. Unit 10 was vacant. To avoid recapture of credit, the project owner must maintain five of the units as low-income units. On November 1, 1999, the certificates of annual income state that annual incomes of the individuals in Units 1, 2, and 3 increased above 140 percent of the income limitation applicable under section 42(g)(1), causing those units to become o v e r-income units. On November 30, 1999, Units 8 and 9 became vacant. On December 1, 1999, the project owner rented Units 8 and 9 to qualified residents who were not current residents at rates meeting the rent restriction requirements of section 42(g)(2). On December 31, 1999, the project owner rented Unit 10 to a market-rate tenant. Because Unit 10, an available comparable unit, was leased to a market-rate tenant, Units 1, 2, and 3 ceased to be treated as low-income units. On that date, Units 4, 5, 8, and 9 were the only remaining low-income units. Because the project owner did not maintain five of the residential units as low-income units, the qualified basis in the building is reduced, and credit must be recaptured. If the project owner had rented Unit 10 to a qualified resident who was not a current resident, eight of the units would be low-income units. At that time, Units 1, 2, and 3, the over income units, could be rented to market-rate tenants because the building would still contain five low-income units.

Example 2. This example illustrates the provisions of paragraph (d) of this section. A low - income project consists of one six-floor building. The residential units in the building are identically sized. The building contains two over-income units on the sixth floor and two vacant units on the first floor. The project owner, desiring to maintain the over-income units as low-income units, wants to rent the available units to qualified residents. J, a resident of one of the over-income units, wishes to occupy a unit on the first floor. J's income has recently increased above the applicable income limitation. The project owner permits J to move into one of the units on the first floor. Despite J's income exceeding the applicable income limitation, J is a qualified resident under the available unit rule because J is a current resident of the building. T h e unit newly occupied by J becomes an over- i n c o m e unit under the available unit rule. The unit vacated by J assumes the status the newly occupied unit had immediately before J occupied the unit. The over income units in the building continue to be treated as low-income units.

(i) *Effective date.* This section applies to leases entered into or renewed on and after September 26, 1997. Michael P. Dolan, Acting Commissioner of Internal Revenue. Approved August 28, 1997. Donald C. Lubick, Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on September 25, 1997, 8:45 a.m., and published in the issue of the Federal Register for September 26, 1997, 62 F.R. 50503)

Section 22

HUD 4350.3 REV-1 Appendix 3: Acceptable Forms of Verification

Appendix 3

Acceptable Forms of Verification

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES: Third Party[a] Written[b]	ACCEPTABLE SOURCES: Third Party[a] Oral[c]	ACCEPTABLE SOURCES: Documents Provided by Applicant	ACCEPTABLE SOURCES: Self-Declaration	Verification Tips
• Age.	• None required.	• None required.	• Birth Certificate • Baptismal Certificate • Military Discharge papers • Valid passport • Census document showing age • Naturalization certificate • Social Security Administration Benefits printout		
• Alimony or child support.	• Copy of separation or divorce agreement provided by ex-spouse or court indicating type of support, amount, and payment schedule. • Written statement provided by ex-spouse or income source indicating all of above. • If applicable, written statement from court/attorney that payments are not being received and anticipated date of resumption of payments.	• Telephone or in-person contact with ex-spouse or income source documented in file by the owner.	• Copy of most recent check, recording date, amount, and check number. • Recent original letters from the court.	• Notarized statement or affidavit signed by applicant indicating amount received. • If applicable, notarized statement or affidavit from applicant indicating that payments are not being received and describing efforts to collect amounts due.	• Amounts awarded but not received can be excluded from annual income only when applicants have made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments.

[a]**NOTE**: Requests for verification from third parties must be accompanied by a Consent to Release form.
[b]**NOTE**: If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party[a]		Documents Provided by Applicant	Self-Declaration	
	Written[b]	Oral[c]			
• Assets disposed of for less than fair market value.	• None required.	• None required.	• None required.	• Certification signed by applicant that no member of family has disposed of assets for less than fair market value during preceding two years. • If applicable, certification signed by the owner of the asset disposed of that shows: - Type of assets disposed of; - Date disposed of; - Amount received; and - Market value of asset at the time of disposition.	• Only count assets disposed of within a two-year period prior to examination or re-examination.

[a]**NOTE:** Requests for verification from third parties must be accompanied by a Consent to Release form.
[b]**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	Acceptable Sources: Third Party[a] Written[b]	Acceptable Sources: Third Party[a] Oral[c]	Acceptable Sources: Documents Provided by Applicant	Acceptable Sources: Self-Declaration	Verification Tips
• Auxiliary apparatus.	• Written verification from source of costs and purpose of apparatus. • Written certification from doctor or rehabilitation agency that use of apparatus is necessary to employment of any family member. • In case where the disabled person is employed, statement from employer that apparatus is necessary for employment.	• Telephone or in-person contact with these sources documented in file by the owner.	• Copies of receipts or evidence of periodic payments for apparatus.		• The owner must determine if expense is to be considered medical or disability assistance.
• Care attendant for disabled family members.	• Written verification from attendant stating amount received, frequency of payments, hours of care. • Written certification from doctor or rehabilitation agency that care is necessary to employment of family member.	• Telephone or in-person contact with source documented in file by the owner.	• Copies of receipts or cancelled checks indicating payment amount and frequency.	• Notarized statement or signed affidavit attesting to amounts paid.	• The owner must determine if this expense is to be considered medical or disability assistance.

[a]**NOTE**: Requests for verification from third parties must be accompanied by a Consent to Release form.
[b]**NOTE**: If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	Acceptable Sources				Verification Tips
	Third Party[a]		Documents Provided by Applicant	Self-Declaration	
	Written[b]	Oral[c]			
• Child care expenses (including verification that a family member who has been relieved of child care is working, attending school, or looking for employment).	• Written verification from person who provides care indicating amount of payment, hours of care, names of children, frequency of payment, and whether or not care is necessary to employment or education. • Verification of employment as required under Employment Income. • Verification of student status (full or part-time) as required under Full-Time Student Status.	• Telephone or in-person contact with these sources (child care provider, employer, school) documented in file by the owner.	• Copies of receipts or cancelled checks indicating payments. • For school attendance, school records, such as paid fee statements that show that the time and duration of school attendance reasonably corresponds to the period of child care.	• For verification of "looking for work," details of job search effort as required by owner's written policy.	• Allowance provided only for care of children 12 and younger. • When same care provider takes care of children and disabled person, the owner must prorate expenses accordingly. • Owners should keep in mind that costs may be higher in summer months and during holiday periods. • The owner must determine which family member has been enabled to work. • Care for employment and education must be prorated to compare to earnings. • Costs must be "reasonable."
• Citizenship				• Citizens must sign declaration certifying U.S. Citizenship.	• Owners may require applicants/residents to provide verification of citizenship.

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[b]**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	Acceptable Sources: Third Party[a] Written[b]	Acceptable Sources: Third Party[a] Oral[c]	Acceptable Sources: Documents Provided by Applicant	Acceptable Sources: Self-Declaration	Verification Tips
• Current net family assets.	• Verification forms, letters or documents received from financial institutions, stock brokers, real estate agents, employers indicating the current value of the assets and penalties or reasonable costs to be incurred in order to convert nonliquid assets into cash.	• Telephone or in-person contact with appropriate source, documented in file by the owner.	• Passbooks, checking, or savings account statements, certificates of deposit, property appraisals, stock or bond documents, or other financial statements completed by financial institution. • Copies of real estate tax statements, if tax authority uses approximate market value. • Quotes from attorneys, stockbrokers, bankers, and real estate agents that verify penalties and reasonable costs incurred to convert asset to cash. • Copies of real estate closing documents that indicate distribution of sales proceeds and settlement costs.	• Notarized statement or signed affidavit stating cash value of assets or verifying cash held at applicant's home or in safe deposit box.	• Use current balance in savings accounts and average monthly balance in checking accounts for last 6 months. • Use cash value of all assets (the net amount the applicant would receive if the asset were converted to cash). • **NOTE:** This information can usually be obtained simultaneously when verifying income from assets and employment (e.g., value of pension).

[a]**NOTE**: Requests for verification from third parties must be accompanied by a Consent to Release form.
[b]**NOTE**: If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	Acceptable Sources				Verification Tips
	Third Party[a]		Documents Provided by Applicant	Self-Declaration	
	Written[b]	Oral[c]			
• Disability status.	• Verification from medical professional stating that individual qualifies under the definition of disability.	• Telephone or in-person contact with medical professional verifying qualification under the federal disability definition and documentation in the file of the conversation.		• Not appropriate.	• If a person receives Social Security Disability solely due to a drug or alcohol problem, the person is not considered disabled under housing law. A person that does not receive Social Security Disability may still qualify under the definition of a person with disabilities. • Owners must not seek to verify information about a person's specific disability other than obtaining a professional's opinion of qualification under the definition of a person with disabilities.

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[b]**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	Acceptable Sources: Third Party[a] — Written[b]	Acceptable Sources: Third Party[a] — Oral[c]	Acceptable Sources: Documents Provided by Applicant	Acceptable Sources: Self-Declaration	Verification Tips
• Dividend income and savings account interest income.	• Verification form completed by bank.	• Telephone or in-person contact with appropriate party, documented in file by the owner.	• Copies of current statements, bank passbooks, certificates of deposit, if they show required information (i.e., current rate of interest). • Copies of Form 1099 from the financial institution, and verification of projected income for the next 12 months. • Broker's quarterly statements showing value of stocks/bonds and earnings credited to the applicant.	• Not appropriate.	• The owner must obtain enough information to accurately project income over next 12 months. • Verify interest rate as well as asset value.

[a]**NOTE**: Requests for verification from third parties must be accompanied by a Consent to Release form.
[b]**NOTE**: If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	Acceptable Sources: Third Party[a] — Written[b]	Acceptable Sources: Third Party[a] — Oral[c]	Acceptable Sources: Documents Provided by Applicant	Acceptable Sources: Self-Declaration	Verification Tips
• Employment Income including tips, gratuities, overtime.	• Verification form completed by employer.	• Telephone or in-person contact with employer, specifying amount to be paid per pay period and length of pay period. Document in file by the owner.	• W-2 Forms, if applicant has had same employer for at least two years and increases can be accurately projected. • Paycheck stubs or earning statements.	• Notarized statements or affidavits signed by applicant that describe amount and source of income.	• Always verify: frequency of gross pay (i.e., hourly, biweekly, monthly, bimonthly); anticipated increases in pay and effective dates; overtime. • Require most recent 6-8 consecutive pay stubs; do not use check without stub. • For a fee, additional information can be obtained from The Work Number 800-996-7556; First American Registry 800-999-0350; and Verifax 800-969-5100. Fees are valid project expenses. Information does not replace third-party verification.

[a]**NOTE:** Requests for verification from third parties must be accompanied by a Consent to Release form.
[b]**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	Acceptable Sources				Verification Tips
	Third Party[a]		Documents Provided by Applicant	Self-Declaration	
	Written[b]	Oral[c]			
• Family composition.	• None required.	• None required.	• Birth certificates • Divorce actions • Drivers' licenses • Employer records • Income tax returns • Marriage certificates • School records • Social Security Administration records • Social service agency records • Support payment records • Utility bills • Veterans Administration (VA) records		• An owner may seek verification only if the owner has clear written policy.
• Family type. (Information verified only to determine eligibility for project, preferences, and allowances.)	• Disability Status: statement from physician or other reliable source, if benefits documenting status are not received. See paragraph 3.25 B.1 for restrictions on this form of verification. • Displacement Status: Written statement or certificate of displacement by the appropriate governmental authority.	• Telephone or in-person contact with source documented in file by the owner.	• Elderly Status (when there is reasonable doubt that applicant is at least 62): birth certificate, baptismal certificate, social security records, driver's license, census record, official record of birth or other authoritative document or receipt of SSI old age benefits or SS benefits. • Disabled, blind: evidence of receipt of SSI or Disability benefits.	• Elderly Status: Applicant's signature on application is generally sufficient.	• Unless the applicant receives income or benefits for which elderly or disabled status is a requirement, such status must be verified. • Status of disabled family members must be verified for entitlement to $480 dependent deduction and disability assistance allowance. • Owner may not ask the nature/extent of disability.

[a]**NOTE**: Requests for verification from third parties must be accompanied by a Consent to Release form.
[b]**NOTE**: If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	Acceptable Sources				Verification Tips
	Third Party[a]		Documents Provided by Applicant	Self-Declaration	
	Written[b]	Oral[c]			
• Full-time student status (of family member 18 or older, excluding head, spouse, or foster children).	• Verification from the Admissions or Registrar's Office or dean, counselor, advisor, etc., or from VA Office.	• Telephone or in-person contact with these sources documented in file by the owner.	• School records, such as paid fee statements that show a sufficient number of credits to be considered a full-time student by the educational institution attended.		
• Immigration Status.	• Verification of eligible immigration status must be received from DHS through the DHS SAVE system or through secondary verification using DHS Form G-845.	• None.	• Applicant/resident must provide appropriate immigration documents to initiate verification.	• Noncitizens must sign declaration certifying the following: Eligible immigration status; or Decision not to claim eligible status.	• Owners must require noncitizens requesting assistance to provide verification of eligible immigration status.

[a]**NOTE:** Requests for verification from third parties must be accompanied by a Consent to Release form.
[b]**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	Acceptable Sources: Third Party[a] — Written[b]	Acceptable Sources: Third Party[a] — Oral[c]	Documents Provided by Applicant	Self-Declaration	Verification Tips
• Income maintenance payments, benefits, income other than wages (i.e., welfare, Social Security [SS], Supplemental Security Income [SSI], Disability Income, Pensions).	• Award or benefit notification letters prepared and signed by authorizing agency. • TRACS or REAC may provide verification for social security.	• Telephone or in-person contact with income source, documented in file by the owner. • **NOTE:** For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.	• Current or recent check stubs with date, amount, and check number recorded by the owner. • Award letters or computer printout from court or public agency. • Copies of validated bank deposit slips, with identification by bank. • Most recent quarterly pension account statement.		• Checks or automatic bank deposit slips may not provide gross amounts of benefits if applicant has deductions made for Medicare Insurance. • Pay stubs for the most recent four to six weeks should be obtained. • Copying of U.S. Treasury checks is not permitted. • Award letters/printouts from court or public agency may be out of date; telephone verification of letter/printout is recommended.
• Interest from sale of real property (e.g., contract for deed, installment sales contract, etc.)	• Verification form completed by an accountant, attorney, real estate broker, the buyer, or a financial institution which has copies of the amortization schedule from which interest income for the next 12 months can be obtained.	• Telephone or in-person contact with appropriate party, documented in file by the owner.	• Copy of the contract. • Copy of the amortization schedule, with sufficient information for the owner to determine the amount of interest to be earned during the next 12 months. • **NOTE:** Copy of a check paid by the buyer to the applicant is not acceptable.		• Only the interest income is counted; the balance of the payment applied to the principal is merely a liquidation of the asset. • The owner must get enough information to compute the actual interest income for the next 12 months.

[a]**NOTE**: Requests for verification from third parties must be accompanied by a Consent to Release form.
[b]**NOTE**: If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	Acceptable Sources: Third Party[a] Written[b]	Acceptable Sources: Third Party[a] Oral[c]	Acceptable Sources: Documents Provided by Applicant	Acceptable Sources: Self-Declaration	Verification Tips
• Medical expenses.	• Verification by a doctor, hospital or clinic, dentist, pharmacist, etc., of estimated medical costs to be incurred or regular payments expected to be made on outstanding bills which are not covered by insurance.	• Telephone or in-person contact with these sources, documented in file by the owner.	• Copies of cancelled checks that verify payments on outstanding medical bills that will continue for all or part of the next 12 months. • Copies of income tax forms (Schedule A, IRS Form 1040) that itemize medical expenses, when the expenses are not expected to change over the next 12 months. • Receipts, cancelled checks, pay stubs, which indicate health insurance premium costs, or payments to a resident attendant. • Receipts or ticket stubs that verify transportation expenses directly related to medical expenses.	• Notarized statement or signed affidavit of transportation expenses directly related to medical treatment, if there is no other source of verification.	• Medical expenses are not allowable as deduction unless applicant is an elderly or disabled family. Status must be verified.
• Need for an assistive animal.	• Letter from medical provider.				• If the owner's policy is to verify this need, owner must implement policy consistently.

[a]**NOTE:** Requests for verification from third parties must be accompanied by a Consent to Release form.
[b]**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	Acceptable Sources: Third Party[a] Written[b]	Acceptable Sources: Third Party[a] Oral[c]	Acceptable Sources: Documents Provided by Applicant	Acceptable Sources: Self-Declaration	Verification Tips
• Net Income for a business.	• Not applicable.	• Not applicable.	• Form 1040 with Schedule C, E, or F. • Financial Statement(s) of the business (audited or unaudited) including an accountant's calculation of straight-line depreciation expense if accelerated depreciation was used on the tax return or financial statement. • Any loan application listing income derived from business during the preceding 12 months. • For rental property, copies of recent rent checks, lease and receipts for expenses, or IRS Schedule E.		
• Recurring contributions and gifts.	• Notarized statement or affidavit signed by the person providing the assistance giving the purpose, dates, and value of gifts.	• Telephone or in-person contact with source documented in file by the owner.	• Not applicable.	• Notarized statement or affidavit signed by applicant stating purpose, dates, and value of gifts.	• Sporadic contributions and gifts are not counted as income.

[a]**NOTE**: Requests for verification from third parties must be accompanied by a Consent to Release form.
[b]**NOTE**: If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	Acceptable Sources: Third Party[a] Written[b]	Acceptable Sources: Third Party[a] Oral[c]	Acceptable Sources: Documents Provided by Applicant	Acceptable Sources: Self-Declaration	Verification Tips
• Self-employment, tips, gratuities, etc.	None available.	None available.	• Form 1040/1040A showing amount earned and employment period.	• Notarized statement or affidavit signed by applicant showing amount earned and pay period.	
• Social security number.	• None required.	• None required.	• Original Social Security card • Driver's license with SSN • Identification card issued by a federal, State, or local agency, a medical insurance provider, or an employer or trade union. • Earnings statements on payroll stubs • Bank statement • Form 1099 • Benefit award letter • Retirement benefit letter • Life insurance policy • Court records	• Certification that document is complete/accurate unless original Social Security card is provided.	• Individuals who have applied for legalization under the Immigration Reform and Control Act of 1986 will be able to disclose their social security numbers but unable to supply cards for documentation. Social security numbers are assigned to these persons when they apply for amnesty. The cards go to DHS until the persons are granted temporary lawful resident status. Until that time, their acceptable documentation is a letter from the DHS indicating that social security numbers have been assigned.
• Unborn children.	• None required.	• None required.	• None required.	• Applicant/tenant self-certifies to pregnancy.	• Owner may not verify further than self-certification.

[a]**NOTE:** Requests for verification from third parties must be accompanied by a Consent to Release form.
[b]**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES: Third Party[a] Written[b]	Third Party[a] Oral[c]	Documents Provided by Applicant	Self-Declaration	Verification Tips
• Unemployment compensation.	• Verification form completed by source.	• Telephone or in-person contact with agency documented in a file by an owner.	• Copies of checks or records from agency provided by applicant stating payment amounts and dates. • Benefit notification letter signed by authorizing agency.		• Frequency of payments and expected length of benefit term must be verified. • Income not expected to last full 12 months must be calculated based on 12 months and interim recertification completed when benefits stop.
• Welfare payments (as-paid states only).	• Verification form completed by welfare department indicating maximum amount family may receive. • Maximum shelter schedule by household size with ratable reduction schedule.	• Telephone or in-person contact with income source, documented in file by the owner.	• Maximum shelter allowance schedule with ratable reduction schedule provided by applicant.	• Not appropriate.	• Actual welfare benefit amount not sufficient as proof of income in "as-paid" states or localities since income is defined as maximum shelter amount.

[a]**NOTE**: Requests for verification from third parties must be accompanied by a Consent to Release form.
[b]**NOTE**: If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	Acceptable Sources				Verification Tips
	Third Party[a]		Documents Provided by Applicant	Self-Declaration	
	Written[b]	Oral[c]			
• Zero Income.	• Not applicable.	• Not applicable.	• Not applicable.	• Applicant/Tenant self-certifies to zero income.	• Owners may require applicant/tenant to sign verification release of information forms for state, local, and federal benefits programs, as well as the HUD 9887 and HUD 9887-A. • Owners may require the tenant to reverify zero income status at least every 90 days.

[a]**NOTE:** Requests for verification from third parties must be accompanied by a Consent to Release form.
[b]**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Section 23

HUD 4350.3 REV-1 Chapter 5: Determining Income and Calculating Rent

CHAPTER 5. DETERMINING INCOME AND CALCULATING RENT

5-1 Introduction

A. Owners must determine the amount of a family's income before the family is allowed to move into assisted housing and at least annually thereafter. The amount of assistance paid on behalf of the family is calculated using the family's annual income less allowable deductions. HUD program regulations specify the types and amounts of income and deductions to be included in the calculation of annual and adjusted income.

B. Although the definitions of annual and adjusted income used for the programs covered in this handbook have some similarities with rules used by the U.S. Internal Revenue Service (IRS), the tax rules are different from the HUD program rules.

C. The most frequent errors encountered in reviews of annual and adjusted income determinations in tenant files fall in three categories:

1. Applicants and tenants failing to fully disclose income information;

2. Errors in identifying required income exclusions; and

3. Incorrect calculations of deductions often resulting from failure to obtain third-party verification.

Careful interviewing and thorough verification can minimize the occurrence of these errors.

D. Chapter 5 is organized as follows:

- **Section 1: Determining Annual Income** discusses the requirements regarding annual income and the procedure for calculating a family's annual income when determining eligibility. This section also includes guidance on determining income from assets.

- **Section 2: Determining Adjusted Income** describes the procedures and requirements for determining adjusted income based on allowable deductions.

- **Section 3: Verification** presents the requirements for verifying information provided by applicants and tenants related to their eligibility.

- **Section 4: Calculating Tenant Rent** discusses the methods for calculating the tenant's portion of rent under the different programs covered by this handbook.

5-2 Key Terms

A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations, or by HUD. These terms are listed in Figure 5-1 and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.

B. The terms "disability" and "persons with disabilities" are used in two contexts – for civil rights protections, and for program eligibility purposes. Each use has specific definitions.

1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.

2. When used in the context of eligibility under multifamily subsidized housing programs, the program eligibility definitions apply.

NOTE: See the Glossary for specific definitions and paragraph 2-23 for an explanation of this difference.

Figure 5-1: Key Terms

• Adjusted income	• Live-in aide
• Annual income	• Low-income family
• Assets	• Market rent
• Assistance payment	• Minimum rent
• Assisted rent	• Operating rent
• Assisted tenant	• Project Assistance Contract (PAC)
• Basic rent	• PRAC Operating Rent
• Co-head of household	• Project Rental Assistance Contract (PRAC)
• Contract rent	• Project assistance payment
• Dependent	• Project rental assistance payment
• Extremely low-income family	• Tenant rent
• Foster adult	• Total tenant payment
• Foster children	• Unearned income
• Full-time student	• Utility allowance
• Gross rent	• Utility reimbursement
• Hardship exemption	• Very low-income family
• Head of household	• Welfare assistance
• Housing assistance payment (HAP)	• Welfare rent
• Income limit	

Section 1: Determining Annual Income

5-3 Key Regulations

This paragraph identifies the key regulatory citation pertaining to Section 1: Determining Annual Income. The citation and its title are listed below.

- 24 CFR 5.609 Annual Income

5-4 Key Requirements

A. Annual income is the amount of income that is used to determine a family's eligibility for assistance. Annual income is defined as follows:

1. All amounts, monetary or not, that go to or are received on behalf of the family head, spouse or co-head (even if the family member is temporarily absent), or any other family member; or

2. All amounts anticipated to be received from a source outside the family during the 12-month period following admission or annual recertification effective date.

B. Annual income includes all amounts that are not specifically excluded by regulation. Exhibit 5-1, Income Inclusions and Exclusions, provides the complete list of income inclusions and exclusions published in the regulations and *Federal Register* notices.

C. Annual income includes amounts derived (during the 12-month period) from assets to which any member of the family has access.

5-5 Methods for Projecting and Calculating Annual Income

A. The requirements for determining whether a family is eligible for assistance, and the amount of rent the family will pay, require the owner to project or estimate the annual income that the family expects to receive. There are several ways to make this projection. The following are two acceptable methods for calculating the annual income anticipated for the coming year:

1. Generally the owner must use current circumstances to anticipate income. The owner calculates projected annual income by annualizing *current* income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months. If changes occur later in the year, an interim recertification can be conducted to change the family's rent.

2. If information is available on changes expected to occur during the year, use that information to determine the total *anticipated* income from all known sources during the year**. For example, if a verification source reports that a union contract calls for a 2% pay increase midway through

the year, the owner may add the total income for the months before, and the total for the months after the increase**.

Example – Calculating Anticipated Annual Income

A teacher's assistant works nine months annually and receives $1,300 per month. During the summer recess, the teacher's assistant works for the Parks and Recreation Department for $600 per month. The owner may calculate the family's income using either of the following two methods:

1. Calculate annual income based on current income: $15,600 ($1,300 x 12 months).

   The owner would then conduct an interim recertification at the end of the school year to recalculate the family's income during the summer months at reduced annualized amount of $7,200 ($600 x 12 months). The owner would conduct another interim recertification when the tenant returns to the nine-month job.

2. Calculate annual income based on anticipated changes through the year:

$11,700	($1,300 x 9 months)
+ 1,800	($ 600 x 3 months)
$13,500	

   Using the second method, the owner would not conduct an interim re-examination at the end of the school year. In order to use this method effectively, history of income from all sources in prior years should be available.

B. Once all sources of income are known and verified, owners must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

1. Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);
2. Weekly wages by 52;
3. Bi-weekly wages (paid every other week) by 26;
4. Semi-monthly wages (paid twice each month) by 24; and
5. Monthly wages by 12.

To annualize other than full-time income, multiply the wages by the actual number of hours or weeks the person is expected to work.

Example – Anticipated Increase in Hourly Rate

February 1	Certification effective date
$7.50/hour	Current hourly rate
$8.00/hour	New rate to be effective March 15

(40 hours per week x 52 weeks = 2,080 hours per year)

February 1 through March 15 =	6 weeks
6 weeks x 40 hours =	240 hours
2,080 hours minus 240 hours =	1,840 hours

(check: 240 hours + 1,840 hours = 2,080 hours)

Annual Income is calculated as follows:

240 hours x $7.50 =	$1,800	
$1,840 hours x $8.00 =	$14,720	
Annual Income		$16,520

(See **Appendix 8** for an explanation of the correct approach to rounding numbers.)

C. Some circumstances present more than the usual challenges to estimating anticipated income. Examples of challenging situations include a family that has sporadic work or seasonal income or a tenant who is self-employed. In all instances, owners are expected to make a reasonable judgment as to the most reliable approach to estimating what the tenant will receive during the year. In many of these challenging situations, midyear or interim recertifications may be required to reflect changing circumstances. Some examples of approaches to more complex situations are provided below.

Examples – Irregular Employment Income

<u>Seasonal work</u>. Clyde Kunkel is a roofer. He works from April through September. He does not work in rain or windstorms. His employer is able to provide information showing the total number of regular and overtime hours Clyde worked during the past three years. To calculate Clyde's anticipated income, use the average number of regular hours over the past three years times his current regular pay rate, and the average overtime hours times his current overtime rate.

<u>Sporadic work</u>. Justine Cowan is not always well enough to work full-time. When she is well, she works as a typist with a temporary agency. Last year was a good year and she worked a total of nearly six months. This year, however, she has more medical problems and does not know when or how much she will be able to work. Because she is not working at the time of her recertification, it will be best to exclude her employment income and remind her that she must return for an interim recertification when she resumes work.

Examples – Irregular Employment Income

Sporadic work. Sam Daniels receives social security disability. He reports that he works as a handyman periodically. He cannot remember when or how often he worked last year: he says it was a couple of times. Sam's earnings appear to fit into the category of nonrecurring, sporadic income that is not included in annual income. Tell Sam that his earnings are not being included in annual income this year, but he must report to the owner any regular work or steady jobs he takes.

Self-employment income. Mary James sells beauty products door-to-door on consignment. She makes most of her money in the months prior to Christmas but has some income throughout the year. She has no formal records of her income other than a copy of the IRS Form 1040 she files each year. With no other information available, the owner will use the income reflected on Mary's copy of her form 1040 as her annual income.

5-6 Calculating Income—Elements of Annual Income

A. Income of Adults and Dependents

1. Figure 5-2 summarizes whose income is counted.

2. Adults. Count the annual income of the head, spouse or co-head, and other adult members of the family. In addition, persons under the age of 18 who have entered into a lease under state law are treated as adults, and their annual income must also be counted. These persons will be either the head, spouse, or co-head; they are sometimes referred to as emancipated minors.

   NOTE: If an emancipated minor is residing with a family as a member other than the head, spouse, or co-head, the individual would be considered a dependent and his or her income handled in accordance with subparagraph 3 below.

3. Dependents. A dependent is a family member who is under 18 years of age, is disabled, or is a full-time student

   The head of the family, spouse, co-head, foster child, or live-in aide are never dependents. Some income received on behalf of family dependents is counted and some is not.

   a. *Earned* income of minors (family members under 18) is not counted.

   b. Benefits or other *unearned* income of minors is counted.

Figure 5-2: Whose Income is Counted?

Members	**Employment Income**	**Other Income** (including income from assets)
Head	Yes	Yes
Spouse	Yes	Yes
Co-head	Yes	Yes
Other adult ***(including foster adult)***	Yes	Yes
Dependents		
-Child under 18	No	Yes
Full-time student over 18	See Note	Yes
***Foster child under 18**	No	Yes*
Nonmembers		
Live-in aide	No	No

NOTE: The earned income of a full-time student 18 years old or older who is a dependent is excluded to the extent that it exceeds $480.

c. When more than one family shares custody of a child and both families live in assisted housing, only one family at a time can claim the dependent deduction. The family that counts the dependent deduction also counts the unearned income of the child. The other family claims neither the dependent deduction nor the unearned income of the child.

d. When full-time students who are 18 years of age or older are dependents, a small amount of their earned income will be counted. Count only earned income up to a maximum of $480 per year for full-time students, age 18 or older, who are not the head of the family or spouse or co-head. If the income is less than $480 annually, count all the income. If the annual income exceeds $480, count $480 and exclude the amount that exceeds $480.

e. The income of full-time students 18 years of age or older who are members of the household but away at school is counted the same as the income for other full-time students. The income of minors who are members of the household but away at school is counted as the income for other minors.

f. All income of a full-time student, 18 years of age or older, is counted if that person is the head of the family, spouse, or co-head.

g. Payments received by the family for the care of foster children or foster adults are *not* counted. This rule applies only to payments made through the official foster care relationships with local welfare agencies.

h. Adoption assistance payments in excess of $480 are not counted.

B. **Income of Temporarily Absent Family Members**

1. Owners must count all income of family members approved to reside in the unit, even if some members are temporarily absent.

2. If the owner determines that an absent person is no longer a family member, the individual must be removed from the lease and the HUD-50059.

3. A temporarily absent individual on active military duty must be removed from the family, and his or her income must not be counted unless that person is the head of the family, spouse, or co-head.

   a. However, if the spouse or a dependent of the person on active military duty resides in the unit, that person's income must be counted in full, even if the military member is not the head, or spouse of the head of the family.

   b. The income of the head, spouse, or co-head will be counted even if that person is temporarily absent for active military duty.

Examples – Income of Temporarily Absent Family Members

- John Chouse works as an accountant. However, he suffers from a disability that periodically requires lengthy stays at a rehabilitation center. When he is confined to the rehabilitation center, he receives disability payments equaling 80% of his usual income.

  During the time he is not in the unit, he will continue to be considered a family member. The owner will conduct an interim recertification. Even though he is not currently in the unit, his total disability income will be counted as part of the family's annual income.

- Mirna Martinez accepts temporary employment in another location and needs a portion of her income to cover living expenses in the new location. The full amount of the income must be included in annual income.

- Charlotte Paul is on active military duty. Her permanent residence is her parents' assisted unit where her husband and children live. Charlotte is not currently exposed to hostile fire. Therefore, because her spouse and children are in the assisted unit, her military pay must be included in annual income. (If her dependents or spouse were not in the unit, she would not be considered a family member and her income would not be included in annual income.)

C. *Deployment of Military Personnel to Active Duty

Owners are encouraged to be as lenient as responsibly possible to support affected households in situation where persons are called to active duty in the Armed Forces. Specific actions that owners should undertake to support military households include, but are not limited to:*

1. *Allow a guardian to move into the assisted unit on a temporary basis to provide care for any dependents the military person leaves in the unit. Income of the guardian temporarily living in the unit for this purpose is not counted as income.

2. Allow a tenant living in an assisted unit to provide care for any dependents of persons called to active duty in the Armed Forces on a temporary basis, as long as the head and/or co-head of household continues to serve in active duty. Income of the child (e.g., SSI benefits, military benefits) is not counted as income of the person providing the care.

3. Exclude from annual income special pay received by a household member serving in the Armed Services who is exposed to hostile fire (see Exhibit 5-1).

4. Give consideration for any case involving delayed payment of tenant rent. Determine whether it is appropriate to accept a late payment.

5. Allow the assistance payment and the lease to remain in effect for a reasonable period of time (depending on the length of deployment) beyond that required by the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. §§ 501-591, even though the adult members of the military family are temporarily absent from the assisted unit.*

D. Income of Permanently Confined Family Members

1. An individual permanently confined to a nursing home or hospital may not be named as family head, spouse, or co-head but may continue as a family member at the family's discretion. The family's decision on whether or not to include the permanently confined family member as a family member determines if that person's income will be counted.

   a. *Include* the individual as a family member and the income and allowable deductions related to the medical care of the permanently confined individual are counted; or

   b. *Exclude* the individual as a family member and the income and allowances based on the medical care of the permanently confined individual are not counted.

2. If the family elects to include the permanently confined member, the individual is listed on the HUD-50059 as an adult who is not the head, spouse, or co-head, even when the permanently confined family member is married to the person who is or will become the head of the family. The owner should consider extenuating circumstances that may prevent the confined member from being able to sign the HUD-50059. If the owner determines the confined member is unable to sign the HUD-50059,

the owner must document the file why the signature was not obtained. If the family elects not to include the permanently confined member, the individual would not be listed on the HUD-50059.**

E. **Educational Scholarships or Grants**

All forms of student financial assistance (grants, scholarships, educational entitlements, work study programs, and financial aid packages) are excluded from annual income **except for students receiving Section 8 assistance.** This is true whether the assistance is paid to the student or directly to the educational institution

For students receiving Section 8 assistance, all financial assistance a student receives (1) under the Higher Education Act of 1965, (2) from private sources, or (3) from an institution of higher education that is in excess of amounts received for tuition is included in annual income except if the student is over the age of 23 with dependent children or the student is living with his or her parents who are receiving Section 8 assistance. See Paragraph 3-13 for further information on eligibility of students to receive Section 8 assistance and the Glossary for the definition of Student Financial Assistance.

F. **Alimony or Child Support**

Owners must count alimony or child support amounts awarded by the court unless the applicant certifies that payments are not being made *and* that he or she has taken all reasonable legal actions to collect amounts due, including filing with the appropriate courts or agencies responsible for enforcing payment.

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

2. Child support paid to the custodial parent through a state child support enforcement or welfare agency may be included in the family’s monthly welfare check and may be designated in different ways. In some states these payments are not identified as separate from the welfare grant. In these states, it is important to determine which portion is child support and not to count it twice. In other states, the payment may be listed as child support or as “pass-through” payments. These amounts must be counted as annual income.

3. 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.

G. **Regular Cash Contributions and Gifts**

1. Owners <u>must count</u> as income any regular contributions and gifts from persons not living in the unit. These sources may include rent and utility

payments paid on behalf of the family, and other cash or noncash contributions provided on a regular basis.

Examples – Regular Cash Contributions

- The father of a young single parent pays her monthly utility bills. On average he provides $100 each month. The $100 per month must be included in the family's annual income.

- The daughter of an elderly tenant pays her mother's $175 share of rent each month. The $175 value must be included in the tenant's annual income.

2. Groceries and/or contributions paid directly to the childcare provider by persons not living in the unit are excluded from annual income.

3. Temporary, nonrecurring, or sporadic income (including gifts) is not counted.

H. **Income from a Business**

When calculating annual income, owners must include the net income from operation of a business or profession including self-employment income. Net income is gross income less business expenses, interest on loans, and depreciation computed on a straight-line basis.

1. In addition to net income, owners must count any salaries or other amounts distributed to family members from the business, and cash or assets withdrawn by family members, except when the withdrawal is a reimbursement of cash or assets invested in the business.

2. When calculating net income, owners must not deduct principal payments on loans, interest on loans for business expansion or capital improvements, other expenses for business expansion, or outlays for capital improvements.

3. If the net income from a business is negative, it must be counted as zero income. A negative amount must not be used to offset other family income.

I. ****Periodic Social Security Payments**

Count the gross amount, before deductions for Medicare, etc., of periodic Social Security payments. Include payments received by adults on behalf of individuals under the age of 18 or by individuals under the age of 18 for their own support.**

J. **Adjustments for Prior Overpayment of Benefits**

If an agency is reducing a family's benefits to adjust for a prior overpayment (e.g., social security, SSI, TANF, or unemployment benefits), count the amount that is actually provided after the adjustment.

> **Example – Adjustment for Prior Overpayment of Benefits**
>
> Lee Park's social security payment of $250 per month is being reduced by $25 per month for a period of six months to make up for a prior overpayment. Count his social security income as $225 per month for the next six months and as $250 per month for the remaining six months.

K. **Public Assistance Income in As-Paid Localities**

1. Special calculations of public assistance income are required for "as-paid" state, county, or local public assistance programs. An "as-paid" system is one:

   a. In which the family receives an amount from a public agency specifically for shelter and utilities; <u>and</u>

   b. In which the amount is adjusted based upon the actual amount the family pays for shelter and utilities.

2. The public assistance amount specifically designated for rent and utilities is called the "welfare rent."

3. To determine annual income for public assistance recipients in "as-paid" localities, include the following:

   a. The amount of the family's grant for other than shelter and utilities; <u>and</u>

   b. The maximum amount the welfare department can pay for shelter and utilities for a family of that size (i.e., the welfare rent). This may be different from the amount the family is actually receiving.

4. Each as-paid locality works somewhat differently, and many are subject to court-ordered modifications to the basic policy. Owners should discuss how the rules are applied with the HUD Field Office.

Example – Welfare Income in "As Paid" Localities

At application, a family's welfare grant is $300, which includes $125 for basic needs and $175 for shelter and utilities (based upon where the family is now living). However, the maximum the welfare agency could allow for shelter and utilities for this size family is $190.

Count the following as income:

$125	Amount family receives for basic needs
<u>$190</u>	Maximum for shelter and utilities
$315	Monthly public assistance income

L. **Periodic Payments from Long-Term Care Insurance, Pensions, Annuities, and Disability or Death Benefits**

1. The full amount of periodic payments from annuities, insurance policies, retirement funds, pensions, and disability or death benefits is included in annual income. (See subparagraph O below for information on the withdrawal of cash or assets from an investment.) Payments such as Black Lung Sick Benefits, Veterans Disability, and Dependent Indemnity Compensation for the Widow of a Killed in Action Serviceman are examples of such periodic payments.

2. Withdrawals from retirement savings accounts such as Individual Retirement Accounts and 401K accounts that are not periodic payments do not fall in this category and are not counted in annual income (see paragraph 5.7 G.4).

Example – Withdrawals from IRAs or 401K Accounts

Isaac Freeman retired recently. He has an IRA account but is not receiving periodic payments from it because his pension is adequate for his routine expenses. However, he has withdrawn $2,000 for a trip with his children. The withdrawal is not a periodic payment and is not counted as income.

3. If the tenant is receiving long-term care insurance payments, any payments in excess of $180 per day must be counted toward the gross annual income. (**NOTE:** Payment of long-term care insurance premiums are an eligible medical expense – see paragraph 5-10 D.8.k.)

4. *****Federal Government/Uniformed Services pension funds paid to a former spouse.*****

Federal Government/Uniformed Services pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are not counted as annual income. The state court has, in the settlement of the parties' marital assets, determined the extent to which each party shares in the ownership of the pension. That portion of the pension that is ordered by the court (and authorized by the Office of Personnel Management (OPM), to be paid to the applicant's/tenant's former spouse is no longer an asset of the applicant/tenant and therefore is not counted as income. However, any pension funds authorized by OPM, pursuant to a court order, to be paid to the former spouse of a Federal government employee is counted as income for a tenant/applicant receiving such funds.

Example: Joan Carson is a retired Federal government employee receiving a retirement pension. She is also the recipient of Section 8 housing assistance and involved in a divorce proceeding. In settling the assets of the marriage between Mrs. Carson and her former husband, the court ordered that one half of her pension be paid directly to her former husband in the amount of $20,000. The court provided OPM with clear, specific and express instructions acceptable for OPM to process the payment to Mrs. Carson's former husband. OPM authorized the payment of pension benefits to Mrs. Carson's former husband in the amount of $20,000. The $20,000 represents an asset disposed of as a result of a court decree. At the interim reexamination of her income, Mrs. Carson indicated a change in her income due to the court ordered payment of pension benefits to her former husband. The PHA requested that Mrs. Carson provide a copy of her statement from OPM evidencing the payment of pension benefits to her (her statement reflected the line item payment to her former husband due to the court order). That portion of the pension paid to her former husband no longer belongs to Mrs. Carson and is not counted as income.

The OPM is responsible for handling court orders (any judgments or property settlements issued by or approved by any court of any state, the

District of Columbia, the Commonwealth of Puerto Rico, Guam, The Northern Mariana Islands, or the Virgin Islands in connection with the divorce, annulment of marriage, or legal separation of a Federal government employee or retiree) affecting current and retired Federal government employees. See 5 C.F.R. § 838.103. OPM must comply with court orders, decrees, or court-approved property settlement agreements in connection with divorces, annulments of marriage, or legal separations of employees that award a portion of the former Federal government employee's retirement benefits. Id. at § 838.101(a)(1). State courts ordering a judgment or property settlement in connection with divorce, annulment of marriage, or legal separation have the responsibility of issuing clear, specific, and express instructions to OPM with regards to providing benefits to former spouses. Id. at § 838.122. In response to instructions from state courts, OPM will authorize payments to the former spouses. Id. at § 838.121. Once the payments have been authorized by OPM, the reduced pension amount paid to the retired Federal employee (the tenant/applicant) will be reflected in the tenant's/applicant's statement from OPM. Former spouses of Federal government employees receiving court ordered pension benefits are provided a Form-1099 reflecting pension benefits received from the retired Federal government employee. In verifying the income of tenants/applicants, owners should require that tenants/applicants provide any copies of statements from OPM verifying pension benefits (including any reductions pursuant to a court order, decree or court-approved property settlement agreement), and any evidence of survivor benefits, pensions or annuities received from retired Federal government employees including, but not limited to, a Form-1099. (See Paragraph 5-7.G.5 for more information on the treatment of income from Federal government pensions.)

5. *Other State, local government, social security or private pensions paid to a former spouse.

   Other state, local government, social security or private pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are also not counted as annual income and should be handled in the same manner as 4, above. The decree and copies of statements should be obtained in order to verify the net amount of the pension that should be applied in order to determine eligibility and calculate rent.*

M. Income from Training Programs

1. Amounts received under HUD-funded training programs are excluded from annual income.

2. Incremental earnings and benefits received by any family member due to participation in qualifying state or local employment training programs are excluded. Income from training programs not affiliated with a local government, and income from the training of a family member resident to serve on the management staff, is also excluded.

   a. Excluded income must be received under employment training programs with clearly defined goals and objectives and for a specific, limited time period. The initial enrollment must not exceed one year, although income earned during extensions for additional specific time periods may also be eligible for exclusion

   b. Training income may be excluded only for the period during which the family member participates in the employment training program.

   c. Exclusions include stipends, wages, transportation or child care payments, or reimbursements.

d. Income received as compensation for employment is excluded only if the employment is a component of a job training program. Once training is completed, the employment income becomes income that is counted.

e. Amounts received during the training period from sources that are unrelated to the job training program, such as welfare benefits, social security payments, or other employment, are not excluded.

2. Owners may ask to use project funds or funds from the Residual Receipts account to underwrite all or a portion of the cost of developing, maintaining, and managing a job training program for project residents if funds are available.

a. The Field Office will make the determination if the job training program may be approved, and if project funds are sufficient to fund the job training program and maintain the physical and financial integrity of the project. Job training programs may be either on-site at the project or off-site. For example, job training programs that have partnerships with local colleges, community based organizations, or local business, may have in-house job training programs designed for project residents.

b. Funds that an owner may choose to use to underwrite a job training program may include Section 8 funds, Community Development Block Grant funds, or housing authority funds. These funds may be used to cover the costs of various components of a job training program, including course materials, computer software, computer hardware, or personnel costs. Also, contractors and subcontractors, in connection with work performed under a Flexible Subsidy contract, may elect to hire project residents to perform certain skills required under the contract. If the employment of the project residents was pursuant to an apprenticeship program, this could constitute a training program using HUD funds, and income received by the tenants in the apprenticeship program will qualify as an exclusion from income.

N. **Resident Services Stipends**

Resident services stipends are generally modest amounts of money received by residents for performing services such as hall monitoring, fire patrol, lawn maintenance, and resident management.

1. If the resident stipend exceeds $200 per month, owners must include the entire amount in annual income.

2. If the resident stipend is $200 or less per month, owners must exclude the resident services stipend from annual income.

O. **Income Received by a Resident of an Intermediate Care Facility for the Mentally Retarded or for the Developmentally Disabled (ICF/MR or ICF/DD) and Assisted Living Units in Elderly Projects**

1. An intermediate care facility is a group home for mentally retarded or developmentally disabled individuals (ICF/MR or ICF/DD). The term "intermediate care facility" is one used by state mental health departments for group homes serving these residents.

2. Assisted living units are units in projects developed for elderly residents with project-based assistance that have been converted to assisted living units.

3. The local agency responsible for Medicaid provides funds directly to group home operators and assisted living providers for services.

4. Annual income at an ICF/MR, ICF/DD, or assisted living unit must include:

   a. The SSI payment a tenant receives or the facility receives on behalf of the tenant; plus

   b. All other income the tenant receives from sources other than SSI that are not excluded from income by HUD regulations (see Exhibit 5-1). Examples of other sources of income include wages, pensions, income from sheltered workshops, income from a trust, or other interest income.

   c. The personal allowance of an individual residing in an ICF/MR or ICF/DD is not included in annual income. If the owner is unable to determine the actual amount of the personal allowance, use $30.

5. Annual income does not include the enhanced benefit portion of the SSI that is provided to pay for services. In some instances, a resident's SSI income may be reduced between annual recertifications if the resident's earnings exceed a specified amount. If this happens, the resident may request an interim recertification.

P. **Withdrawal of Cash or Assets from an Investment**

The withdrawal of cash or assets from an investment received as periodic payments should be counted as income. **Lump sum receipts from pension and retirement funds are counted as assets. If benefits are received through periodic payments, do not count any remaining amounts in the account as an asset. See Paragraph 5-7 G.2 for guidance on calculating income from an asset.**

Q. **Lump Sum Payments Counted as Income**

1. Generally, lump sum amounts received by a family, such as inheritances, insurance settlements, or proceeds from sale of property are considered assets, not income.

2. When social security or SSI benefit income is paid in a lump sum as a result of deferred periodic payments, that amount is *excluded* from annual income.

3. Settlement payments from claim disputes over welfare, unemployment, or similar benefits may be counted as assets, but lump sum payments caused by *delays in processing* periodic payments for unemployment or welfare assistance are included as income.

   How lump sum payments for delayed start of benefits are counted depends upon the following:

   a. When the family reports the change;

   b. When an interim re-examination is conducted; and

   c. Whether the family's income increases or decreases as a result.

   A lump sum payment resulting from delayed benefit income may be treated in either of the two ways illustrated in the example shown in Figure 5-3.

4. Lottery winnings paid in one payment are treated as assets. Lottery winnings *paid in periodic payments* must be counted as income.

Figure 5-3: Treatment of Delayed Benefit Payments Received in a Lump Sum

Family member loses his/her job on October 19 and applies for unemployment benefits. The family receives a lump sum payment of $700 in December to cover the period from 10/20 to 12/5 and begins to receive $100 a week effective 12/6.

Option A: The owner processes one interim re-examination immediately effective 11/1 and a second interim after unemployment benefits are known.

	10/1	11/1	12/1	1/1	2/1
Monthly gross income	800	*0	*0	492**	492**
Monthly allowances (three minors x 480 / 12 months)	120	-	-	120	120
Monthly adjusted income	680	0	0	372	372
Total tenant payment (TTP)	204	25	25	25***	112***

* The family's income is calculated at $0/month beginning November 1, continuing until benefits actually begin and new income is calculated. TTP is set at the minimum rent.

** Family's actual income for 1/1 is $100/week x 52 weeks = $5,200 / 12 = $433.

However, because the family's TTP was calculated at zero income for the months of November and December (the period eventually covered by the $700 lump sum payment), the annual income to be used in calculating monthly gross income should be as follows:

$100/week benefit x 52 weeks = $5,200 + $700 lump sum payment = $5,900 annual gross income/ 12 = $492.

*** Increased rent does not start until 2/1 in order to give the family notice of rent increase.

Option B: The owner processes one interim re-examination after unemployment benefits are known.

	10/1	11/1	12/1	1/1	2/1
Monthly gross income	800	0/800*	0/800*	433*	433*
Monthly allowances (three minors x 480 / 12 Months)	120	120	120	120	120
Monthly adjusted income	680	0/680	0/680	313	313
Total tenant payment	204	204*	204*	94	94
Recalculated TTP	-	94***	94*	94	94
Rent credit (204 – 94=)	-	110	110	-	-

* Family's actual income for 11/1 and 12/1 is zero, but because the owner does not process an interim re-examination, the family's TTP continues to be calculated using $800 as monthly gross income. Beginning 1/1, monthly gross income is known to be $100/week, or $433/month.

** The lump sum payment is taken into account by making the recertification retroactive to 11/1. Annual income is calculated as $5,200 / 12 = $433 monthly gross income.

*** TTP for November and December recalculated as $433 monthly gross income and $313 monthly adjusted income x .30 = 94 with credit or refund to family of $110/month for each of these two months for difference between TTP paid of $204 and recalculated TTP of $94.

R. Exclusions from Income

1. Regulations for the multifamily subsidized housing programs covered by this handbook specifically exclude certain types of income from annual income. However, many of the items listed as exclusions from annual income under HUD requirements are items that the IRS includes as taxable income. Therefore, it is important for owners to focus specifically on the HUD program requirements regarding annual income.

2. Among the items that are excluded from annual income are the value of food provided through:

   a. The Meals on Wheels program, food stamps, or other programs that provide food for the needy;

   b. Groceries provided by persons not living in the household; and

   c. Amounts received under the School Lunch Act and the Child Nutrition Act of 1966, including reduced lunches and food under the Special Supplemental Food Program for Women, Infants and Children (WIC).

Examples – Income Exclusions

- The Value of Food Provided through the Meals on Wheels Program or Other Programs Providing Food for the Needy. Jack Love receives a hot lunch each day during the week in the community room and an evening meal in his apartment. One meal is provided through the Meals on Wheels program. A local church provides the other. The value of the meals he receives is not counted as income.
- Groceries provided by persons not living in the household. Carrie Sue Colby's mother purchases and delivers groceries each week for Carrie Sue and her two year old. The value of these groceries is not counted as income despite the fact that these are a regular contribution or gift.
- Amounts Received Under WIC or the School Lunch Act. Lydia Jeffries' two children receive a free breakfast and reduced priced lunches at school every day through the Special Supplemental Food Program for Women, Infants and Children (WIC). The value of this food is not counted as income.

**

3. Some additional examples of income that is excluded from the calculation of annual income follow.

Examples – Income Exclusions

- Resident service stipends. Rich Fuller receives $50 a month for distributing flyers for management. This amount is excluded from annual income.

- Deferred periodic payments of social security benefits. Germain Johnson received $32,000 in deferred social security benefits following a lengthy eligibility dispute. This delayed payment of social security benefits is treated as an asset, not as income.

- Income from training programs. Jennifer Jones is participating in a qualified state-supported employment training program every afternoon to learn improved computer skills. Each morning, she continues her regular job as a typist. The $250 a week she receives as a part-time typist is included in annual income. The $150 a week she receives for participation in the training program is excluded in annual income.

- Earned Income Tax Credit refund payments. Mary Frances Jackson is eligible for an earned income tax credit. She receives payments from her employer each quarter because of the tax credit. These payments are excluded in annual income.

**

5-7 Calculating Income from Assets

Annual income includes amounts derived from assets to which family members have access.

A. What is Considered to Be an Asset?

1. Assets are items of value that may be turned into cash. A savings account is a cash asset. The bank pays interest on the asset. The interest is the *income* from that asset.

2. Some tenants have assets that are not earning interest. A quantity of money under a mattress is an asset: it is a thing of value that could be used to the benefit of the tenant, but under the mattress it is not producing income.

3. Some belongings of value are not considered assets. Necessary personal property is not counted as an asset. Exhibit 5-2 summarizes the items that are considered assets and those that are not.

B. Determining Income from Assets

Note: For families receiving only BMIR assistance, it is not necessary to determine whether family assets exceed $5,000. The rule for imputing income from assets does not apply to the BMIR program.

1. The calculation to determine the amount of income from assets to include in annual income considers both of the following:

   a. The total cash value of the family's assets; and

   b. The amount of income those assets are earning or could earn.

2. The rule for calculating income from assets differs depending on whether the total cash value of family assets is $5,000 or less, or is more than $5,000.

C. **Determining the Total Cash Value of Family Assets**

1. To comply with the rule for determining the amount of income from assets, it is necessary to first determine whether the total "cash value" of family assets exceeds $5,000.

   a. The "cash value" of an asset is the market value less reasonable expenses that would be incurred in selling or converting the asset to cash, such as the following:

      (1) Penalties for premature withdrawal;

      (2) Broker and legal fees; and

      (3) Settlement costs for real estate transactions.

      The cash value is the amount the family could actually receive in cash, if the family converted an asset to cash.

Example – Calculating the Cash Value of an Asset

A family has a certificate of deposit (CD) in the amount of $5,000 paying interest at 4%. The penalty for early withdrawal is three months of interest.

$5,000 x 0.04 = $200 in annual income

$200/12 months = $16.67 interest per month

$16.67 x 3 months = $50.01

$5,000 - $50 = $4,950 cash value of CD

   b. It is essential to note that a family is not required to convert an asset to cash. Determining the cash value of the asset is done simply as a calculation by the owner because it is a required step when determining income from assets under program requirements.

D. **Assets Owned Jointly**

1. If assets are owned by more than one person, prorate the assets according to the percentage of ownership. If no percentage is specified or provided by a state or local law, prorate the assets evenly among all owners.

2. If an asset is not effectively owned by an individual, do not count it as an asset. An asset is not effectively owned when the asset is held in an individual's name, but (a) the asset and any income it earns accrue to the benefit of someone else who is not a member of the family, and (b) that other person is responsible for income taxes incurred on income generated by the assets.

3. Determining which individuals have ownership of an asset requires collecting as much information as is available and making the best judgment possible based on that information.

Example – Determining the Cash Value of an Asset

The "cash value" of an asset is the amount a family would receive if the family turned a noncash asset into cash.

The cash value is the market value—or the amount another person would pay to acquire the asset—less the cost to turn the asset into cash.

If a family owns real estate, it may be necessary to consider the family's equity in the property as well as the expense to sell the property.

To determine the family's equity, subtract amounts owed on the property from its market value:

Market value
- Mortgage amount owed
Equity in the property

Calculate the cash value by subtracting the expense of selling the property:

Equity
- Expense of selling
Cash Value

Juanita Player owns a rental house. The market value is $100,000. She owes $60,000. The cost to dispose of this house would be $8,000. The owner would determine the cash value as follows:

Market Value	$100,000
Mortgage amount	- $60,000
	40,000
Cost of disposing of the asset (real estate commission, and other costs of sale)	- $8,000
Cash Value	**$32,000**

a. In some instances, but not all, knowing whose social security number is connected with the asset may help in identifying ownership. Owners should be aware that there are many situations in which a social security number connected with an asset does not indicate ownership and other situations where there is ownership without connection to a social security number.

b. Determining who has contributed to an asset or who is paying taxes on the asset may assist in identifying ownership.

Examples – Jointly Owned Assets

- Helen Wright is an assisted-housing tenant. She and her daughter, Elsie Duncan, have a joint savings account. Mother and daughter both contribute to the account. They have used the account for trips together and to cover emergency needs for either of them. Assume in this example that state law does not specify ownership. Even though either Helen Wright or Elsie Duncan could withdraw the entire asset for her own use, count Helen's ownership as 50% of the account.
- Jean Boucher's name is on her mother's savings account to ensure that she can access the funds for her mother's care. The account is not effectively owned by Jean and should not be counted as her asset.

E. Calculating Income from Assets When Assets Total $5,000 or Less

If the total cash value of all the family's assets is $5,000 or less, the actual income the family receives from assets is the amount that is included in annual income as income from assets.

F. Calculating Income from Assets When Assets Exceed $5,000

1. When net family assets are more than $5,000, annual income includes the greater of the following:

   a. Actual income from assets; or

   b. A percentage of the value of family assets based upon the current passbook savings rate as established by HUD. This is called *imputed* income from assets. The passbook rate is currently set at 2%.

2. To begin this calculation, first add the cash value of all assets. Multiply the total cash value of all assets by .02. The product is the "imputed income" from assets. Then, add the actual income from all assets. The greater of the imputed income from assets or the actual income from assets is included in the calculation of annual income.

Example – Use Actual Income from Assets When Total Net Family Assets are $5,000 or Less

Type of Asset	Cash Value	Actual Yearly Income
Certificate of Deposit $1,000 withdrawal fee $50 interest @ 4%	$950	$40
Savings Account $500 interest @ 2.5%	$500	$13
Stock $300 Not paying dividends	$300	$0
Total	$1,750	$53

The total cash value of the family's assets is $1,750. Therefore, the amount that is added to annual income as income from assets is the actual income earned or $53.

Example – Imputed Income from Assets

"Imputed" means "attributed" or "assigned." Imputing income from assets is "assigning" an amount of income solely for the sake of the annual income calculation. The imputed income is not real income.

For example, money under a mattress is not earning income. If the money were put in a savings account it would earn interest. Imputed income from such an asset is the interest the money would earn if it were put in a savings account.

A family with cash under a mattress is not required to put the cash in a savings account; but when the owner is calculating income for a family with more than $5,000 in assets, the owner must assign an amount that cash would earn if it were in a savings account.

Example – Determining Income from Assets
When Net Family Assets Exceed $5,000

Type of Asset	Cash Value	Actual Yearly Income
Checking Account (non-interest bearing)	$455	$0
Savings Account (interest at 2.5%)	$6,000	$150
Stocks (not paying dividends this year)	$3,000	$0
Total	$9,455	$150

Total cash value of assets is greater than $5,000. Therefore, it is necessary to compare the actual income from assets to the imputed income from assets.

The total cash value of assets ($9,455) is multiplied by 2% to determine the imputed income from assets.

.02 x $9,455 = $189

$189 is greater than the actual income from assets ($150).

In this case, therefore, the owner will add $189 to the annual income calculation as income from assets.

G. Calculating Income from Assets - Specific Types of Assets

1. Trusts.

a. Explanation of trusts.

(1) A trust is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries). A trust can contain cash or other liquid assets or real or personal property that could be turned into cash. Generally, the assets are invested for the benefit of the beneficiaries.

(2) Trusts may be revocable or nonrevocable. A revocable trust is a trust that the creator of the trust may amend or end (revoke). When there is a revocable trust, the creator has access to the funds in the trust account. When the creator sets up a nonrevocable trust, the creator has no access to the funds in the account.

(3) The beneficiary frequently will be unable to touch any of the trust funds until a specified date or event (e.g., the

beneficiary's 21st birthday or the grantor's death). In some instances, the beneficiary may receive the regular investment income from the trust but not be able to withdraw any of the principal.

(4) The beneficiary and the grantor may be members of the same family. A parent or grandparent may have placed funds in trust to a child. If the trust is revocable, the funds may be accessible to the parent or grandparent but not to the child.

b. How to treat trusts.

(1) The basis for determining how to treat trusts relies on information about who has access to either the principal in the account or the income from the account.

(2) Revocable trusts. If any member of the tenant family has the right to withdraw the funds in the account, the trust is considered to be an asset and is treated as any other asset. The cash value of the trust (the amount the family member would receive if he or she withdrew all that could be withdrawn) is added to total net assets. The actual income received is added to actual income from assets.

Example – A Trust Accessible to Family Members

Assez Charaf lives alone. He has placed $20,000 in trust to his grandson to be available to the grandson upon the death of Assez. The trust is revocable, that is, Assez has control of the principal and interest in the account and can amend the trust or remove the funds at any time. In calculating Assez's income, the owner will add the $20,000 to Assez's net family assets and the actual income received on the trust to actual income from assets.

(3) Nonrevocable trusts. If no family member has access to either the principal or income of the trust at the current time, the trust is not included in the calculation of income from assets or in annual income.

If only the income (and none of the principal) from the trust is currently available to a family member, the income is counted in annual income, but the trust is not included in the calculation of income from assets.

(4) Nonrevocable trust as an asset disposed of for less than fair market value. If a tenant sets up a nonrevocable trust for the benefit of another person while residing in assisted

housing, the trust is considered an asset disposed of for less than fair market value (see subparagraph G.6 below).

– If the trust has been set up so income from the trust is regularly reinvested in the trust and is not paid back to the creator, the trust is calculated as any other asset disposed of for less than fair market value for two years and not taken into consideration thereafter.

Example – Nonrevocable Trust As an Asset Disposed of for Less Than Fair Market Value

Sarah Gordy placed $100,000 in a nonrevocable trust for her grandson. Last year, the trust produced $8,000, which was reinvested into the trust.

The trust is treated as an asset disposed of for less than fair market value for two years. (See paragraph 5.7 G.6.) No actual income from the trust is included in Sarah's annual income, but the value of the asset when it was given away, $100,000, is included in net family assets for two years from the date the trust was established.

– Nonrevocable trust distributing income. When a tenant places an asset in a nonrevocable trust but continues to receive income from the trust, the income is added to annual income *and* the trust is counted as an asset disposed of for less than market value for two years. Following the two-year period, the owner will count only the actual income distributed from the trust to the tenant.

Example – Nonrevocable Trust Distributing Income to the Creator/Tenant

Reggie Bouchard has established a nonrevocable trust in the amount of $35,000 that no one in the tenant family controls. Income from the trust is paid to Reggie. Last year, he received $3,500.

The owner will count Reggie's actual anticipated income from the trust in next year's annual income.

Because the asset was disposed of for less than fair market value (see paragraph 5.7 G.6), the value of the asset given away, $35,000, is counted as an asset disposed of for less than fair market value for two years.

(5) Payment of principal from a trust. The beneficiary of a trust may receive funds from the trust in different ways. A beneficiary may receive the full value of a trust at one time. In that instance the funds would be considered a lump sum receipt and would be treated as an asset. A trust set up to provide support for a person with disabilities may pay only income from the trust on a periodic basis. Occasionally, however, a beneficiary may be given a portion of the trust principal on a periodic basis. When the principal is paid out on a periodic basis, those payments are considered regular income or gifts and are counted in annual income.

Example – Payment of Principal Amounts from a Trust

Jared Leland receives funds from a nonrevocable trust established by his parents for his support. Last year he received $18,000 from the trust. The attorney managing the trust reported that $3,500 of the funds distributed was interest income and $14,500 was from principal. Jared receives a payment of $1,500 each month (an amount that includes both principal and interest from the trust).

The owner will count the entire $18,000 Jared received as annual income.

c. Special needs trusts.

A special needs trust is a trust that may be created under some state laws, often by family members for disabled persons who are not able to make financial decisions for themselves. Generally, the assets within the trust are not accessible to the beneficiary.

(1) If the beneficiary does not have access to income from the trust, then it is not counted as part of income.

(2) If income from the trust is paid to the beneficiary regularly, those payments are counted as income.

Example – Special Needs Trust

Daryl Rockland is a 55-year-old person with disabilities, living with his elderly parents. The parents have established a special-needs trust to provide income for their son after they are gone. The trust is not revocable; neither the parents nor the son currently have access to the principal or interest. In calculating the income of the Rocklands, the owner will disregard the trust.

2. Annuities.

a. Annuity facts and terms.

(1) An annuity is a contract sold by an insurance company designed to provide payments, usually to a retired person, at specified intervals. Fixed annuities guarantee a certain payment amount, while variable annuities do not, but have the potential for greater returns.

– A hybrid annuity (also called a combination annuity) combines the features of a fixed annuity and a variable annuity.

– A deferred annuity is an annuity that delays income payments until the holder chooses to receive them. An immediate annuity is one that begins payments immediately upon purchase.

– A life annuity continues to pay out as long as the owner is alive. A single-life annuity provides income benefits for only one person. A joint life annuity is issued on two individuals, and payments continue in whole or in part as long as either individual is alive.

(2) Generally, a person who holds an annuity from which he or she is not yet receiving payments will also be earning income. In most instances, a fixed annuity will be earning interest at a specified fixed rate similar to interest earned by a CD. A variable annuity will earn (or lose) based on market fluctuations, as in a mutual fund.

(3) Most annuities charge surrender or withdrawal fees. In addition, early withdrawal usually results in tax penalties.

(4) Depending on the type of annuity and the current status of the annuity, the owner will need to ask different questions of the verification source, which will normally be the applicant or tenant's insurance broker.

b. Income after the holder begins receiving payments.

(1) When verifying an annuity, owners should ask the verification source whether the holder of the annuity has the right to withdraw the balance of the annuity. For annuities without this right, the annuity is not treated as an asset.

(2) Generally, when the holder has begun receiving annuity payments, the holder can no longer convert it to a lump sum of cash. In this situation, the holder will receive regular payments from the annuity that will be treated as regular income, and no calculations of income from assets will be made. **

c. Calculations when an annuity is considered an asset.

(1) When an applicant or tenant has the option of withdrawing the balance in an annuity, the annuity will be treated like any other asset. **It will be necessary to determine the cash value of the annuity in addition to determining the actual income earned.

(2) In most instances, an annuity from which payments have not yet been made is earning income on the balance in the annuity. A fixed annuity will earn income at a fixed rate in the same manner that a CD earns income. A variable annuity will earn (or lose) based on current market conditions, as with a mutual fund.

(3) The owner will need to verify with the insurance agent or other appropriate source:

– The right of the holder to withdraw the balance (even if penalties are involved).

– The basis on which the annuity may be expected to grow during the coming year.

– The surrender or early withdrawal penalty fee.

– The tax rate and the tax penalty that would apply if the family withdrew the annuity.

(4) The cash value will be the full value of the annuity, less the surrender (or withdrawal) penalty, and less any taxes and tax penalties that would be due.

(5) The actual income is the balance in the annuity times the percentage (either fixed or variable) at which the annuity is expected to grow over the coming year. (This money will be reinvested into the annuity, but it is still considered actual income.)

(6) The imputed income from the asset is calculated only after the cash value of all family assets has been determined.

imputed income from assets is calculated on the total cash value of all family assets.

3. Lump sum receipts counted as assets.

a. Commonly, when a family receives a large amount of money, a lump sum payment, the family will put the money in a checking or savings account, or will purchase stocks or bonds or a CD. Owners must count lump sum payments received by a tenant as assets. Examples of lump sum payments include the following:

(1) Inheritances;

(2) Capital gains;

(3) Lottery winnings paid in one payment;

(4) Cash from the sale of assets;

(5) Insurance settlements (including health and accident insurance, workers compensation, and personal and property losses); and

(6) Any other amounts that are received in one-time lump sum payments.

Example – Calculating the Cash Value of an Annuity

Rodrigo Ramirez, site manager at Fernwood Forrest, has interviewed Barbara Barstow, an applicant who reports holding an annuity from which she will not receive payments for another 15 years when she turns 65. The applicant could not provide any more detail on the annuity but did report the name, address, and phone number of her insurance agent.

Rodrigo called the insurance agent and faxed a copy of the applicant's approval for release of information. As a result, Rodrigo learned that the annuity is a fixed annuity, with a current value of $20,400 earning interest at an annual rate of 4.5%. The applicant could withdraw the current balance in the account but would pay a surrender penalty of $3,000. If the annuity is withdrawn, then the applicant will owe $1,200 in tax penalties.

In this example, the important information for calculating cash value is the current value, $20,400; the surrender fee, $3,000; and the tax penalties, $1,200. If the applicant withdrew the cash from the annuity, after paying the surrender fee and tax penalty, then the amount of cash received would be $16,200.

The cash value, $16,200, is recorded as an asset.

Rodrigo will also calculate the actual anticipated income on this asset: $20,400 x .045 = $918.

b. A lump sum payment is counted as an asset only as long as the family continues to possess it. If the family uses the money for something that is not an asset—a car or a vacation or education—the lump sum must not be counted.

c. It is possible that a lump sum or an asset purchased with a lump sum payment may result in enough income to require the family to report the increased income before the next regularly scheduled annual recertification. But this requirement to report an increase in income before the next annual recertification would not apply if the income from the asset was not measurable by the tenant (e.g., gems, stamp collection).

Examples – Lump Sum Additions to Family Assets (One-Time Payment)

- JoAnne Wettig won $500 in the lottery and received it in one payment. Do not count the $500 as income. At JoAnne's next annual recertification, she will report all of her assets.

- Mia LaRue, a tenant in a Section 8 property, won $75,000 in one payment in the lottery. She buys a car with some of the money, and puts the remaining amount of $24,000 in the bank. Mia receives her first bank statement and notices that the income on this asset is $205 per month. She must report this increase in income because the family has experienced a cumulative increase in income of more than $200 per month. (See paragraph 7-10 A.4 on rules for reporting interim increases in income.) The owner must perform an interim recertification and count the greater of the actual or imputed income on this asset (since the net family assets are greater than $5,000).

4. Balances held in retirement accounts.

a. Balances held in retirement accounts are counted as assets if the money is accessible to the family member. For individuals still employed, accessible amounts are counted even if withdrawal would result in a penalty. However, amounts that would be accessible only if the person retired are not counted.

b. IRA, Keogh, and similar retirement savings accounts are counted as assets, even though withdrawal would result in a penalty.

c. Include contributions to company retirement/pension funds:

(1) While an individual is employed, count only amounts the family can withdraw without retiring or terminating employment.

(2) After retiring or terminating employment, count as an asset any amount the employee elects to receive as a lump sum.

d. Include in *annual income* any retirement benefits received through periodic payments.

Examples – Balances Held in an IRA or 401K Retirement Account

- Jed Dozier's 401K account balance is $35,000. He is able to terminate his participation in the retirement plan without quitting his job, but if he did so he would lose a part of his employer's contribution and would pay a penalty fee. The total cash he could withdraw, $18,000, is the amount that is counted as an asset.

5. ***Federal Government/Uniformed Services Pensions**

In instances where the applicant/tenant is a retired Federal Government/Uniformed Services employee receiving a pension that is***** determined by a state court in a divorce, annulment of marriage, or legal separation proceeding to be a marital asset and the court provides OPM with the appropriate instructions to authorize OPM to provide payment of a portion of the retiree's pension to a former spouse, that portion to be paid directly to the former spouse is not counted as income for the applicant/tenant. However, where the tenant/applicant is the former spouse of a retired Federal Government/Uniformed Services employee, any amounts received pursuant to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation are reflected on a Form-1099 and is counted as income for the applicant/tenant. (See Paragraph 5-6.K.4 for more information on Federal Government/Uniformed Services pension funds paid to a former spouse.)

6. *****Other state, local government, social security or private pensions.

Other state, local government, social security or private pensions where pensions are reduced due to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation and paid directly to the former spouse are not counted as income for the applicant/tenant and should be handled in the same manner as 5, above.*****

7. Mortgage or deed of trust.

a. Occasionally, when an individual sells a piece of real estate, the seller may loan money to the purchaser through a mortgage or deed of trust. This may be referred to as a "contract sale."

b. A mortgage or deed of trust held by a family member is included as an asset. Payments on this type of asset are often received as one combined payment that includes interest and principal. The value of the asset is the unpaid principal as of the effective date of the certification. Each year this balance will decline as more principal is paid off. The interest portion of the payment is counted as actual income from an asset.

8. Assets disposed of for less than fair market value. Applicants and tenants must declare whether an asset has been disposed of for less than fair market value at each certification and recertification. Owners must count assets disposed of for less than fair market value during the two years preceding certification or recertification. The amount counted as an asset is the difference between the cash value and the amount actually received. (This provision does not apply to families receiving only BMIR assistance.)

a. Any asset that is disposed of for less than its full value is counted, including cash gifts as well as property. To determine the amount that has been given away, owners must compare the cash value of the asset to any amount received in compensation.

b. However, the rule applies only when the fair market value of all assets given away during the past two years exceeds the gross amount received by more than $1,000.

Examples – Assets of More or Less Than $1,000 Disposed of for Less Than Fair Market Value

- During the past two years, Alexis Turner donated $300 to the local food bank, $150 to a camp program, and $200 to her church. The total amount she disposed of for less than fair market value is $650. Since the total is less than $1,000, the donations are not treated as assets disposed of for less than fair market value.
- Jackson Jones gave each of his three children $500. Because the total exceeds $1,000, the gifts are treated as assets disposed of for less than fair market value.

c. When the two-year period expires, the income assigned to the disposed asset also expires. If the two-year period ends in the middle of a recertification year, the tenant may request an interim recertification to remove the disposed asset(s). ***** However, if the owner elects to only include the income for a partial remaining year as shown in the example below, an interim recertification should not be conducted.*****

Example – Asset Disposed of for Less Than Fair Market Value

Margot Lundberg's recertification will be effective January 1. On that date, it will be 18 months since she sold her house to her daughter for $60,000 less than its value. The owner will count income on the $60,000 for only six months. (After six months, the two-year limit on assets disposed of for less than fair market value will have expired.)

d. Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, divorce, or separation are *not* counted.

e. Assets placed in nonrevocable trusts are considered as assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgements.

f. Applicants and tenants must sign a self-verification form at their initial certification and each annual recertification identifying all assets that have been disposed of for less than fair market value or certifying that no assets have been disposed of for less than fair market value.

g. Owners need to verify the tenant self certification only if the information does not appear to agree with other information reported by the tenant/applicant.

Examples – Asset Disposed of for Less Than Market Value

(1) An applicant “sold” her home to her daughter for $10,000. The home was valued at $89,000 and had no loans secured against it. Broker fees and settlement costs are estimated at $1,800.

$89,000	Market value
- 1,800	Fees
$87,200	Cash value
- 10,000	Sales price to daughter
$77,200	Asset disposed of for less than fair market value

In this example, the asset disposed of for less than fair market value is $77,200. That amount is counted as the resident’s asset for two years from the date the sale took place.

(The $10,000 received from the daughter may currently be in a savings account or other asset or may have been spent. The $10,000 will be counted as an asset if the applicant has not spent the money.)

(2) A resident contributed $10,000 to her grandson’s college tuition and gave her two granddaughters $4,000 each to save for college.

$10,000	College tuition gift
+ 8,000	Gift to granddaughters
$18,000	Asset disposed of for less than fair market value

The $18,000 disposed of for less than fair market value is counted as the tenant’s asset for two years from the date each asset was given away.

Section 2: Determining Adjusted Income

Section 2 does not apply to families applying for or occupying 221(d)(3) BMIR units without additional subsidy.

5-8 Key Regulations

This paragraph identifies the key regulatory citation pertaining to Section 2: Determining Adjusted Income. The citation and its topic are listed below.

- 24 CFR 5.611 Adjusted Income

5-9 Key Requirements for Determining Adjusted Income

A. There are five possible deductions that may be subtracted from annual income based on allowable family expenses and family characteristics. The remainder, after these deductions are subtracted, is called adjusted income. Adjusted income is generally the amount upon which rent is based. See Section 4 of this chapter for information about specific rent calculation methods. This section focuses on the calculation of annual adjusted income. Before rent is calculated, annual adjusted income is converted to monthly adjusted income.

B. Of the five possible deductions, three are available to any assisted family, and two are permitted only for elderly or disabled families.

1. The three types of deductions available to any assisted family are:

a. A deduction for dependents;

b. A child care deduction; and

c. A disability assistance deduction.

2. The two types of deductions permitted only for families in which the head, spouse, or co-head is elderly or disabled are:

a. An elderly/disabled family deduction; and

b. A deduction for unreimbursed medical expenses.

NOTE: A family may not designate a family member as head or co-head solely to become eligible for these additional benefits. The remaining member of a family listed in paragraph 5-9 B.2 who is not 62 or older or a person with disabilities is not eligible for these allowances.

5-10 Calculating Adjusted Income

A. **Dependent Deduction**

1. A family receives a deduction of $480 for each family member who is:

a. Under 18 years of age;

b. A person with disabilities; or

c. A full-time student of any age.

2. Some family members may never qualify as dependents regardless of age, disability, or student status.

a. The head of the family, the spouse, and the co-head may never qualify as dependents.

b. A foster child, an unborn child, a child who has not yet joined the family, or a live-in aide may never be counted as a dependent.

3. A full-time student is one who is carrying a full-time subject load at an institution with a degree or certificate program. A full-time load is defined by the institution where the student is enrolled.

4. When more than one family shares custody of a child and both live in assisted housing, only one family at a time can claim the dependent deduction for that child. The family with primary custody or with custody at the time of the initial certification or annual recertification receives the deduction. If there is a dispute about which family should claim the dependent deduction, the **owner** should refer to available documents such as copies of court orders or an IRS return showing which family has claimed the child for income tax purposes.

B. **Child Care Deduction**

1. Anticipated expenses for the care of children under age 13 (including foster children) may be deducted from annual income if all of the following are true:

   a. The care is necessary to enable a family member to work, seek employment, or further his/her education (academic or vocational).

   b. The family has determined there is no adult family member capable of providing care during the hours care is needed.

   c. The expenses are not paid to a family member living in the unit.

   d. The amount deducted reflects reasonable charges for child care.

   e. The expense is not reimbursed by an agency or individual outside the family.

   f. Child care expenses incurred to permit a family member to work must not exceed the amount earned by the family member made available to work during the hours for which child care is paid.

2. When child care enables a family member to work or go to school, the rule limiting the deduction to the amount earned by the family member made available to work applies only to child care expenses incurred while the individual is at work. The expense for child care while that family member is at school or looking for work is not limited.

Example – Child Care Deduction
Separate Expenses for Time at Work and Time at School

Bernice and Ernest have two children. Both parents work, but Bernice works only part-time and goes to school half time. She pays $4.00 an hour for eight hours of child care a day. For four of those hours, she is at work; for four of them she attends school. She receives no reimbursement for her child care expense.

Her annual expense for child care during the hours she works is $4,000. Her annual expense for the hours she is at school is also $4,000. She earns $6,000 a year. Ernest earns $18,000.

The rule requires that Bernice's child care expense while she is working not exceed the amount she is earning while at work. In this case, that is not a problem. Bernice earns $6,000 during the time she is paying $4,000. Therefore, her deduction for the hours while she is working is $4,000.

Bernice's expense while she is at school is not compared to her earnings. Her expense during those hours is $4,000, and her deduction for those hours will also be $4,000.

Bernice's total child care deduction is $8,000 ($4,000 + $4,000). The total deduction exceeds the amount of Bernice's total earnings, but the amount she pays during the hours she works does not exceed her earnings.

If Bernice's child care costs for the hours while she works were greater than her earnings, she would not be able to deduct all of her child care costs.

Bernice is paying a total of $8,000 in child care expenses. Of that expense, payments of $4,000 cover the hours while she is in school; payments of $4,000 cover the hours she works. If Bernice were earning $3,500, her total child care deduction for the hours she works would be capped at the amount of money she earns. In this case, the total deduction would be $7,500 ($4,000 for expenses while she is in school plus $3,500 of the amount she pays while she is working.)

3. Child care attributable to the work of a full-time student (except for head, spouse, co-head) is limited to not more than $480, since the employment income of full-time students in excess of $480 is not counted in the annual income calculation. Child care payments on behalf of a minor who is not living in the applicant's household cannot be deducted.

4. Child care expenses incurred by two assisted households with split custody can be split between the two households when the custody and expense is documented for each household and the documentation demonstrates that the total expense claimed by the two households does not exceed the cost for the actual time the child spends in care.

C. Deduction for Disability Assistance Expense

1. Families are entitled to a deduction for unreimbursed, anticipated costs for attendant care and “auxiliary apparatus” for each family member who is a person with disabilities, to the extent these expenses are reasonable and necessary to enable any family member 18 years of age or older who may or may not be the member who is a person with disabilities to be employed.

Examples – Eligible Disability Assistance Expenses

The payments made on a motorized wheelchair for the 42-year-old son of the head of the family enable the son to leave the house and go to work each day on his own. Prior to the purchase of the motorized wheelchair, the son was unable to make the commute to work. These payments are an eligible disability assistance expense.

Payments to a care attendant to stay with a disabled 16-year-old child allow the child’s mother to go to work every day. These payments are an eligible disability assistance expense.

2. This deduction is equal to the amount by which the cost of the care attendant or auxiliary apparatus exceeds 3% of the family’s annual income. However, the deduction may not exceed the earned income received by the family member or members who are enabled to work by the attendant care or auxiliary apparatus.

3. If the disability assistance enables more than one person to be employed, the owner must consider the combined incomes of those persons. For example, if an auxiliary apparatus enables a person with a disability to be employed and frees another person to be employed, the allowance cannot exceed the combined incomes of those two people.

Example – Calculating a Deduction for Disability Assistance Expenses

Head's earned income	$14,500
Spouse's earned income	+$12,700
Total income	$27,200
Care expenses for disabled 15-year-old	$3,850
Calculation:	$3,850
(3% of annual income)	- $816
Allowable disability assistance expenses	$3,034

(**NOTE:** $3,034 is not greater than amount earned by spouse, who is enabled to work.)

4. Auxiliary apparatus includes items such as wheelchairs, ramps, adaptations to vehicles, or special equipment to enable a sight-impaired person to read or type, but only if these items are directly related to permitting the disabled person or other family member to work.

   a. Include payments on a specially-equipped van to the extent they exceed the payments that would be required on a car purchased for transportation of a person who does not have a disability.

   b. The cost of maintenance and upkeep of an auxiliary apparatus is considered a disability assistance expense (e.g., the veterinarian costs and food costs of a service animal; the cost of maintaining the equipment that is added to a car, but not the cost of maintaining the car).

   c. If the apparatus is not used exclusively by the person with a disability, the owner must prorate the total cost and allow a specific amount for disability assistance.

5. In addition to anticipated, ongoing expenses, one-time nonrecurring expenses of a current resident for auxiliary apparatus may be included in the calculation of the disability assistance expense deduction after the expense is incurred. These expenses may be added to the family's total disability assistance expense either at the time the expense occurs through an interim recertification or in the rent calculation during the following annual recertification.

6. Attendant care includes but is not limited to reasonable expenses for home medical care, nursing services, housekeeping and errand services, interpreters for hearing-impaired, and readers for persons with visual disabilities.

Example – Calculating a Deduction When Disability Assistance Expenses Exceed Related Earnings

Kenisha Prior, an individual with disabilities, lives with her mother Grace Prior. Her mother works full time. Kenisha works part time at the library. She requires a motorized wheelchair and special transportation to get to her job.

Grace Prior's Income	$24,000
Kenisha Prior's Income	+ 5,000
Total income	$29,000
Disability Assistance Expense	$8,000
(3% of annual income)	- $870
	$7,130

The $7,130 exceeds the amount Kenisha earns. The disability assistance deduction, therefore, is limited to the amount earned by the person made available to work or, in this case, $5,000.

7. When the same provider takes care of children and a disabled person over age 12, the owner must prorate the total cost and allocate a specific cost to attendant care. The sum of both child care and disability assistance expenses cannot exceed the employment income of the family member enabled to work.

Example – Calculating Child Care and Disability Assistance Deductions

Head's earned income	$8,300
Spouse's earned income	+ $6,700
Total income	$15,000

The family has two children: a 10-year-old son and a 15-year-old son who is disabled. One care provider, who charges $120 per week, cares for both sons. The care provider reports that the cost for caring for the 10-year-old is $50 a week and the cost of care for the child with disabilities is $70 a week.

Child care expense	$50 x 52 = $2,600
Total disability assistance expense	$70 x 52 = $3,640

Total disability assistance expense ($3,640) less 3% of annual income ($450) = $3,190

Child care deduction	$2,600
Disability assistance deduction	+$3,190
Total deductions	$5,790

Total deductions when compared to earnings must not exceed employment earnings of $6,700.

D. Medical Expense Deduction

1. The medical expense deduction is permitted only for families in which the head, spouse, or co-head is at least 62 years old or is a person with disabilities (elderly or disabled families).

2. If the family is eligible for a medical expense deduction, owners must include the unreimbursed medical expenses of all family members, including the expenses of nonelderly adults or children living in the family.

3. Medical expenses include all expenses the family anticipates to incur during the 12 months following certification/recertification that are not reimbursed by an outside source, such as insurance.

4. The owner may use the ongoing expenses the family paid in the 12 months preceding the certification/recertification to estimate anticipated medical expenses.

5. The medical expense deduction is that portion of total medical expenses that exceeds 3% of annual income.

Example – Calculating the Medical Expense Deduction

Age of head	64	Annual income	$12,000
Age of spouse	58	Total medical expenses	$1,500
		Sample Calculation	
		Annual income	$12,000
			x .03
		3% of annual income	$ 360
		Total medical expenses	$1,500
			- $360
		Allowable medical expenses	$ 1,140

6. In addition to anticipated expenses, past one-time nonrecurring medical expenses that have been paid in full may be included in the calculation of the medical expense deduction **for current tenants at an initial, interim or annual recertification. Past one-time nonrecurring medical expenses that have been paid in full are not applicable when calculating anticipated medical expenses at move-in.** If the tenant is under a payment plan, the expense would be counted as anticipated

   a. There are two options for addressing one-time medical expenses. These expenses may be added to the family's total medical expenses either: (1) at the time the expense occurs, through an interim recertification, or (2) at the upcoming annual recertification

      NOTE: If the one-time expense is added at an interim recertification, it cannot be added to expenses at the annual recertification.

b. The following example illustrates the two options. Tenants may use either option.

The following example illustrates the two options. Tenants may use either option.Example – One-Time, Nonrecurring Medical Expenses

Maria and Gustav Crumpler had a total of $2,932 in medical expenses last year (Year 1). Of this amount, $932 covered Gustav's gall bladder surgery; $2,000 was for routine costs that are expected to re-occur in the coming year. The entire amount may be included in the Crumpler's medical costs for the coming year (Year 2) despite the fact that the gall bladder surgery is a past event that is not likely to re-occur.

If, during the coming year (Year 2), the Crumplers experience additional one-time medical costs not anticipated at the annual recertification, they may request an interim recertification or wait for their next annual recertification (during Year 3) and ask for the unanticipated expenses to be included in the medical expense calculation for the following year.

The owner may wish to explain to residents that including past one-time medical expenses in an annual recertification rather than in an interim recertification will result in a rent reduction for a larger number of months.

For example, let us assume Maria has unanticipated dental surgery during Year 2 at a cost of $3,550 six months after the annual recertification. The Crumpler's current TTP is $560; their annual income is $25,000.

Annual income	$25,000
Less elderly household deduction	- $400
Less allowable medical deduction ($2,932 less 3% of $25,000)	- $2,182
Adjusted annual income	$22,418
Adjusted monthly income	$1,868
TTP	$560

If the Crumplers request an interim recertification, the $3,550 additional cost will lower their rent for 6 months; if they wait for their annual recertification, the cost of the dental surgery will affect their rent for 12 months.

Annual income	$25,000
Less elderly household deduction	- $400
Less allowable medical deduction* ($6,482 less 3% of $25,000)	- $5,732
Adjusted annual income	$18,868
Adjusted monthly income	$1,572
TTP	$472

At the Crumplers' current annual income, the large dental bill reduces rent by $88.

OPTION #1: If the Year 2 rent is adjusted through an interim recertification, the Crumplers will save 6 months times $88 or $528.

OPTION #2: If the Crumplers wait until their annual recertification, the large bill will affect their rent for the 12 months of Year 3, and they will save twice as much, or $1,056.

7. When a family is making regular payments over time on a bill for a past one-time medical expense, those payments are included in anticipated medical expenses. However, if a family has received a deduction for the full amount of a medical bill it is paying over time, the family cannot continue to count that bill even if the bill has not yet been paid.

Example – Medical Expense Paid over a Period of Time

Ursula and Sebastian Grant did not have insurance to cover Sebastian's operation four years ago. They have been paying $105 a month toward the $5,040 debt. Each year that amount ($105 x 12 months or $1,260) has been included in their total medical expenses. A review of their file indicates that a total of $5,040 has been added to total medical expenses over the four-year period. However, the Grants bring a current invoice to their annual recertification interview. Over the four-year period they have missed five payments and still owe $525. Although they still owe this amount, the bill cannot be included in their current medical expenses because the expense has already been deducted.

8. Not all elderly or disabled applicants or participants are aware that their unreimbursed expenses for medical care are included in the calculation of adjusted income for elderly or disabled families. For that reason, it is important for owners to ask enough questions to obtain complete information about allowable medical expenses. The following list highlights some of the most common expenses that may be deducted. A list of examples of eligible medical expenses may be found in Exhibit 5-3.

   a. Services of doctors and health care professionals;

   b. Services of health care facilities;

   c. Medical insurance premiums or costs of an HMO;

   d. Prescription/nonprescription medicines that have been prescribed by a physician;

   e. Transportation to treatment;

   f. Dental expenses;

   g. Eyeglasses, hearing aids, batteries;

   h. Live-in or periodic medical assistance such as nursing services, or costs for an assistance animal and its upkeep;

   i. Monthly payments on accumulated medical bills;

   j. Medical care of a permanently institutionalized family member *if* his or her income is included in annual income; and

k. Long-term care insurance premiums. The family member paying a long-term care insurance premium must sign a certification (**see Sample Certification for Qualified Long-Term Care Insurance Expenses in Exhibit 5-4**) that states the insurance is guaranteed renewable, does not provide a cash surrender value, will not cover expenses covered under Medicare, and restricts the use of refunds. The certification must be maintained in the family's occupancy file. (Paragraph 5-6 J.3 describes situations in which long-term care insurance payments must be included in annual income.)

9. Special calculation for families eligible for disability assistance and medical expense deductions. If an elderly family has both unreimbursed medical expenses and disability assistance expenses, a special calculation is required to ensure that the family's 3% of income expenditure is applied only one time. Because the deduction for disability assistance expenses is limited by the amount earned by the person enabled to work, the disability deduction must be calculated before the medical deduction is calculated.

a. When a family has unreimbursed disability assistance expenses that are less than 3% of annual income, the family will receive no deduction for disability assistance expense. However, the deduction for medical expenses will be equal to the amount by which the sum of both disability and medical expenses exceeds 3% of annual income.

b. If the disability assistance expense exceeds the amount earned by the person who was enabled to work, the deduction for disability assistance will be capped at the amount earned by that individual. When the family is also eligible for a medical expense deduction, however, the 3% may have been exhausted in the first calculation, and it then will not be applied to medical expenses.

c. When a family has both disability assistance expenses and medical expenses, it is important to review the collected expenses to be sure no expense has been inadvertently included in both categories.

E. Elderly Family Deduction

An elderly or disabled family is any family in which the head, spouse, or co-head (or the sole member) is at least 62 years of age or a person with disabilities. Each elderly or disabled family receives a $400 family deduction. Because this is a "family deduction" each family receives only one deduction, even if both the head and spouse are elderly or disabled.

Example – Special Calculation for Families Who Are Eligible for Disability Assistance and Medical Expense Deductions

The following is basic information on the family:

Head (retired/disabled)—SS/pension income	$16,000
Spouse (employed)—employment income	+ $4,000
Total Annual Income	$20,000
Total disability assistance expenses	$500
Total medical expenses	$1,000

Step 1: Determine if the disability assistance expenses exceed 3% of the family's total annual income.

Total disability assistance expenses	$500
Minus 3% of total annual income	-$600
	($100)

No portion of the disability expenses exceeds 3% of the annual income; therefore, the disability assistance deduction is $0.

Step 2: Calculate if the medical expenses exceed the balance of 3% of the family's total annual income.

Total medical expenses	$1,000
Minus the balance of 3% of total annual income	- $100
Allowable medical expenses deduction	$900

F. No Deduction for Alimony or Child Support Paid to a Person outside the Assisted Family

There is no deduction for an amount paid to a person outside the assisted family for alimony or child support. Even if the amount is garnished from the wages of a family member, it must be included in annual income.

Example – Child Support Garnished from Wages

George Graevette pays $150 per month in child support. It is garnished from his monthly wages of $950. After the child support is deducted from his salary, he receives $800. The owner must count $950 as George's monthly income.

Section 3: Verification

5-11 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 3: Verification. The citations and their titles (or topics) are listed below.

A. 24 CFR part 5, subpart B – Disclosure and Verification of Social Security Numbers and Employer Identification Numbers; Procedures for Obtaining Income Information

B. 24 CFR 5.659 Family Information and Verification

C. 24 CFR 8.24, 8.32, 100.204 (Reasonable accommodation)

5-12 Verification Requirements

A. Key Requirements

1. Owners must verify all income, assets, expenses, deductions, family characteristics, and circumstances that affect family eligibility or level of assistance.

2. Applicants and adult family members must sign consent forms to authorize the owner to collect information to verify eligibility, income, assets, expenses, and deductions. Applicants and tenants who do not sign required consent forms will not receive assistance.

3. Family members 6 years of age and older must provide the owner with a complete and accurate social security number. For any members of the family who do not have a social security number, the applicant or family member must certify that the individual has never received a social security number. This requirement is described in paragraphs 3-9 and 3-**31** of this handbook.

4. The owner must handle any information obtained to verify eligibility or income in accordance with the Privacy Act.

Figure 5-4: Privacy Act Notice

The Department of Housing and Urban Development (HUD) is authorized to collect this information by the U.S. Housing Act of 1937 (42 U.S.C. 1437 et. seq.), by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), and by the Fair Housing Act (42 U.S.C. 3601-19). The Housing and Community Development Act of 1987 (42 U.S.C. 3543) requires applicants and participants to submit the social security number of each household member who is 6 years old or older. Purpose: Your income and other information are being collected by HUD to determine your eligibility, the appropriate bedroom size, and the amount your family will pay toward rent and utilities. Other Uses: HUD uses your family income and other information to assist in managing and monitoring HUD-assisted housing programs, to protect the Government's financial interest, and to verify the accuracy of the information you provide. This information may be released to appropriate federal, state, and local agencies, when relevant, and to civil, criminal, or regulatory investigators and prosecutors. However, the information will not be otherwise disclosed or released outside of HUD, except as permitted or required by law. Penalty: You must provide all of the information requested by the owner, including all social security numbers you, and all other household members age 6 years and older, have and use. Giving the social security numbers of all household members 6 years of age and older is mandatory, and not providing the social security numbers will affect your eligibility. Failure to provide any of the requested information may result in a delay or rejection of your eligibility approval.

B. Timeframe for Conducting Verifications

Owners conduct verifications at the following three times.

1. Owners must verify income, assets, expenses, and deductions and all eligibility requirements prior to move-in.

2. Owners must verify each family's income, assets, expenses, and deductions as part of the annual recertification process. Refer to Chapter 7, Section 1 for information on annual recertifications.

3. Owners must verify changes in income, allowances, or family characteristics reported between annual recertifications. Refer to Chapter 7, Section 2 for information on interim recertifications.

5-13 Acceptable Verification Methods

A. Methods of Verification

Owners must use verification methods that are acceptable to HUD. The owner is responsible for determining if the verification documentation is adequate and credible. HUD accepts three methods of verification. These are, in order of acceptability, third-party verification, review of documents, and family certification. If third-party verification is not available, owners must document the tenant file to explain why third-party verification was not available. **Appendix 3** provides a detailed list of acceptable forms of verification by type of information.

B. Third-Party Verification

The following describes ways in which third-party verification may be obtained.

1. Written. Written documentation sent directly by a third-party source is the preferred method of verification. It is assumed that third-party sources will send written verification to the owner through the mail. (For information about electronic documentation, see subparagraph B3 below.)

   The applicant or tenant should not hand-carry the verification to or from the third-party source. If the verification does not contain an original signature or is delivered by the applicant or tenant, the owner should examine the document for evidence of tampering. In these situations, the owner may, but does not have to, accept the document as acceptable verification.

2. Oral. Oral verification, by telephone, from a reliable third-party source is an acceptable verification method. Owners frequently use this method when the third party does not respond to the written verification request. When verifying information over the telephone, it is important to be certain that the person on the telephone is the party he or she claims to be. Generally, it is best to telephone the verification source rather than to accept verification from a source calling the property management office. Oral verification must be documented in the file, as described in paragraph 5-19 C.

   NOTE: Appendix 3 includes selected phone numbers of verification sources for employment and income records. However, they do not take the place of third party verification. The phone numbers contained in **Appendix 3** are not toll free but such calls are valid project expenses.

3. Electronic. The owner may obtain accurate third-party written verification by facsimile, e-mail, or Internet, if adequate effort is made to ensure that the sender is a valid third-party source.

a. Facsimile. Information sent by fax is most reliable if the owner and the verification source agree to use this method in advance during a telephone conversation. The fax should include the company name and fax number of the verification source.

b. E-mail. Similar to faxed information, information verified by e-mail is more reliable when preceded by a telephone conversation and/or when the e-mail address includes the name of an appropriate individual and firm.

c. Internet. Information verified on the Internet is considered third party verification if the owner is able to view web-based information from a reputable source on the computer screen. Use of a printout from the Internet may also be adequate verification in many instances. Refer to subparagraph C. Review of Documents below.

Example – Verification by Internet Printout

Jose Perez maintains a portfolio of stocks and bonds through an Internet-based stockbroker. The broker only provides electronic account statements and will not respond to a written verification request. The owner may accept a printout of Jose's most recent statement if it includes the relevant information required for a third-party verification and an Internet address and header or footer that identifies the company issuing the statement. If the owner has reason to question the authenticity of a document, the owner may require Jose to access the electronic file via the Internet in the owner's office, without providing the owner with username or password information.

C. **Review of Documents**

1. An owner may review documents submitted by the applicant or tenant in one of the following situations:

a. Third-party verification is not possible or is not required. For example, verifying that a family member is over 62 years old is more appropriately accomplished by examining a birth certificate than through third-party verification. **When third party verification is not possible, refer to paragraph 5-19 E for documenting the file.**

b. Third-party verification is delayed. If information from a third party is not received within two weeks of its request, owners may consider original documents submitted by the tenant.**

Examples – Appropriate Occasions to Verify Information through a Review of Documents

- The owner sent a verification request to the tenant's employer but did not receive a response. The owner then made several calls to the employer but has not received a return call. The owner may use a review of documents (pay stubs) for verification. The owner should insist on a series of consecutive, recent pay stubs and should have a standard policy indicating the number of consecutive pay stubs required.
- The tenant's bank charges the bank account a fee for completing verification requests. The owner allows the resident to provide a current savings account statement or checking account statements for the past six months.
- The tenant's employer uses a 900 phone number, which results in a charge to the owner's phone to provide income verification. (In this case, the owner will accept the most recent consecutive eight pay stubs to verify earned income.)
- In cases where there is no third party available, a review of documents will always be appropriate. To verify a person's age, a birth certificate may be used. A social security card is the best verification of a social security number.

2. An owner must place copies of the reviewed documents in the applicant's or tenant's file. If copies cannot be made, the person reviewing the original documents must list the reviewed documents and the information provided on the documents, and must initial and date the notation.

3. Obtaining accurate verification through a review of documents requires the owner to consider the following:

   a. Is the document current? Documentation of public assistance may be inaccurate if it is not recent and does not show any changes in the family's benefits or work and training activities.

   b. Is the documentation complete? Owners may not accept pay stubs to document employment income unless the applicant or tenant provides the most recent **four to six** pay stubs to illustrate variations in hours worked. Actual paychecks or copies of paychecks should never be used to document income because deductions are not shown on the paycheck.

c. Is the document an unaltered original? The greatest shortcoming of documents as a verification source is their susceptibility to undetectable change through the use of high-quality copying equipment. Documents with original signatures are the most reliable. Photocopied documents generally cannot be assumed to be reliable.

D. **Family Certification**

An owner may accept a tenant's notarized statement or signed affidavit regarding the veracity of information submitted if the information cannot be verified by another acceptable verification method.

5-14 Identifying Appropriate Verification Sources

An owner must only collect information that is necessary to determine the applicant's or tenant's eligibility for assistance or level of assistance. **Appendix 3** provides a list of acceptable forms of third-party verification.

5-15 Required Verification and Consent Forms

A. **Consent and Verification Forms**

Adult members of assisted families must authorize owners to request independent verification of data required for program participation. To provide owners with this authorization, adult family members must sign two HUD-required consent forms plus the owner's specialized verification forms. Owners must create their own verification forms to request information from employers, child care providers, medical professionals, and others. Families sign these and the two HUD consent forms at the time of move-in certification and annual recertification. All adults in each assisted family must sign the required consent forms or the family must be denied assistance. Owners must give the family a copy of each form the family signed, a HUD Fact Sheet, and the Resident Rights and Responsibilities brochure.

B. **HUD-Required Consent and Release Forms**

Applicants and tenants must sign two HUD-required consent forms.

1. Form HUD-9887, *Notice and Consent to the Release of Information to HUD and to a PHA*. Each adult member must sign the form regardless of whether he or she has income. *****Each family member who is at least 18 years of age and the head, spouse or co-head, regardless of age, must sign this form at move-in, initial and at each annual recertification. The form must also be signed when a new adult member joins the household.***** The form is valid for 15 months from the date of signature. The consent allows HUD or a public housing agency to verify information with the Internal Revenue Service, the Social Security Administration, and with state agencies that maintain wage and unem,ployment claim information. Owners must keep the original signed form in the tenant's

file and provide a copy to the family. Exhibit 5-5 contains a copy of form HUD-9887.

2. Form HUD 9887-A, *Applicant's/Tenant's Consent to the Release of Information – Verification by Owners of Information Supplied by Individuals Who Apply for Housing Assistance*. Owners and the head of household, spouse, co-head and each family member who is at least 18 years of age must sign **a HUD-9887-A** form **at move-in and at each annual recertification**. Each adult member must sign a form regardless of whether he or she has income. The consent allows owners to request and receive information from third-party sources about the applicant or tenant. Owners keep the original form in the tenant's file and provide a copy to the family. Exhibit 5-6 contains a copy of form HUD 9887-A.

C. Information to Tenants

Owners must provide applicants and tenants with the HUD Fact Sheet and a copy of the Resident Rights and Responsibilities brochure.

1. HUD-9887 Fact Sheet. When applicants and tenants sign form HUD-9887 and form HUD 9887-A, owners must provide each family with a copy of the HUD Fact Sheet. This Fact Sheet describes the verification requirements for applicants and tenants and the tenant protections that are part of the verification process. Exhibit 5-7 contains a copy of the HUD Fact Sheet.

2. Resident Rights and Responsibilities Brochure. In addition, owners must provide applicants and tenants with a copy of the Resident Rights and Responsibilities brochure at move-in and annually at recertification. Copies of the brochure may be obtained by calling the HUD National Multifamily Clearinghouse at 800-685-8470.

D. Owner-Created Verification Forms

1. Owners must create verification forms for specific verification needs and must include the language required by HUD as shown in Figure 5-5. **Appendix **6**** contains instructions, a sample verification consent, and guidance about the types of information to request when verifying income and eligibility.

2. It is important that the applicant or tenant know whom owners will ask to provide information and to whom the completed form will be returned. Therefore, verification forms must clearly state in a prominent location that the applicant or tenant may not sign the consent if the form does not clearly indicate who will provide the requested information and who will receive the information. When sending a request for verification to a third party, owners send the verification form with the applicant's or tenant's original signature to the third-party source. Owners must retain a copy of the verification form and provide a copy to the applicant or tenant upon request.

Figure 5-5: Language Required in all Consent Forms

The following statement must appear on all consent forms developed by owners:

"Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD and any owner (or any employee of HUD or the owner) may be subject to penalties for unauthorized disclosures or improper use of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willingly requests, obtains or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than $5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages, and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security number are contained in the **Social Security Act at 208 (a) (6), (7) and (8). Violation of these provisions are cited as violations of 42 U.S.C. 408 (a) (6), (7) and (8).**

5-16 Social Security and Supplemental Security Income Data Match

A. Owners verify social security income and supplemental security income electronically through TRACS. If there is a discrepancy between income reported by the tenant or applicant and income provided by the Social Security Administration (SSA), TRACS will automatically generate a message that is sent to the owner. The owner must attempt to contact the applicant or tenant to disclose the discrepancy. **

B. Additional information is available on HUD's website page describing the tenant assessment system (for tenant income verification) (TASS):

www.hud.gov/offices/reac/products/prodtass.cfm

TASS is a computer-based tool to assist owners in verifying tenant incomes by comparing tenant-reported information to information in other HUD systems from the Social Security Administration and the Internal Revenue Service.

5-17 Effective Term of Verifications

Signed verification and consent forms must be used within a reasonable time after the applicant or tenant has signed if the tenant's signature is to represent a valid and current authorization by the family. Therefore, HUD has set specific limits on the duration of verification consents. In addition, verified information must be used in a timely manner since family circumstances are subject to change. HUD places several other limits on the information that may be requested and when and how it may be used.

A. **Duration of Verification Authorization**

Owner-created verification forms and the forms HUD 9887 and 9887-A expire 15 months after they are signed. Owners must ensure that the forms HUD 9887 and 9887-A have not expired when processing verifications. However, there are differences between the duration of form HUD-9887 and that of the individual verification forms.

1. The form HUD 9887-A and individual verification forms can be used during the 120 days before the certification period. During the certification period, however, these forms may be used only in cases where the owner receives information indicating that the information the tenant has provided may be incorrect. Other uses are prohibited.

2. Owners may verify anticipated income using individual verification forms to gather prospective information when necessary (e.g., verifying seasonal employment). Historical information that owners may request using individual verification forms is restricted as follows:

   a. Information requested by individual verification forms is restricted to data that is no more than 12 months old.

   b. However, if the owner receives inconsistent information and has reason to believe that the information the applicant or tenant has supplied is incorrect, the owner may obtain information from any time in the last five years when the individual was receiving assistance, as provided by the form HUD 9887-A.

3. The form HUD-9887 may be used at any time during the entire 15 month period. The information covered by the form HUD-9887 is restricted as follows:

   a. <u>State Wage Information Collection Agency (SWICA).</u> Information received from SWICA is limited to wages and unemployment compensation the applicant or tenant received during the last five years she/he received housing assistance.

   b. <u>Internal Revenue Service and Social Security Administration.</u> form HUD-9887 authorizes release by IRS and SSA of data from only the current income tax return and IRS W-2 form.

      If the IRS or SSA matches reveal that the tenant may have supplied inconsistent information, HUD may request that the tenant consent to the owner acquiring information on the last five years during the periods in which the tenant was receiving assistance.

B. **Effective Term of Verifications**

1. Verifications are valid for **120** days from the date of receipt by the owner.

**

2. If verifications are more than 120 days old, the owner must obtain new verifications.

3. Time limits do not apply to information that does not need to be reverified, such as:

   a. Age;

   b. Disability status;

   c. Family membership; or

   d. Citizenship status.

4. Time limits also do not apply to the verification of social security numbers; however, at each recertification any family member who has previously reported having never received a social security number, must be asked:

   a. To supply verification of a social security number if one has been received; or

   b. To certify, again, that he/she has never received a social security number.

5-18 Inconsistent Information Obtained Through Verifications

An owner may not take any action to reduce, suspend, deny, or terminate assistance based on inconsistent information received during the verification process until the owner has independently investigated the information. The owner should follow procedures for addressing errors and fraud and for terminating assistance in accordance with Chapter 8.

5-19 Documenting Verifications

A. Key Requirement

Owners must include verification documentation in the tenant file.

B. Documenting Third-Party Verification

Third-party verification received through the mail or by facsimile transmission must be put in the tenant file.

C. Documenting Telephone Verification

When verifying information by phone, the owner must record and include in the tenant's file the following information:

1. Third-party's name, position, and contact information;

2. Information reported by the third party;

3. Name of the person who conducted the telephone interview; and

4. Date and time of the telephone call.

D. **Recording Inspection of Original Documents**

Original documents should be photocopied, and the photocopy should be placed in the tenant file. If the original document cannot be copied, a clear note to the file must describe the type of document, the information contained in the document, the name of the person who reviewed the document, and the date of that review.

NOTE: It is not mandatory that social security cards be copied. See **Appendix 3** for alternate methods.

E. **Documenting Why Third-Party Verification Is Not Available**

When third-party verification is not available, owners must document in the file efforts made to obtain the required verification and the reason the verification was not obtained. The owner must include the following documents in the applicant's or tenant's file:

1. A written note to the file explaining why third-party verification is not possible; or

2. A copy of the date-stamped original request that was sent to the third party;

3. Written notes or documentation indicating follow-up efforts to reach the third party to obtain verification; and

4. A written note to the file indicating that the request has been outstanding without a response from the third party.

F. **Reasonable Accommodation**

If an applicant or tenant cannot read or sign a consent form because of a disability, the owner must provide a reasonable accommodation. See Chapter 2, Section 3, Subsection 4 for a description of the requirements regarding reasonable accommodations.

Examples – Reasonable Accommodation

- Provide forms in large print.
- Provide readers for persons with visual disabilities.
- Allow the use of a designated signatory.

- Visit the person's home if the applicant or tenant cannot travel to the office to complete the forms.

5-20 Confidentiality of Applicant and Tenant Information

A. Federal law limits the information owners can collect about an applicant or tenant to only information that is necessary to determine eligibility and level of assistance.

B. Federal privacy requirements also establish the responsibility of owners and their employees to use information provided by applicants and tenants only for specified program purposes and to prevent the use or disclosure of this information for other purposes.

1. To help ensure the privacy of applicant and tenant information, owners and their employees are subject to penalties for unauthorized disclosure of applicant/tenant information. In addition, applicants and tenants may initiate civil action against an owner for unauthorized disclosure or improper use of the information they provided. Language on the HUD-required consent forms, the verification forms developed by owners, and the **HUD-50059** clearly describes owners' responsibility regarding the privacy of this information and the possible penalties.

2. HUD encourages owners to develop their own procedures and internal controls to prevent the improper use or unauthorized disclosure of information about applicants and tenants. Adequate procedures and controls protect not only applicants and tenants, but also owners.

C. Owners must also comply with state privacy laws concerning the information they receive from third-party sources about applicants and tenants. These laws generally require confidentiality and restrict the uses of this information.

5-21 Refusal to Sign Consent Forms

A. If an applicant refuses to sign forms HUD 9887 or 9887-A or the owner's verification forms, the owner must deny assistance.

B. If a tenant refuses to sign the required verification and consent forms, the owner must terminate assistance. If the owner intends to terminate assistance for this reason, the owner must follow procedures established in the lease that require the tenant to pay the HUD-approved market rent for the unit. In a Section 202 PRAC or Section 811 PRAC project, the tenant may be evicted if the tenant refuses to sign the required verification and consent forms.

C. If a tenant is unable to sign the forms on time due to extenuating circumstances, the owner must document the reasons for the delay in the tenant file and indicate how and when the tenant will provide the proper signature.

Examples – Tenant Failure to Sign Consent Forms Due to Extenuating Circumstances

- Jonas and Joycelyn Hardwick were to have forms HUD 9887 and 9887-A signed by their adult son. However, he was in an automobile accident and has been in a coma.
- Lydia Bailey's husband has been temporarily assigned to overseas duty as part of a missionary hunger-relief program. She has signed consent forms, and the forms have been mailed to him but have not been returned. She reports that mail has recently been taking five or six weeks.

5-22 Interim Recertifications

When processing an interim recertification, the owner must ask the tenant to identify all changes in income, expenses, or family composition since the last recertification. Owners only need verify those items that have changed. For example, if the head of household was laid off from his or her job and asks the owner to prepare an interim recertification, the owner does not need to reverify the spouse's employment income unless that has also changed. When the tenant signs the certification she or he certifies that the information on the report is accurate and current. Additional information about the procedures for conducting interim recertifications is discussed in Chapter 7, Section 2.

5-23 Record-Keeping Procedures

A. Owners must keep the following documents in the tenant's file at the project site:

1. All original, signed forms HUD 9887 and HUD 9887-A;
2. A copy of signed individual consent forms; and
3. Third-party verifications.

B. Owners must maintain documentation of all verification efforts throughout the term of each tenancy and for at least three years after the tenant moves out

C. **The tenant's file should be available for review by the tenant upon request or by a third party who provides signed authorization for access from the tenant.**

D. Owners must maintain applicant and tenant information in a way to ensure confidentiality. Any applicant or tenant affected by negligent disclosure or improper use of information may bring civil action for damages and seek other relief, as appropriate, against the employee. Forms HUD 9887 and 9887-A describe the penalties for the improper use of consent forms.

E. **Owners must dispose of tenant files and records in a manner that will prevent any unauthorized access to personal information, e.g., burn, pulverize, shred, etc.**

Section 4: Calculating Tenant Rent

5-24 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 4: Calculating Tenant Rent. The citations and their titles or (topics) are listed below.

A. 24 CFR 5.628 Total Tenant Payment

B. 24 CFR 5.630 Minimum Rent

C. 24 CFR 236.735 Rental Assistance Payments and Rental Charges

D. 24 CFR 891.105, 891.410, 891.520, 891.640, 891.655, 891.705 (Project rental assistance payment, project assistance payment, tenant rent, total tenant payment, and rent for unassisted units)

E. **24 CFR 5.661 Section 8 project-based assistance programs: Approval for police or other security personnel to live in project**

5-25 Calculating the Tenant Contribution for Section 8, PAC, PRAC, RAP, and Rent Supplement Properties

A. **Total Tenant Payment (TTP)**

The Total Tenant Payment (TTP) is the amount a tenant is expected to contribute for rent and utilities. TTP for Section 8, PAC, PRAC, RAP, and Rent Supplement properties is based on the family's income. The formulas for calculating TTP are shown in Figure 5-6. ** Exhibit 5-8** also shows the formulas for calculating tenant contributions for all assisted-housing programs.

B. **Unit Rent**

1. The contract rent (basic rent in the Section 236 program) represents the amount of rent an owner is entitled to collect to operate and maintain the property. It is HUD-approved. For Section 202 and 811 PRACS, the contract rent is the operating rent minus the utility allowance.

2. Projects in which the tenant pays all or some utilities have HUD-approved utility allowances that reflect an estimated average amount tenants will pay for utilities assuming normal consumption.

C. Timeframe for Calculating Rent

Owners calculate rent at three points in time.

1. Owners must calculate rent prior to occupancy by an applicant.

2. Owners must calculate rent as part of an annual recertification. Refer to Chapter 7, Section 1 for information on annual recertification of income.

3. When assistance is provided through Section 8, PAC, PRAC, RAP, or Rent Supplement, owners must recalculate rent if a tenant reports a change in income, allowances, or family composition. Refer to Chapter 7, Section 2 for information on interim recertifications of income.

Figure 5-6: Total Tenant Payment Formulas

Section 8, PAC, PRAC, and RAP

- TTP is the greater of the following:
  - ♦ 30% of monthly adjusted income;
  - ♦ 10% of monthly gross income;
  - ♦ Welfare rent (welfare recipients in as-paid localities only); or
  - ♦ The $25 minimum rent (Section 8 only).
- Section 8, RAP, and PAC programs may admit an applicant only if the TTP is less than the gross rent.
- In PRAC properties, the TTP may exceed the PRAC operating rent.

Rent Supplement

- TTP is the greater of the following:
  - ♦ 30% of monthly adjusted income; or
  - ♦ 30% of gross rent.
- At move-in or initial certification, the amount of Rent Supplement assistance may be no less than 10% of the gross rent or the tenant is <u>not</u> eligible.

5-26 Procedures for Determining Tenant Contribution for Section 8, PAC, PRAC, RAP, and Rent Supplement Properties

A. Tenant Rent

Tenant rent is the portion of the TTP the tenant pays each month to the owner for rent. Tenant rent is calculated by subtracting the utility allowance from the TTP.

It is possible for tenant rent to be $0 if the utility allowance is greater than the TTP. (See paragraph 9-13 for more information on utility reimbursements when the utility allowance is greater than the TTP.)

Example – Calculating Tenant Rent

TTP:	$225
Utility allowance:	-$ 75
Tenant rent:	$150

B. **Assistance Payments**

The assistance payment is the amount the owner bills HUD every month on behalf of the tenant. The assistance payment covers the difference between the TTP and the gross rent. It is the subsidy that HUD pays to the owner.

1. Housing Assistance Payment (HAP) is the assistance payment made by HUD to owners with units receiving assistance from the Section 8 program.

Example – Calculating HAP

Gross rent	$564
TTP	- $175
HAP	$389

2. Rental Assistance Payment (RAP) is the assistance payment made by HUD to owners for units receiving assistance through the RAP program.

3. Rent Supplement payment is the assistance payment made by HUD to owners for units receiving assistance through the Rent Supplement program.

4. Project Assistance Payment (PAC) is the assistance payment made by HUD for assisted units in a Section 202 project for nonelderly disabled families and individuals (also referred to as Project Assistance Contract [PAC] projects).

5. Project Rental Assistance Payment (PRAC) is the assistance payment made by HUD for assisted units in Section 202 or Section 811 properties with a Project Rental Assistance Contract (PRAC).

C. **Utility Reimbursement**

When the TTP is less than the utility allowance, the tenant receives a utility reimbursement to assist in meeting utility costs. The tenant will pay no tenant rent. The utility reimbursement is calculated by subtracting the TTP from the utility allowance. Refer to paragraph 9-13 for more information on utility reimbursements.

D. Section 8 Minimum Rent

Tenants in properties subsidized through the Section 8 program must pay a minimum TTP of $25.

__NOTE:__ Minimum rent does not apply to Section 202 PAC, Section 202 PRAC, Section 811 PRAC, RAP, Rent Supplement, Section 221(d)(3) BMIR or Section 236 programs.

1. The minimum rent is used when 30% of adjusted monthly income and 10% of gross monthly income, and the welfare rent where applicable, are all below $25.

2. The minimum rent includes the tenant's contribution for rent and utilities. In any property in which the utility allowance is greater than $25, the full TTP is applied toward the utility allowance. The tenant will receive a utility reimbursement in the amount by which the utility allowance exceeds $25.

Example – Utility Reimbursement for a Tenant Paying Minimum Rent
The Nguyen family qualifies for the minimum total tenant payment of $25. The family pays its own utility bills. The utility allowance for the unit is $75 a month. The owner sends the Nguyen family a check each month for $50 ($75-$25) as a utility reimbursement. The Nguyen family does not pay any tenant rent to the owner.

3. Financial hardship exemptions.

   a. Owners must waive the minimum rent for any family unable to pay due to a long-term financial hardship, including the following:

      – The family has lost federal, state, or local government assistance or is waiting for an eligibility determination.

      – The family would be evicted if the minimum rent requirement was imposed.

– The family income has decreased due to a change in circumstances, including but not limited to loss of employment.

– A death in the family has occurred.

– Other applicable situations, as determined by HUD, have occurred.

b. Implementing an exemption request. When a tenant requests a financial hardship exemption, the owner must waive the minimum $25 rent charge beginning the month immediately following the tenant's request and implement the TTP calculated at the higher of 30% of adjusted monthly income or 10% of gross monthly income (or the welfare rent). The TTP will not drop to zero unless those calculations all result in zero.

(1) The owner may request reasonable documentation of the hardship in order to determine whether there is a hardship and whether it is temporary or long term in nature. The owner should make a determination within one week of receiving the documentation.

(2) If the owner determines there is no hardship as covered by the statute, the owner must immediately reinstate the minimum rent requirements. The tenant is responsible for paying any minimum rent that was not paid from the date rent was suspended. The owner may not evict the tenant for nonpayment of rent during the time in which the owner was making the determination. The owner and tenant should reach a reasonable repayment agreement for any back payment of rent.

(3) If the owner determines that the hardship is temporary, the owner may not impose the minimum rent requirement until 90 days after the date of the suspension. At the end of the 90-day period, the tenant is responsible for paying the minimum rent, retroactive to the initial date of the suspension. The owner may not evict the tenant for nonpayment of rent during the time in which the owner was making the determination or during the 90-day suspension period. The owner and tenant should reach a reasonable repayment agreement for any back payment of rent.

Example – Temporary Hardship Schedule

Due to the death of his wife, Yung Kim took a six-week leave of absence from his part-time job. He requests a financial hardship exception. The owner, Oak Knoll Management, reviews his request and determines that the hardship is not long term. Yung Kim and Oak Knoll Management implement the following schedule:

- Current TTP $25
- Hardship request received July 15
- Owner grants temporary hardship July 20
- August TTP $0
- September TTP $0
- October TTP $0
- 90-day period ends October 15
  Total balance due 3 x $25 $75
- Tenant agrees to pay $10 extra per month for seven months and $5 extra on the eighth month.
- Monthly payment for seven months
  November – May TTP $25 + $10 $35
- June TTP $25 + $5 $30
- July TTP $25

(4) If the hardship is determined to be long term, the owner must exempt the tenant from the minimum rent requirement from the date the owner granted the suspension. The suspension may be effective until such time that the hardship no longer exists. However, the owner must recertify the tenant every 90 days while the suspension lasts to verify that circumstances have not changed. The length of the hardship exemption may vary from one family to another depending on the circumstances of each family. The owner must process an interim recertification to implement a long-term exemption. Owners must maintain documentation on all requests and determinations regarding hardship exemptions.

E. **Welfare Rent**

1. The term “welfare rent” applies only in states that have “as-paid” public benefit programs. A welfare program is considered “as-paid” if the welfare agency does the following:

   a. Designates a specific amount for shelter and utilities; and

b. Adjusts that amount based upon the actual amount the family pays for shelter and utilities.

2. The maximum amount that may be specifically designated for rent and utilities is called the "welfare rent." See below for an example.

Example – Calculating Welfare Rent

Published maximum for shelter and utilities:	$200
Amount of welfare assistance for other needs:	$220
Other income:	$100

Monthly income =	$520
"Welfare rent"=	$200

5-27 Calculating Assistance Payments for Authorized Police/Security Personnel

A. The amount of the monthly assistance payment to the owner is equal to the contract rent minus the monthly amount paid by the police officer or security personnel. HUD will not increase the assistance payment due to nonpayment of rent by the police officer or security personnel.

NOTE: The owner is not entitled to vacancy payments for the period following occupancy by a police officer or security personnel.

B. For police/security personnel whose income exceeds the income limit for the property, the rent is set by the owner.

1. The determination of the rent amount in such circumstances should take into consideration the income of the officer, the location of the property, and rents for comparable unassisted units in the area.

2. Owners should establish a rent that is attractive to the officer, but not less than what the officer would pay as an eligible Section 8 tenant.

3. Owners are expected to use a consistent methodology for each property when establishing the rents for officers in these circumstances.

5-28 Calculating Tenant Contribution for "Double Occupancy" in Group Homes

A. **Double Occupancy**

Some group homes for disabled residents provide units that may be shared by unrelated single tenants. The calculations for tenant contribution and for the assistance payment vary depending on whether the project is a Section 202/8 or a Section 811.

B. Total Tenant Payment

In both Section 202/8 and Section 811 group homes, each tenant in a double occupancy room is treated as a separate family in the calculation of TTP. Each resident is entitled to any deductions he or she would receive if occupying a single room, including the $400 elderly/disabled family deduction.

Example – TTP Calculation for Double Occupancy

<u>Resident A:</u>	
Annual income	$5,200
Elderly family deduction	- $400
Medical expense deduction	- $900
Annual adjusted income	$3,900
Monthly adjusted income	$325 ($3,900/12 months)
30% of monthly adjusted income	$98
10% of monthly gross income	$43
Minimum rent	$25
TTP for Resident A =	$98
<u>Resident B:</u>	
Annual income	$3,600
Elderly family deduction	- $400
Medical expense deduction	- $2,480
Annual adjusted income	$720
Monthly adjusted income	$60 ($720/12 months)
30% of monthly adjusted income	$18
10% of monthly gross income	$30
Minimum rent	$25
TTP for Resident B =	$30

C. Contract Rent and Assistance Payment in Section 202/8 Group Homes

1. In Section 202/8 group homes, the contract rent for a room shared by two occupants is split between the two tenants.

2. The assistance payment for the Section 202/8 double occupancy room is calculated separately for each tenant based on half of the contract rent for the unit.

Example – Assistance Payment, Section 202/8 Double Occupancy	
Contract rent for the unit	$800
Half of the contract rent for the unit	$400
TTP for Tenant A =	**$98**
Assistance payment for Tenant A is $400 less **$98 = $302**	
TTP for Tenant B =	$30
Assistance payment for Tenant B is $400 less $30 =	$370

3. If the tenant rent for either tenant exceeds half of the contract rent, that tenant's rent will be capped at half of the contract rent. In the Section 202/8 double occupancy room, half of the contract rent is the maximum rent one occupant can pay.

Example – Section 202/8 Double Occupancy

Tenant A has an increase in income changing the monthly adjusted income to $1,500. 30% of $1,500 equals $450. Tenant A is no longer eligible for assistance. Tenant A's rent is capped at $400, which represents the maximum Tenant A will pay.

Gross rent for unit	$800
Half the contract rent for the unit	$400
**TTP for Tenant A	$450
Assistance Payment for Tenant A	-0-
Rent Tenant A will pay	$400**

4. Owner's rent-calculation software must reflect the split-unit rent and contain unit numbers that provide a distinction between tenants (e.g., unit 101A, 101B).

D. ****Operating Cost** and Assistance Payment in Section 811 Group Homes**

1. **In a Section 811 group home, the operating cost for a room shared by two occupants is split between the two tenants.

2. The assistance payment for the Section 811 double occupancy room is calculated separately for each tenant based on half of the operating cost for the unit.**

3. In a Section 811 property, each tenant is certified separately and pays the greater of 30% of monthly adjusted income, 10% of monthly annual income, or the welfare rent.

4. In the Section 811 double occupancy unit, both occupants will pay the calculated TTP amount **even if it exceeds their portion of** the operating **cost** for the unit.

Example – Calculating the Assistance Payment for a Double Occupancy Unit in a Section 811 Group Home

Operating **cost** for unit	$310
**Half of the operating cost for the unit	$155**
TTP Tenant A =	$160
**Assistance Payment for Tenant A	$(5)**
TTP Tenant B =	$75
**Assistance Payment for Tenant B	$80

Although the Assistance Payment for Tenant A is zero, the voucher must indicate that $5 over the operating cost was collected for rent. This is indicated by bracketing the ($5.)**

5. **Owner's rent-calculation software must reflect the split-unit operating cost and contain unit numbers that provide a distinction between tenants (e.g., unit 101A, 101B).**

Example – Section 811 Total Tenant Payments

Operating **cost** for the unit	$310
One half of operating cost	$155**
TTP Tenant A =	$330
**Assistance Payment for Tenant A	($175)**
TTP Tenant B =	$240
Assistance payment **for Tenant B	($85)

E. **Calculating Rent at Change in Occupancy**

1. If there is a change in the number of individuals occupying the double occupancy unit, the assistance payment for the whole unit may change.

2. In a Section 202/8 **or a Section 811 PRAC** double-occupancy room, the rent and assistance payments are calculated as if each tenant occupied a separate unit each with a rent equaling half of the contract rent **or operating cost** for the unit. If one resident moves out, the TTP and assistance payment calculations for the remaining resident remain the same. The other half of the unit is treated like a vacant unit: there is no **assistance** payment but the owner may be eligible for vacancy loss claims for the vacated half of the unit.

Example – Section 202/8 Calculation at a Change in Occupancy

Contract Rent	$800
Half of the contract rent	$400
Tenant A Tenant Rent	**$98**
Tenant B Tenant Rent	$30

Tenant A moves out.

Assistance Payment for Tenant B is calculated using half of the contract rent = $400 less the Tenant Rent for Tenant B $30 = $370 housing assistance payment.

There is no HAP payment for the half of the unit vacated by Tenant A. It is vacant. But, the owner may request a vacancy loss payment if appropriate.

Example – Section 811 Calculation at a Change in Occupancy

Operating Cost	$310
Half of the operating cost	$155
Tenant A Tenant Rent	$160
Tenant B Tenant Rent	$75

Tenant A moves out.

Assistance Payment for Tenant B is calculated using half of the operating cost = $155 less the Tenant Rent for Tenant B $75 = $80 housing assistance payment.

There is no Assistance Payment for the half of the unit vacated by Tenant A. It is vacant. Even though Tenant A was paying more than half of the operating cost for the unit at move-out, the owner may request a vacancy loss payment if all other vacancy claim requirements have been met.

5-29 Calculating Tenant Contribution for Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR)

A. Tenant's Rent Contribution

The tenant's contribution to rent in the Section 236 and Section 221(d)(3) BMIR programs is based on the cost to operate the property and the income of the family. Figure 5-7 presents the rules for determining the tenant rent in these two programs.

1. Section 236 property. Every Section 236 property has a HUD-approved basic rent and market rent. Basic rent is the minimum rent all Section 236 tenants must pay. It represents the cost to operate the property after HUD has provided mortgage assistance to reduce the mortgage interest expense. The market rent represents the amount of rent the owner would have to charge, if the mortgage were not subsidized. Tenants pay a

percentage of their income towards rent, but never pay less than the basic rent or more than the market rent for the property.

When a tenant pays more than basic rent, the difference between the tenant's rent and basic rent is called "excess income." Excess income is an amount that exceeds what the owner needs to operate the property and is subject to specific requirements. Refer to HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*, and other current HUD notices for guidance on handling excess income. Although a tenant may pay more than basic rent, no tenant in a Section 236 property will pay more than the market rent for the property.

Example – Calculating Excess Income

Rent for Tenant A (30% of Tenant A's income):	$350
Basic rent	-$300
Excess Income	$50

2. Section 221(d)(3) BMIR property. There is no rent calculation for tenants in a Section 221(d)(3) BMIR property. HUD approves a BMIR rent that all of the tenants must pay. The federal assistance in the BMIR property is provided through a below market interest rate for the mortgage loan. Applicants must meet income eligibility standards to be admitted to a BMIR property. After move-in, if a tenant's annual income goes above 110% of the BMIR income limit, the tenant must pay 110% the BMIR rent.

3. BMIR cooperative. If a BMIR cooperative member's annual income exceeds 110% of the BMIR income limit at the time of recertification, the cooperative must levy a surcharge to the member. See the definition of market rent in the Glossary for an explanation of the market carrying charge for over-income cooperative members.

B. Timeframe for Calculating Rent

Owners calculate rent at three points in time.

1. Owners must calculate rent prior to occupancy by an applicant.

2. Owners must calculate rent as part of an annual recertification. Refer to Chapter 7, Section 1 for information on annual recertification of income.

3. Owners of Section 236 properties must calculate rent if a tenant reports a change in income, allowances, or family composition. Refer to Chapter 7, Section 2 for information on interim recertifications of income.

Figure 5-7: Tenant Contributions for the Section 236 and Section 221(d)(3) BMIR

Section 236

Section 236 without Utility Allowance

- Tenant rent is the greater of:
  - ♦ 30% of monthly adjusted income; or
  - ♦ Section 236 basic rent.
- Tenant rent may not be more than the Section 236 market rent.

Section 236 with Utility Allowance

- Tenant rent is the greater of:
  - ♦ 30% of monthly adjusted income less the utility allowance; or
  - ♦ 25% of monthly adjusted income; or
  - ♦ Basic rent.
- Tenant rent may not be more than the Section 236 market rent.

Section 221(d)(3) BMIR

- At initial certification, the tenant pays the BMIR rent.
- At recertification, the tenant's annual income is compared to the BMIR income limits. If the tenant's annual income is:
  - ♦ Less than or equal to 110% of the BMIR income limit, the tenant pays the BMIR rent;
  - ♦ Greater than 110% of the BMIR income limit, the tenant pays 110% of the BMIR rent.

5-30 Determining Tenant Contribution at Properties with Multiple Forms of Subsidy

A. At many multifamily properties different kinds of subsidies have been combined. For many years, tenant-based Section 8 subsidies have been added to properties built with Section 202 loans or financed with Section 236 and Section 221(d)(3) mortgage subsidies. Recently, the Low Income Housing Tax Credit program has been combined with a wide range of programs, from Section 202 projects with Section 8 already in place (Section 202/8) to housing choice voucher assistance.

B. Although each of the programs combined within one property may have a different formula for determining tenant payments, it is generally possible to determine the correct rent for a family by identifying the available program for which that family is eligible that will provide the best option—or the lowest rent—for the tenant. The one exception to this can be at the recertification of a Section 8 or Rent Supplement family in a property with Low Income Housing Tax Credits. If the family's income has increased since move-in to a point that the assisted rent exceeds the Low Income Housing Tax Credit rent, that family will have to make a choice between the lower tax credit rent and the security of continuing on the rental assistance program.

C. The tenant rent at properties assisted under more than one program is generally the lowest rent available for which the tenant is eligible.

1. Section 202/Section 8. In a Section 202 property with Section 8 tenant-based assistance, a tenant eligible for Section 8 will pay the tenant rent based on the Section 8 rent formula. If that tenant's income increases to the point that its TTP equals or exceeds the Section 8 contract rent, the family would no longer be eligible for the tenant based assistance.

2. Section 236/Section 8. A family with a Section 8 subsidy in a Section 236 property will pay the Section 8 tenant rent unless, at recertification, the family's TTP equals or exceeds the Section 8 contract rent. Thereafter, the family will pay the tenant rent based on the Section 236 rent formula. A family living in a Section 236 property receiving Rent Supplement assistance would also stop receiving Rent Supplement assistance at the point the family's TTP increased to the level of the rent supplement contract rent. Thereafter the family will pay the tenant rent based on the Section 236 rent formula.

3. Section 221(d)(3) BMIR with Section 8. A family receiving Section 8 assistance at a BMIR project would continue to pay the tenant rent based on the Section 8 rent formula until the TTP equaled or exceeded the BMIR rent. Thereafter, the family would pay rent based on the BMIR rent formula.

D. In some instances, a tenant will not be eligible for the program offering the lowest rent, or a subsidy under that program will not be available for every unit or every tenant.

Sometimes, Section 8 subsidies are not available for the unit size the family needs, and the family must wait for a subsidy for the appropriate unit size. The owner's contract with HUD for the Section 8 assistance allocates Section 8 funding by unit size, and the owner is required to subsidize families based on the unit sizes allocated. If the owner was allocated 10 two-bedroom subsidies and has assigned those subsidies to 10 two-bedroom families, the owner cannot use an available three-bedroom subsidy to assist an 11th two-bedroom family. If the owner has determined that the bedroom distribution in its contract does not match the need in the project, the owner can ask HUD for a contract amendment to revise the unit size designations of the subsidy awarded.

E. In some instances, a family will not be eligible for a lower rent program available at the property.

For example, a family in a BMIR project with Section 8 may be financially stretched when paying the BMIR rent but may not be income-eligible for the lower-rent Section 8 program.

5-31 Procedures for Calculating Rent

A. Owners must calculate tenant rent payments electronically using on-site software or a service provider. Data used to determine the rent are based on information certified as accurate by the family and independently verified.

B. The owner's computer software calculates rent based on the appropriate formulas for the tenant's unit and produces a printed copy of the **HUD-50059** to be signed by the tenant and the owner. The owner must produce a printed report in an easily read and understood format that contains all of the information used to calculate the tenant's rent.

C. The tenant and the owner sign a copy of the report containing a statement certifying the accuracy of the information. The certification statements are provided on the **form HUD-50059 in Appendix 7-B.** Additional information on the **HUD-50059** and the certifications can be found in Chapter 9.

D. The owner must give a copy of the printed **HUD-50059** with the required signatures to the tenant and place another copy in the tenant file.

E. The **HUD-50059 is** then transmitted electronically to TRACS either directly or through the Contract Administrator. Refer to Chapter 9 for information on **the HUD-50059** requirements.

F. **In all cases, the computer generated HUD-50059 must include the required tenant signatures and owner signatures prior to submitting the data to the Contract Administrator or HUD. The owner may consider extenuating circumstances when an adult family member is not available to sign the HUD-50059, for example, an adult serving in the military, students away at college, adults who are hospitalized for an extended period of time, or a family member who is permanently confined to a nursing home or hospital. The owner must document the file why the signature(s) was not obtained and, if applicable, when the signature(s) will be obtained.**

Chapter 5 Exhibits

5-1. Income Inclusions and Exclusions

http://hudstage.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/43503e5-1HSGH.pdf

5-2. Assets

http://hudstage.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/43503e5-2HSGH.pdf

5-3. **Examples** of Medical Expenses That Are Deductible and Nondeductible

http://hudstage.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/43503e5-3HSGH.pdf

5-4. **Sample** Certification for Qualified Long-Term Care Insurance Expenses

http://www.hud.gov/offices/adm/hudclips/forms/files/90101.pdf

5-5. Form HUD-9887, *Notice and Consent for the Release of Information to HUD and to a PHA*

http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/43503e5HSGH.pdf

5-6. Form HUD-9887-A, *Applicant's/Tenant*'s *Consent to the Release of Information – Verification by Owners of Information Supplied by Individuals Who Apply for Housing Assistance*

See 5-5 above.

5-7. HUD Fact Sheet – Verification of Information Provided by Applicants and Tenants of Assisted Housing

See 5-5 above.

5-8. Tenant Rent Formulas

http://hudstage.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/43503e5-8HSGH.pdf

Exhibit 5-1: Income Inclusions and Exclusions

24 CFR 5.609(b) and (c)

Examples included in parentheses have been added to the regulatory language for clarification.

INCOME INCLUSIONS

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (2) above. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of $5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a **periodic amount (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action). See paragraph (13) under Income Exclusions for an exception to this paragraph;**

(5) Payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation, and severance pay, except as provided in paragraph (3) under Income Exclusions;

(6) Welfare Assistance.

(a) Welfare assistance received by the family.

(b) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities. the amount of welfare assistance income to be included as income shall consist of:

(c) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(d) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regularr contributions or gifts received from organizations or from persons not residing in the dwelling; and

(8) All regular pay, special pay, and allowances of a member of the Armed Forces, except as provided in paragraph (7) under Income Exclusions.

(9) For Section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.)*, from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph "financial assistance" does not include loan proceeds for the purpose of determining income. *(Note: This paragraph also does not apply to a student who is living with his/her parents who are applying for or receiving Section 8 assistance.)*

INCOME EXLCUSIONS:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses, except as provided in paragraph (5) under Income Inclusions;

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in 24 CFR 5.403;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution (see Income Inclusions (9), above, for students receiving Section 8 assistance);

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm);

(8) (a) Amounts received under training programs funded by HUD (e.g., training received under Section 3);

(b) Amounts received by a person with a disability that are disregarded for a limited time for purposes of supplemental security income eligibility and benefits because they are set-aside for use under a Plan to Attain Self-Sufficiency (PASS);

(c) Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(d) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the project. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident-initiative coordination. No resident may receive more than one such stipend during the same period of time; or

(e) Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as a resident management staff person. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program.

(9) Temporary, nonrecurring, or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. (Examples include payments by the German and Japanese governments for atrocities committed during the Nazi era);

(11) Earnings in excess of $480 for each full-time student 18 years or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of $480 per adopted child;

(13) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts;

(14) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;

(15) Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(16) Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the *Federal Register* and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

The following is a list of income sources that qualify for that exclusion:

(a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 [b]);

(b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058) (employment through AmeriCorps, Volunteers in Service to America [VISTA], Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);

(c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626[c])

(d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624[f]);

(f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552[b]; (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 [29 U.S.C. 2931], e.g., employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs, career intern programs, Americorps);

(g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L-94-540, 90 Stat. 2503-04);

(h) The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first $2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);

(i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

(j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056[f]), e.g., Green Thumb, Senior Aides, Older American Community Service Employment Program;

(k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent*-product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);

(m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);

(n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991, including advanced earned income credit payments (26 U.S.C. 32[j]);

(o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);

(p) Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637[d]);

(q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);

(r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and

(s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

Exhibit 5-2: Assets

NOTE: There is no asset limitation for participation in HUD assisted-housing programs. However, the definition of annual income includes net income from family assets.

A. Net Family Assets include the following:

1. Cash held in savings and checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average balance for the last six months. Assets held in foreign countries are considered assets.

2. Revocable trusts. Include the cash value of any revocable trust available to the family. See discussion of trusts in paragraph 5-7 G.1.

3. Equity in rental property or other capital investments. Include the current fair market value less (a) any unpaid balance on any loans secured by the property and (b) reasonable costs that would be incurred in selling the asset (e.g., penalties, broker fees, etc.).

   NOTE: If the person's main business is real estate, then count any income as business income under paragraph 5-6 G of the chapter. Do not count it both as an asset and business income.

4. Stocks, bonds, Treasury bills, certificates of deposit, mutual funds, and money market accounts. Interest or dividends earned are counted as income from assets even when the earnings are reinvested. The value of stocks and other assets vary from one day to another. The value of the asset may go up or down the day before or after rent is calculated and multiple times during the year thereafter. The owner may assess the value of these assets at any time after the authorization for the release of information has been received. The tenant may request an interim recertification at any time thereafter that a decrease in stock value may result in a decrease in rent.

5. Individual retirement, 401K, and Keogh accounts. These are included when the holder has access to the funds, even though a penalty may be assessed. If the individual is making occasional withdrawals from the account, determine the amount of the asset by using the average balance for the previous six months. (Do not count withdrawals as income.)

Example – Withdrawals from a Keogh Account

Ly Pham has a Keogh account valued at $30,000. When she turns 70 years old, she begins drawing $2,000 a year. Continue to count the account as an asset. Use the guidance in paragraph 5-7 to determine the cash value and imputed income from the asset. Do not count the $2,000 she withdraws as income.

6. Retirement and pension funds.

   a. While the person is employed. Include only amounts the family can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs. Follow paragraph 5-7 G.4 of the chapter on determining the value of assets.

   b. At retirement, termination of employment, or withdrawal. Periodic receipts from pension and retirement funds are counted as income. Lump-sum receipts from pension and retirement funds are counted as assets. Count the amount as an asset or as income, as provided below.

      (1) If benefits will be received in a lump sum, include the lump-sum receipt in net family assets.

      (2) If benefits will be received through periodic payments, include the benefits in annual income. Do not count any remaining amounts in the account as an asset.

      (3) If the individual initially receives a lump-sum benefit followed by periodic payments, count the lump-sum benefit as an asset as provided in the example below and treat the periodic payment as income. In subsequent years, count only the periodic payment as income. Do not count the remaining amount as an asset.

   NOTE: This paragraph and the example below assume that the lump-sum receipt is a one-time receipt and that it does not represent delayed periodic payments. However, in situations in which a lump-sum payment does represent delayed periodic payments, then the amount would be considered as income and not an asset.

Example – Retirement Benefits as Lump-Sum and Periodic Payments

Upon retirement, Eleanor Reilly received a lump-sum payment of $15,000. She will also receive periodic pension payments of $350 a month.

The lump-sum amount of $15,000 is generally treated as an asset. In this instance, however, Eleanor spent $5,000 of the lump sum on a trip following her retirement. The remaining $10,000 she placed in her mutual fund with other savings. The entire mutual fund will be counted as an asset.

The owner has verified that Eleanor is now not able to withdraw the balance from her pension. Therefore, the owner will count the $350 monthly pension payment as annual income and will not list the pension account as an asset.

7. Cash value of life insurance policies available to the individual before death (e.g., the surrender value of a whole life policy or a universal life policy). It would not include a value for term insurance, which has no cash value to the individual before death.

8. Personal property held as an investment. Include gems, jewelry, coin collections, or antique cars held as an investment. Personal jewelry is NOT considered an asset.

9. Lump-sum receipts or one-time receipts. (See paragraph 5-6 **P** for additional information on what is counted as a lump-sum receipt and how to treat lump-sum receipts.) These include inheritances, capital gains, one-time lottery winnings, victim's restitution, settlements on insurance claims (including health and accident insurance, worker's compensation, and personal or property losses), and any other amounts that are not intended as periodic payments.

10. A mortgage or deed of trust held by an applicant.

    a. Payments on this type of asset are often received as one combined payment of principal and interest with the interest portion counted as income from the asset.

    b. This combined figure needs to be separated into the principal and interest portions of the payment. (This can be done by referring to an amortization schedule that relates to the specific term and interest rate of the mortgage.)

    c. To count the actual income for this asset, use the interest portion due, based on the amortization schedule, for the 12-month period following the certification.

    d. To count the imputed income for this asset, determine the asset value **as of the effective date of the certification**. Since this amount will continually be reduced by the principal portion paid during the previous year, the owner will have to determine this amount at each annual recertification. See the following example:

Example – Deed of Trust and Imputed Income

Computation of imputed income:
An elderly tenant sells her home and holds the mortgage for the buyer. The cash value of the mortgage is $60,000. The combined payment of principal and interest expected to be received for the upcoming year is $5,000. The amortization schedule breaks that payment into $2,000 in principal and $3,000 in interest. In completing the asset income calculation, the cash value of the asset is $60,000, and the projected annual income from that asset is $3,000. **The imputed income would be calculated by multiplying the cash value of $60,000 by the 2% imputed passbook rate.** Each subsequent year, the cash value of the asset should be reduced by the principal portion paid. In this example, it would be reduced to $58,000 in the following year ($60,000 – $2,000 principal payment = $58,000). **When calculating the imputed income for the following year, the owner would multiply the cash value of $58,000 by the 2% passbook savings rate.**

Regulatory References

(These references are current as of the date of publication. Readers should refer to the latest edition of the Code of Federal Regulations.)

24 CFR part 5.603 defines net family assets as follows:

Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and the equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded. . . . . In determining net family assets, owners shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or recertification, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

B. Net family assets **DO NOT** include the following:

IMPORTANT: The owner does not compute income from any assets in this paragraph.

1. Personal property (clothing, furniture, cars, wedding ring, other jewelry that is not held as an investment, vehicles specially equipped for persons with disabilities).

2. Interests in Indian trust land.

3. Term life insurance policies (i.e., where there is no cash value).

4. Equity in the cooperative unit in which the family lives.

5. Assets that are part of an active business. "Business" does NOT include rental of properties that are held as investments unless such properties are the applicant's or tenant's main occupation.

Example – Assets that are Part of an Active Business

- Laura and Lester Hines own a copier and courier service. None of the equipment that they use in their business is counted as an asset (e.g., the copiers, the FAX machines, the bicycles).
- Alice Washington rents out the home that she and her husband lived in for 42 years. This home is not an active business asset. Therefore, it is considered an asset and the owner must determine the annual income that Alice receives from it.

6. Assets that are NOT effectively owned by the applicant. Assets are not effectively owned when they are held in an individual's name, but (a) the assets and any income they earn accrue to the benefit of someone else who is not a member of the family, and (b) that other person is responsible for income taxes incurred on income generated by the assets.

NOTE: Nonrevocable trusts (i.e., irrevocable trusts) are not covered by this paragraph. See information on nonrevocable trusts in paragraph 5-7 G.1.

Example – Assets not Effectively Owned by the Applicant

Net family assets do not include assets held pursuant to a power of attorney because one party is not competent to manage the assets, or assets held in a joint account solely to facilitate access to assets in the event of an emergency.

Example: Alexander Cumbow and his daughter, Emily Bornscheuer, have a bank account with both names on the account. Emily's name is on that account for the convenience of her father in case an emergency arises that would result in Emily handling payments for her father. Emily has not contributed to this asset, does not receive interest income from it, nor does she pay taxes on the interest earned. Therefore, Emily does not own this account. If Emily applies for assisted housing, the owner should not count this account as her asset. This asset belongs to Alexander and would be counted entirely as the father's asset should he apply for assisted housing.

7. Assets that are not accessible to the applicant and provide no income to the applicant. Nonrevocable trusts are not covered under this paragraph. See information on nonrevocable trusts in paragraph 5-7 G.1.

Example

A battered spouse owns a house with her husband. Because of the domestic situation, she receives no income from the asset and cannot convert the asset to cash.

Exhibit 5-3: Examples of
Medical Expenses That Are Deductible and Nondeductible

The following are examples of eligible items for medical expense deductions. Please note that this list is not exhaustive.

Type of Medical Expenses	May Include*
Services of recognized health care professionals	Services of physicians, nurses, dentists, opticians, mental health practitioners, osteopaths, chiropractors, Christian Science practitioners, and acupuncture practitioners
Services of health care facilities; laboratory fees, X-rays and diagnostic tests, blood, oxygen	Hospitals, health maintenance organizations (HMOs), laser eye surgery, out-patient medical facilities, and clinics
Alcoholism and drug addiction treatment	
Medical insurance premiums	Expenses paid to an HMO; Medicaid insurance payments that have not been reimbursed; long-term care premiums (not prorated)
Prescription and nonprescription medicines	Aspirin, antihistamine only if prescribed by a physician for a particular medical condition
Transportation to/from treatment and lodging	Actual cost (e.g., bus fare) or, if driving in a car, a mileage rate based on IRS rules. *If the individual is receiving reimbursement for the cost of transportation to/from treatment or the lodging from another source, the cost or mileage is not eligible for the medical expense deduction*.
Medical care of permanently institutionalized family member IF his/her income is included in Annual Income	
Dental treatment	Fees paid to the dentist; x-rays; fillings, braces, extractions, dentures
Eyeglasses, contact lenses	
Hearing aid and batteries, wheelchair, walker, artificial limbs, Braille books and magazines, oxygen and oxygen equipment	Purchase and upkeep (e.g., additional utility costs to tenant because of oxygen machine [in properties with tenant paid utilities only])
Attendant care or periodic medical care	Nursing services, assistance animal and its upkeep
Payments on accumulated medical bills	Scheduled payments

* Or any other medically necessary service, apparatus, or medication, as documented by third-party verification.

Some items that **may not** be included in medical expense deductions are listed below.

Medical Expenses	May Not Include
Cosmetic surgery	Do not include in medical expenses amounts paid for unnecessary cosmetic surgery. This applies to any procedure that is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease. Procedures such as face-lifts, hair transplants, hair removal (electrolysis), and liposuction generally are not deductible. However, if medical complications, e.g., infections, etc., occur as a result of the procedure that requires medical treatment, the medical treatment expenses would be treated as a medical expense deduction. Amounts paid for cosmetic surgery may be deducted if necessary to improve a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease.
Health club dues	Do not include in medical expenses the cost of membership in any club organized for business, pleasure, recreation, or other social purpose, such as health club dues, YMCA dues, or amounts paid for steam baths for general health or to relieve physical or mental discomfort not related to a particular medical condition.
Household help	Do not include in medical expenses the cost of household help, even if such help is recommended by a doctor. However, certain expenses paid to a person providing nursing-type services may be deductible as medical costs.
Medical savings account (MSA)	Do not deduct as a qualified medical expense amounts contributed to an Archer MSA.
Nutritional supplements, vitamins, herbal supplements, "natural medicines"	Do not include in medical expenses the cost of nutritional supplements, vitamins, herbal supplements, "natural medicines," etc., unless they are recommended in writing by a medical practitioner licensed in the locality where practicing. These items must be recommended as treatment for a specific medical condition diagnosed by a physician or other health care provider licensed to make a diagnosis in the locality where practicing. Otherwise, these items are taken to maintain ordinary good health, and are not for medical care.

Medical Expenses	May Not Include
Personal use items	Do not include in medical expenses an item ordinarily used for personal, living, or family purposes unless it is used primarily to prevent or alleviate a physical or mental defect or illness. For example, the cost of a wig purchased upon the advice of a physician for the mental health of a patient who has lost all of his or her hair from disease or incontinence supplies can be included with medical expenses
Nonprescription medicines	Do not include in medical expenses nonprescription medicines unless they are recommended in writing by a medical practitioner licensed in the locality where practicing. These items must be recommended as treatment for a specific medical condition diagnosed by a physician or other health care provider licensed to make a diagnosis in the locality where practicing.

Exhibit 5-4: Certification for Qualified Long-Term Care Insurance Expenses

I certify that the long-term care insurance policy for which I pay premiums,

(insert policy provider name) ______________________________________,

policy number _______________ meets the following conditions.

1. It is guaranteed renewable;
2. It does not provide a cash surrender value which can be paid, assigned, pledged, or borrowed;
3. It provides that refunds (other than refunds on the death of the insured or complete surrender or cancellation of the contract) and dividends under the contract may be used only to reduce future premiums or increase future benefits; and,
4. It does not pay or reimburse expenses incurred for services or items that would be reimbursed under Medicare (except where Medicare is a secondary payer or the contract makes per diem or other periodic payments without regard to expenses).

____
Name (print)

____
Name (sign)

____
Unit Number

Public reporting burden for this collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain benefits and is voluntary. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. Upon completion of the certification, the insurance premiums are then included in the tenant's total medical expenses deduction which is electronically transmitted by the owner/management agent to HUD's Tenant Rental Assistance Certification System (TRACS).

This information is authorized by the 24 CFR 5.611(a)(3)(i) which allows for unreimbursed medical expenses in excess of three (3) percent of annual income be included as a mandatory deduction from annual income for any elderly family or disabled family in order to arrive at the adjusted income used for rent and subsidy determination. This information is considered non-sensitive and does no require any special protection.

U.S. Department of Housing and Urban Development

Document Package for Applicant's/Tenant's Consent to the Release Of Information

This Package contains the following documents:

1. **HUD-9887/A Fact Sheet describing the necessary verifications**
2. **Form HUD-9887 (to be signed by the Applicant or Tenant)**
3. **Form HUD-9887-A (to be signed by the Applicant or Tenant and Housing Owner)**
4. **Relevant Verifications (to be signed by the Applicant or Tenant)**

Each household must receive a copy of the 9887/A Fact Sheet, form HUD-9887, and form HUD-9887-A.

Verification of Information Provided by Applicants and Tenants of Assisted Housing

What Verification Involves

To receive housing assistance, applicants and tenants who are at least 18 years of age and each family head, spouse, or co-head regardless of age must provide the owner or management agent (O/A) or public housing agency (PHA) with certain information specified by the U.S. Department of Housing and Urban Development (HUD).

To make sure that the assistance is used properly, Federal laws require that the information you provide be verified. This information is verified in two ways:

1. HUD, O/As, and PHAs may verify the information you provide by checking with the records kept by certain public agencies (e.g., Social Security Administration (SSA), State agency that keeps wage and unemployment compensation claim information, and the Department of Health and Human Services' (HHS) National Directory of New Hires (NDNH) database that stores wage, new hires, and unemployment compensation). HUD (only) may verify information covered in your tax returns from the U.S. Internal Revenue Service (IRS). You give your consent to the release of this information by signing form HUD-9887. Only HUD, O/As, and PHAs can receive information authorized by this form.

2. The O/A must verify the information that is used to determine your eligibility and the amount of rent you pay. You give your consent to the release of this information by signing the form HUD-9887, the form HUD-9887-A, and the individual verification and consent forms that apply to you. Federal laws limit the kinds of information the O/A can receive about you. The amount of income you receive helps to determine the amount of rent you will pay. The O/A will verify all of the sources of income that you report. There are certain allowances that reduce the income used in determining tenant rents.

   Example: Mrs. Anderson is 62 years old. Her age qualifies her for a medical allowance. Her annual income will be adjusted because of this allowance. Because Mrs. Anderson's medical expenses will help determine the amount of rent she pays, the O/A is required to verify any medical expenses that she reports.

   Example: Mr. Harris does not qualify for the medical allowance because he is not at least 62 years of age and he is not handicapped or disabled. Because he is not eligible for the medical allowance, the amount of his medical expenses does not change the amount of rent he pays. Therefore, the O/A cannot ask Mr. Harris anything about his medical expenses and cannot verify with a third party about any medical expenses he has.

Customer Protections

Information received by HUD is protected by the Federal Privacy Act. Information received by the O/A or the PHA is subject to State privacy laws. Employees of HUD, the O/A, and the PHA are subject to penalties for using these consent forms improperly. You do not have to sign the form HUD-9887, the form HUD-9887-A, or the individual verification consent forms when they are given to you at your certification or recertification interview. You may take them home with you to read or to discuss with a third party of your choice. The O/A will give you another date when you can return to sign these forms.

If you cannot read and/or sign a consent form due to a disability, the O/A shall make a reasonable accommodation in accordance with Section 504 of the Rehabilitation Act of 1973. Such accommodations may include: home visits when the applicant's or tenant's disability prevents him/her from coming to the office to complete the forms; the applicant or tenant authorizing another person to sign on his/her behalf; and for persons with visual impairments, accommodations may include providing the forms in large script or braille or providing readers.

If an adult member of your household, due to extenuating circumstances, is unable to sign the form HUD-9887 or the individual verification forms on time, the O/A may document the file as to the reason for the delay and the specific plans to obtain the proper signature as soon as possible.

The O/A must tell you, or a third party which you choose, of the findings made as a result of the O/A verifications authorized by your consent. The O/A must give you the opportunity to contest such findings in accordance with HUD Handbook 4350.3 Rev. 1. However, for information received under the form HUD-9887 or form HUD-9887-A, HUD, the O/A, or the PHA, may inform you of these findings.

O/As must keep tenant files in a location that ensures confidentiality. Any employee of the O/A who fails to keep tenant information confidential is subject to the enforcement provisions of the State Privacy Act and is subject to enforcement actions by HUD. Also, any applicant or tenant affected by negligent disclosure or improper use of information may bring civil action for damages, and seek other relief, as may be appropriate, against the employee.

HUD-9887/A requires the O/A to give each household a copy of the Fact Sheet, and forms HUD-9887, HUD-9887-A along with appropriate individual consent forms. The package you will receive will include the following documents:

1. **HUD-9887/A Fact Sheet**: Describes the requirement to verify information provided by individuals who apply for housing assistance. This fact sheet also describes consumer protections under the verification process.
2. **Form HUD-9887:** Allows the release of information between government agencies.
3. **Form HUD-9887-A:** Describes the requirement of third party verification along with consumer protections.
4. **Individual verification consents:** Used to verify the relevant information provided by applicants/tenants to determine their eligibility and level of benefits.

Consequences for Not Signing the Consent Forms

If you fail to sign the form HUD-9887, the form HUD-9887-A, or the individual verification forms, this may result in your assistance being denied (for applicants) or your assistance being terminated (for tenants). See further explanation on the forms HUD-9887 and 9887-A.

If you are an applicant and are denied assistance for this reason, the O/A must notify you of the reason for your rejection and give you an opportunity to appeal the decision.

If you are a tenant and your assistance is terminated for this reason, the O/A must follow the procedures set out in the Lease. This includes the opportunity for you to meet with the O/A.

Programs Covered by this Fact Sheet

- Rental Assistance Program (RAP)
- Rent Supplement
- Section 8 Housing Assistance Payments Programs (administered by the Office of Housing)
- Section 202
- Sections 202 and 811 PRAC
- Section 202/162 PAC
- Section 221(d)(3) Below Market Interest Rate
- Section 236
- HOPE 2 Home Ownership of Multifamily Units

O/As must give a copy of this HUD Fact Sheet to each household. See the Instructions on form HUD-9887-A.

Notice and Consent for the Release of Information

to the U.S. Department of Housing and Urban Development (HUD) and to an Owner and Management Agent (O/A), and to a Public Housing Agency (PHA)

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

HUD Office requesting release of information (Owner should provide the full address of the HUD Field Office, Attention: Director, Multifamily Division.):	O/A requesting release of information (Owner should provide the full name and address of the Owner.):	PHA requesting release of information (Owner should provide the full name and address of the PHA and the title of the director or administrator. If there is no PHA Owner or PHA contract administrator for this project, mark an X through this entire box.):

Notice To Tenant: Do not sign this form if the space above for organizations requesting release of information is left blank. You do not have to sign this form when it is given to you. You may take the form home with you to read or discuss with a third party of your choice and return to sign the consent on a date you have worked out with the housing owner/manager.

Authority: Section 217 of the Consolidated Appropriations Act of 2004 (Pub L. 108-199). This law is found at 42 U.S.C.653(J). This law authorizes HHS to disclose to the Department of Housing and Urban Development (HUD) information in the NDNH portion of the "Location and Collection System of Records" for the purposes of verifying employment and income of individuals participating in specified programs and, after removal of personal identifiers, to conduct analyses of the employment and income reporting of these individuals. Information may be disclosed by the Secretary of HUD to a private owner, a management agent, and a contract administrator in the administration of rental housing assistance.

Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, as amended by section 903 of the Housing and Community Development Act of 1992 and section 3003 of the Omnibus Budget Reconciliation Act of 1993. This law is found at 42 U.S.C. 3544.This law requires you to sign a consent form authorizing: (1) HUD and the PHA to request wage and unemployment compensation claim information from the state agency responsible for keeping that information; and (2) HUD, O/A, and the PHA responsible for determining eligibility to verity salary and wage information pertinent to the applicant's or participant's eligibility or level of benefits; (3) HUD to request certain tax return information from the U.S. Social Security Administration (SSA) and the U.S. Internal Revenue Service (IRS).

Purpose: In signing this consent form, you are authorizing HUD, the above-named O/A, and the PHA to request income information from the government agencies listed on the form. HUD, the O/A, and the PHA need this information to verify your household's income to ensure that you are eligible for assisted housing benefits and that these benefits are set at the correct level. HUD, the O/A, and the PHA may participate in computer matching programs with these sources to verify your eligibility and level of benefits. This form also authorizes HUD, the O/A, and the PHA to seek wage, new hire (W-4), and unemployment claim information from current or former employers to verify information obtained through computer matching.

Uses of Information to be Obtained: HUD is required to protect the income information it obtains in accordance with the Privacy Act of 1974, 5 U.S.C. 552a. The O/A and the PHA is also required to protect the income information it obtains in accordance with any applicable State privacy law. After receiving the information covered by this notice of consent, HUD, the O/A, and the PHA may inform you that your eligibility for, or level of, assistance is uncertain and needs to be verified and nothing else.

HUD, O/A, and PHA employees may be subject to penalties for unauthorized disclosures or improper uses of the income information that is obtained based on the consent form.

Who Must Sign the Consent Form: Each member of your household who is at least 18 years of age and each family head, spouse or co-head, regardless of age, must sign the consent form at the initial certification and at each recertification. Additional signatures must be obtained from new adult members when they join the household or when members of the household become 18 years of age.

Persons who apply for or receive assistance under the following programs are required to sign this consent form:

Rental Assistance Program (RAP)

Rent Supplement

Section 8 Housing Assistance Payments Programs (administered by the Office of Housing)

Section 202; Sections 202 and 811 PRAC; Section 202/162 PAC Section

221(d)(3) Below Market Interest Rate

Section 236

HOPE 2 Homeownership of Multifamily Units

Failure to Sign Consent Form: Your failure to sign the consent form may result in the denial of assistance or termination of assisted housing benefits. If an applicant is denied assistance for this reason, the owner must follow the notification procedures in Handbook 4350.3 Rev. 1. If a tenant is denied assistance for this reason, the owner or managing agent must follow the procedures set out in the lease.

Consent: I consent to allow HUD, the O/A, or the PHA to request and obtain income information from the federal and state agencies listed on the back of this form for the purpose of verifying my eligibility and level of benefits under HUD's assisted housing programs.

Signatures:

Head of Household ______ Date ______

Spouse ______ Date ______

Other Family Members 18 and Over ______ Date ______

Other Family Members 18 and Over ______ Date ______

Additional Signatures, if needed:

Other Family Members 18 and Over ______ Date ______

Other Family Members 18 and Over ______ Date ______

Other Family Members 18 and Over ______ Date ______

Other Family Members 18 and Over ______ Date ______

Agencies To Provide Information

State Wage Information Collection Agencies. (HUD and PHA). This consent is limited to wages and unemployment compensation you have received during period(s) within the last 5 years when you have received assisted housing benefits.

U.S. Social Security Administration (HUD only). This consent is limited to the wage and self employment information from your current form W-2.

National Directory of New Hires contained in the Department of Health and Human Services' system of records. This consent is limited to wages and unemployment compensation you have received during period(s) within the last 5 years when you have received assisted housing benefits.

U.S. Internal Revenue Service (HUD only). This consent is limited to information covered in your current tax return.

This consent is limited to the following information that may appear on your current tax return:

1099-S Statement for Recipients of Proceeds from Real Estate Transactions

1099-B Statement for Recipients of Proceeds from Real Estate Brokers and Barters Exchange Transactions

1099-A Information Return for Acquisition or Abandonment of Secured Property

1099-G Statement for Recipients of Certain Government Payments

1099-DIV Statement for Recipients of Dividends and Distributions

1099 INT Statement for Recipients of Interest Income

1099-MISC Statement for Recipients of Miscellaneous Income

1099-OID Statement for Recipients of Original Issue Discount

1099-PATR Statement for Recipients of Taxable Distributions Received from Cooperatives

1099-R Statement for Recipients of Retirement Plans W2-G

Statement of Gambling Winnings

1065-K1 Partners Share of Income, Credits, Deductions, etc.

1041-K1 Beneficiary's Share of Income, Credits, Deductions, etc.

1120S-K1 Shareholder's Share of Undistributed Taxable Income, Credits, Deductions, etc.

I understand that income information obtained from these sources will be used to verify information that I provide in determining initial or continued eligibility for assisted housing programs and the level of benefits.

No action can be taken to terminate, deny, suspend, or reduce the assistance your household receives based on information obtained about you under this consent until the HUD Office, Office of Inspector General (OIG) or the PHA (whichever is applicable) and the O/A have independently verified: 1) the amount of the income, wages, or unemployment compensation involved, 2) whether you actually have (or had) access to such income, wages, or benefits for your own use, and 3) the period or periods when, or with respect to which you actually received such income, wages, or benefits. A photocopy of the signed consent may be used to request a third party to verify any information received under this consent (e.g., employer).

HUD, the O/A, or the PHA shall inform you, or a third party which you designate, of the findings made on the basis of information verified under this consent and shall give you an opportunity to contest such findings in accordance with Handbook 4350.3 Rev. 1.

If a member of the household who is required to sign the consent form is unable to sign the form on time due to extenuating circumstances, the O/A may document the file as to the reason for the delay and the specific plans to obtain the proper signature as soon as possible.

This consent form expires 15 months after signed.

Privacy Act Statement. The Department of Housing and Urban Development (HUD) is authorized to collect this information by the U.S. Housing Act of 1937, as amended (42 U.S.C. 1437 et. seq.); the Housing and Urban-Rural Recovery Act of 1983 (P.L. 98-181); the Housing and Community Development Technical Amendments of 1984 (P.L. 98-479); and by the Housing and Community Development Act of 1987 (42 U.S.C. 3543). The information is being collected by HUD to determine an applicant's eligibility, the recommended unit size, and the amount the tenant(s) must pay toward rent and utilities. HUD uses this information to assist in managing certain HUD properties, to protect the Government's financial interest, and to verify the accuracy of the information furnished. HUD, the owner or management agent (O/A), or a public housing agency (PHA) may conduct a computer match to verify the information you provide. This information may be released to appropriate Federal, State, and local agencies, when relevant, and to civil, criminal, or regulatory investigators and prosecutors. However, the information will not be otherwise disclosed or released outside of HUD, except as permitted or required by law. You must provide all of the information requested. Failure to provide any information may result in a delay or rejection of your eligibility approval.

Penalties for Misusing this Consent:
HUD, the O/A, and any PHA (or any employee of HUD, the O/A, or the PHA) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form.

Use of the information collected based on the form HUD 9887 is restricted to the purposes cited on the form HUD 9887. Any person who knowingly or willfully requests, obtains, or discloses any information under false pretenses concerning an applicant or tenant may be subject to a misdemeanor and fined not more than $5,000.

Any applicant or tenant affected by negligent disclosure of information may bring civil action for damages, and seek other relief, as may be appropriate, against the officer or employee of HUD, the Owner or the PHA responsible for the unauthorized disclosure or improper use.

Applicant's/Tenant's Consent to the Release of Information

Verification by Owners of Information
Supplied by Individuals Who Apply for Housing Assistance

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

Instructions to Owners

1. Give the documents listed below to the applicants/tenants to sign. Staple or clip them together in one package in the order listed.
   a. The HUD-9887/A Fact Sheet.
   b. Form HUD-9887.
   c. Form HUD-9887-A.
   d . Relevant verifications (HUD Handbook 4350.3 Rev. 1).
2. Verbally inform applicants and tenants that
   a. They may take these forms home with them to read or to discuss with a third party of their choice and to return to sign them on a date they have worked out with you, and
   b. If they have a disability that prevents them from reading and/ or signing any consent, that you, the Owner, are required to provide reasonable accommodations.
3. Owners are required to give each household a copy of the HUD9887/A Fact Sheet, form HUD-9887, and form HUD-9887-A after obtaining the required applicants/tenants signature(s). Also, owners must give the applicants/tenants a copy of the signed individual verification forms upon their request.

Instructions to Applicants and Tenants

This Form HUD-9887-A contains customer information and protections concerning the HUD-required verifications that Owners must perform.

1. Read this material which explains:
   • HUD's requirements concerning the release of information, and
   • Other customer protections.
2. Sign on the last page that:
   • you have read this form, or
   • the Owner or a third party of your choice has explained it to you, and
   • you consent to the release of information for the purposes and uses described.

Authority for Requiring Applicant's/Tenant's Consent to the Release of Information

Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, as amended by section 903 of the Housing and Community Development Act of 1992. This law is found at 42 U.S.C. 3544.

In part, this law requires you to sign a consent form authorizing the Owner to request current or previous employers to verify salary and wage information pertinent to your eligibility or level of benefits.

In addition, HUD regulations (24 CFR 5.659, Family Information and Verification) require as a condition of receiving housing assistance that you must sign a HUD-approved release and consent authorizing any depository or private source of income to furnish such information that is necessary in determining your eligibility or level of benefits. This includes information that you have provided which will affect the amount of rent you pay. The information includes income and assets, such as salary, welfare benefits, and interest earned on savings accounts. They also include certain adjustments to your income, such as the allowances for dependents and for households whose heads or spouses are elderly handicapped, or disabled; and allowances for child care expenses, medical expenses, and handicap assistance expenses.

Purpose of Requiring Consent to the Release of Information

In signing this consent form, you are authorizing the Owner of the housing project to which you are applying for assistance to request information from a third party about you. HUD requires the housing owner to verify all of the information you provide that affects your eligibility and level of benefits to ensure that you are eligible for assisted housing benefits and that these benefits are set at the correct levels. Upon the request of the HUD office or the PHA (as Contract Administrator), the housing Owner may provide HUD or the PHA with the information you have submitted and the information the Owner receives under this consent.

Uses of Information to be Obtained

The individual listed on the verification form may request and receive the information requested by the verification, subject to the limitations of this form. HUD is required to protect the income information it obtains in accordance with the Privacy Act of 1974, 5 U.S.C. 552a. The Owner and the PHA are also required to protect the income information they obtain in accordance with any applicable state privacy law. Should the Owner receive information from a third party that is inconsistent with the information you have provided, the Owner is required to notify you in writing identifying the information believed to be incorrect. If this should occur, you will have the opportunity to meet with the Owner to discuss any discrepancies.

Who Must Sign the Consent Form

Each member of your household who is at least 18 years of age, and each family head, spouse or co-head, regardless of age must sign the relevant consent forms at the initial certification, at each recertification and at each interim certification, if applicable. In addition, when new adult members join the household and when members of the household become 18 years of age they must also sign the relevant consent forms.

Persons who apply for or receive assistance under the following programs must sign the relevant consent forms:

Rental Assistance Program (RAP)
Rent Supplement
Section 8 Housing Assistance Payments Programs (administered by the Office of Housing)
Section 202
Sections 202 and 811 PRAC
Section 202/162 PAC
Section 221(d)(3) Below Market Interest Rate
Section 236
HOPE 2 Home Ownership of Multifamily Units

Failure to Sign the Consent Form

Failure to sign any required consent form may result in the denial of assistance or termination of assisted housing benefits. If an applicant is denied assistance for this reason, the O/A must follow the notification procedures in Handbook 4350.3 Rev. 1. If a tenant is denied assistance for this reason, the O/A must follow the procedures set out in the lease.

Conditions

No action can be taken to terminate, deny, suspend or reduce the assistance your household receives based on information obtained about you under this consent until the O/A has independently 1) verified the information you have provided with respect to your eligibility and level of benefits and 2) with respect to income (including both earned and unearned income), the O/A has verified whether you actually have (or had) access to such income for your own use, and verified the period or periods when, or with respect to which you actually received such income, wages, or benefits.

A photocopy of the signed consent may be used to request the information authorized by your signature on the individual consent forms. This would occur if the O/A does not have another individual verification consent with an original signature and the O/A is required to send out another request for verification (for example, the third party fails to respond). If this happens, the O/A may attach a photocopy of this consent to a photocopy of the individual verification form that you sign. To avoid the use of photocopies, the O/A and the individual may agree to sign more than one consent for each type of verification that is needed. The O/A shall inform you, or a third party which you designate, of the findings made on the basis of information verified under this consent and shall give you an opportunity to contest such findings in accordance with Handbook 4350.3 Rev. 1.

The O/A must provide you with information obtained under this consent in accordance with State privacy laws.

If a member of the household who is required to sign the consent forms is unable to sign the required forms on time, due to extenuating circumstances, the O/A may document the file as to the reason for the delay and the specific plans to obtain the proper signature as soon as possible.

Individual consents to the release of information expire 15 months after they are signed. The O/A may use these individual consent forms during the 120 days preceding the certification period. The O/A may also use these forms during the certification period, but only in cases where the O/A receives information indicating that the information you have provided may be incorrect. Other uses are prohibited.

The O/A may not make inquiries into information that is older than 12 months unless he/she has received inconsistent information and has reason to believe that the information that you have supplied is incorrect. If this occurs, the O/A may obtain information within the last 5 years when you have received assistance.

I have read and understand this information on the purposes and uses of information that is verified and consent to the release of information for these purposes and uses.

____

Name of Applicant or Tenant (Print)

____

Signature of Applicant or Tenant & Date

I have read and understand the purpose of this consent and its uses and I understand that misuse of this consent can lead to personal penalties to me.

____

Name of Project Owner or his/her representative

____

Title

____

Signature & Date
cc:Applicant/Tenant
Owner file

Penalties for Misusing this Consent:

HUD, the O/A, and any PHA (or any employee of HUD, the O/A, or the PHA) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form.

Use of the information collected based on the form HUD 9887-A is restricted to the purposes cited on the form HUD 9887-A. Any person who knowingly or willfully requests, obtains or discloses any information under false pretenses concerning an applicant or tenant may be subject to a misdemeanor and fined not more than $5,000.

Any applicant or tenant affected by negligent disclosure of information may bring civil action for damages, and seek other relief, as may be appropriate, against the officer or employee of HUD, the O/A or the PHA responsible for the unauthorized disclosure or improper use.

Exhibit 5-8: Tenant Rent Formulas

Section 8, RAP, PRAC, PAC

Total Tenant Payment (TTP) is the <u>greater</u> of:

- 30% monthly adjusted income;
- 10% monthly gross income;
- Welfare rent (welfare recipients in as-paid localities only); or
- $25 minimum rent (Section 8 only).

NOTE: An owner may admit an applicant to the <u>Section 8, RAP, and PAC</u> programs only if the TTP is less than the gross rent. This note does not apply to the PRAC program. In some instances under the PRAC program a tenant's TTP will exceed the PRAC operating rent (gross rent).

Rent Supplement

Total Tenant Payment (TTP) is the <u>greater</u> of:

- 30% of monthly adjusted income; or
- 30% of gross rent.

NOTE: For move-ins and initial certifications, the amount of Rent Supplement assistance may be no less than 10% of the gross rent. If the initial amount of Rent Supplement assistance would be less than 10% of the gross rent, the tenant is <u>not</u> eligible for Rent Supplement Assistance.

Section 236—No Utility Allowance

Tenant rent is the <u>greater</u> of:

- 30% of monthly adjusted income; or
- Section 236 basic rent.

Tenant rent is never more than market rent.

Section 236—With Utility Allowance

Tenant rent is the <u>greater</u> of:

- 30% of the monthly adjusted income less the utility allowance;
- 25% of monthly adjusted income; or
- Basic rent.

Tenant rent is never more than market rent.

Section 221(d)(3) BMIR (Below Market Interest Rate)

At move-in or initial certification, if the tenant's annual income is:

- At or below the BMIR income limit, the tenant is charged the BMIR rent.
- Above the BMIR income limit, the tenant may not be admitted to the project.

At recertification, if the tenant's annual income is:

- Less than or equal to 110% of the BMIR income limit, the tenant pays the BMIR rent.
- Greater than 110% of the BMIR income limit, the tenant pays 110% of the BMIR rent.

Section 24

HUD 4350.3 REV-1 Appendix 6: Verification and Consent

-Guidance and Sample Formats

Appendix 15

Verification of Consent – Guidance and Sample Formats

Appendix 6-A: Guidance for Development of Individual Consent Forms.

Appendix 6-B: Verification of Disability.

Appendix 6-C: Guidance About Types of Information to Request When Verifying Eligibility and Income.

APPENDIX 6: VERIFICATION AND CONSENT – GUIDANCE AND SAMPLE FORMATS

This appendix contains three components.

Appendix 6-A: Guidance for Development of Individual Consent Forms describes the required language that must be used when obtaining an applicant/tenant's consent to seek third-party verification of eligibility and income information, as well as a sample format.

Appendix 6-B: Verification of Disability – Instructions to Owners and Sample Formats provides additional instructions and sample formats for verifying an applicant/tenant's disability status for eligibility, or for receiving allowable income deductions based on disability.

Appendix 6-C: Guidance About Types of Information to Request When Verifying Eligibility and Income presents guidance about the types of information that are appropriate when an owner is seeking to verify an applicant/tenant's eligibility or income information.

Appendix 6-A: Guidance for Development of Individual Consent Forms

1. REQUIREMENTS FOR INDIVIDUAL CONSENT. See sample consent below. Individual verification consent forms must contain the following consumer protections:

   a. State in bold (or other emphasis) in a prominent place that the applicant/tenant does not have to sign the consent if it is not clear who will provide the information or who will receive the information.

      NOTE: This can be re-worded to suit the owner's individual style. This customer protection assures individuals that their consents will be used by authorized individuals only.

      "NOTE: This information may have to be conveyed in languages other than English for LEP persons in accordance with HUD guidance."

   b. Include the following statement on the penalties for misusing the consent:

      "Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD and any owner (or any employee of HUD or the owner) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willingly requests, obtains or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than $5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security number are contained in the Social Security Act at **208 (a) (6), (7) and (8).** Violation of these provisions are cited as violations of 42 U.S.C. Section **408 (a) (6), (7) and (8).**

   c. Request only that information necessary to determine the person's eligibility or level of assistance.

EXAMPLE – Information That Is <u>Not</u> Necessary to Determine Eligibility or Level of Assistance

In a verification for termination of employment, it would not be appropriate to ask “would you rehire this person?” But, it would be appropriate to ask “do you anticipate rehiring this person and, if yes, when?”

In a medical verification, it would not be appropriate to ask the purpose of an office visit or to ask for a diagnosis.

NOTE: Concerning verifications of disability (handicap), **Appendix 6-B** provides a specific explanation to the applicant/tenant on the limitations on any verification of disability (handicap).

d. Include the following certification statement to be signed by the applicant/tenant:

"I hereby authorize the release of the requested information. Information obtained under this consent is limited to information that is no older than 12 months. There are circumstances that would require the owner to verify information that is up to 5 years old, which would be authorized by me on a separate consent attached to a copy of this consent."

e. Provide a space for the title, agency/organization, and signature of the third party who is supplying the information. This information will be provided by the third party. For example:

____________________________ NAME AND TITLE OF PERSON SUPPLYING THE INFORMATION (PRINT)	________________________ AGENCY/ORGANIZATION
____________________________ SIGNATURE	________________________ DATE

2. <u>SAMPLE VERIFICATION CONSENT FORMAT</u>

The format on the next page shows a sample of how consent for verification may be requested.

SAMPLE VERIFICATION CONSENT

DATE:

TO: (Name and address of third party who is being requested to verify this information)

FROM: (Name of individual requesting the information, title, name of housing project, address)

RETURN THIS VERIFICATION TO THE PERSON LISTED ABOVE (or other instruction to the third party to ensure that the verification is returned to the right person. This is important because owners have a responsibility to treat this information confidentially.)

SUBJECT: Verification of Information Supplied by an Applicant for Housing Assistance

NAME ____

ADDRESS ____

This person has applied for housing assistance under a program of the U.S. Department of Housing and Urban Development (HUD). HUD requires the housing owner to verify all information that is used in determining this person's eligibility or level of benefits.

We ask your cooperation in providing the following information and returning it to the person listed at the top of the page. Your prompt return of this information will help to ensure timely processing of the application for assistance. Enclosed is a self-addressed, stamped envelope for this purpose. The applicant/tenant has consented to this release of information as shown below.

==

INFORMATION BEING REQUESTED

(Owners: Fill in here the information requested. Consult **Appendix 6-C** of this handbook for examples of relevant information that owners may request from third parties in verifying several types of income and information and household characteristics. This list of information is not meant to be all-inclusive. Owners may add other information as long as any additional information is relevant to determining the individual's eligibility for assistance or level of benefits. This instruction does not have to appear on an individual consent.)

______________________________ ______________________________

Name and Title of Person Supplying the Information | Firm/Organization

______________________________ ____________________

Signature | Date

==

==

RELEASE: I hereby authorize the release of the requested information. Information obtained under this consent is limited to information that is no older than 12 months. There are circumstances that would require the owner to verify information that is up to 5 years old, which would be authorized by me on a separate consent attached to a copy of this consent.

________________________________ ___________________

Signature Date

Note to Applicant/Tenant: You do not have to sign this form if either the requesting organization or the organization supplying the information is left blank.

==

PENALTIES FOR MISUSING THIS CONSENT:

Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD and any owner (or any employee of HUD or the owner) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willingly requests, obtains, or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than $5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security number are contained in the Social Security Act at **208 (a) (6), (7) and (8).** Violations of these provisions are cited as violations of 42 USC **408 (a) (6), (7) and (8).**

EQUAL HOUSING OPPORTUNITY

We Do Business in Accordance With the Federal Fair Housing Law

(The Fair Housing Amendments Act of 1988)

Appendix 6-B: Verification of Disability – Instructions to Owners and Sample Formats

NOTE: These verification instructions and sample formats are not to be used when assigning accessible units.

1. EXPLANATION TO THE APPLICANT

(**Instruction to Owners:** This explanation is required. It may be in the form of a cover letter or may appear directly on the verification consent. Owners may edit the following explanation as long as the same message is conveyed. This instruction does not have to appear on the verification consent.)

HUD permits owners to verify that you have a disability only if:

1) Your eligibility for admission is dependent on your being a person with a disability; or

2) You claim eligibility for deductions that are given to a person with a disability.

The definitions of disability vary depending on the project you are applying for or living in. The owner determines the definition(s) to use by consulting with HUD Handbook 4350.3 REV-1. The third party from whom this verification is being requested has knowledge of whether your disability meets the applicable definition(s) of disability (or person with a disability). An owner may request from a third party only the minimum information necessary to determine whether you meet the applicable definition of disability (or person with a disability). Any other request for information about you is not relevant and may not be asked (e.g., diagnosis, treatment plan).

"NOTE: This information may have to be conveyed in languages other than English for LEP persons in accordance with HUD guidance."

2. SAMPLE FORMATS

The two sample formats on the next page can be used to verify an applicant/tenant's disability status for purposes of eligibility for occupancy in properties/units where occupancy is restricted to disabled families or persons with disabilities, or for income deductions based on disability when determining an applicant/tenant's adjusted income.

Please note that if Item 4, on either sample format, is checked "YES", the applicant/tenant does not meet HUD's definition of disability.

HUD- 90102 - SAMPLE VERIFICATION OF DISABILITY WHEN ELIGIBILITY FOR ADMISSION OR QUALIFICATION FOR CERTAIN INCOME DEDUCTIONS IS BASED ON DISABILITY

FOR USE WITH **SECTION 202/8**, **SECTION 202 PAC**, **Section 202 PRAC,** AND **SECTION 811 PRAC**

http://www.hud.gov/offices/adm/hudclips/forms/files/90102.pdf

HUD -90103 - SAMPLE VERIFICATION OF DISABILITY WHEN ELIGIBILITY FOR ADMISSION OR QUALIFICATION FOR CERTAIN INCOME DEDUCTIONS IS BASED ON DISABILITY

FOR USE WITH ALL PROGRAMS **EXCEPT** SECTION 202/8, SECTION 202 PAC, SECTION 202 PRAC, AND SECTION 811 PRAC

http://www.hud.gov/offices/adm/hudclips/forms/files/90103.pdf

Appendix 6-C: Guidance About Types of Information to Request When Verifying Eligibility and Income

Paragraph 1.c of **Appendix 6-A** states that owners may request only that information necessary to determine the person's eligibility or level of assistance. The first paragraph under most of the types of income listed below provides information that would meet this requirement. For some types of income listed below, appropriate requests for information are combined with the types of verification that are permitted. In deciding whether to add information to a particular verification request that is not listed below, the owner must ask: Is this information necessary to determine the individual's eligibility for assistance or level of assistance? If the answer is "yes", then the owner may verify that information. If the answer is "no", then the owner may not verify that information

"NOTE: This information may have to be conveyed in languages other than English for LEP persons in accordance with HUD guidance."

A. **Employment Income**

1. <u>Relevant information to verify with third party</u>:

   a. Nonmilitary employment

      (1) Date first employed,

      (2) Base pay rate (Gross) (check one)

      Per hour $______ or per week $______

      OR per month $_____

      Date present rate became effective ____________

      Expected average hours to be worked during next 12 calendar months at base pay rate ______________

      Per week __________ or per month________,

      (3) Overtime pay rate

      Per hour $____________

      Expected average number of hours to be worked per week during next 12 calendar months ____________________,

      (4) Other compensation not included above (specify for commissions, bonuses, tips, etc.)

      For ___________________ $__________ per _________,

(5) Total anticipated base pay earnings for the next 12 calendar months $____________________,

Total anticipated overtime earnings for the next 12 calendar months $____________________,

(6) Medical insurance premium deducted (if any). (This would be relevant only for families eligible for the medical deduction.),

____

(7) Has employment been terminated? __________________

If yes, is individual eligible for unemployment benefits?

____

b. Military employment

(1) Years ____ and months _____ of services for pay purposes.

Number of dependents claimed____________,

(2) Monthly income from the following sources:

Base pay and longevity pay	$___________
Proficiency pay	$___________
Sea and foreign duty pay	$___________
Hazardous duty pay	$___________
Imminent danger pay	$___________
Subsistence allowance	$___________
Quarters allowance (Include only amount contributed by government)	$___________
Other (explain)	$___________

TOTAL AMOUNT RECEIVED MONTHLY $___________.

2. Acceptable forms of verification:

a. Employment verification form completed by the employer verifying frequency of pay, effective date of the last pay increase, and probability and effective date of any increase during the next 12 months;

b. Check stubs or earning statements showing employee's gross pay per pay period and frequency of pay;

c. W-2 forms if applicant has had the same job for at least two years and pay increases can be accurately projected; and

d. Notarized statements, affidavits or income tax returns signed by the applicant describing self-employment and amount of income or income from tips and other gratuities.

B. **Date Employment Terminated**

1) Relevant information to verify with third party:

a. Date of hire;

b. Date of termination;

c. Last day actually worked;

d. Do you anticipate rehiring this employee? If yes, when?

e. Will the employee receive additional paychecks for worker's compensation?

If yes, provide the name and address of the company through which this can be verified.

f. Is employee eligible for unemployment benefits?

g. Total severance pay anticipated for the next 12 months.

2. Acceptable forms of verification:

a. Termination of employment verification;

b. Letter from employer stating date of termination; and

c. Letter from an agency providing unemployment compensation stating that the individual's employment terminated and that unemployment benefits will begin.

C. **Social Security and Supplementary Security Income (SSI)**

1. Relevant information to verify *Social Security and SSI income.* The following information is generally available from *EIV or the* award or benefit letter *or the Proof of Income Letter*.

a. Name of original annuitant;

b. Pension claim number or social security number of person receiving the pension claim;

c. Current monthly gross amount of pension or annuity;

d. Deductions from gross amount for medical insurance premiums;

e. Date benefits began;

f. Effective date of current amount;

g. For social security, ask: Has the monthly payment been reduced for overpayment of previous benefits? If so, by how much?

2) Acceptable forms of verification:

a. Initial occupancy. At initial occupancy, acceptable forms of verification are:

- Benefit verification form completed by agency providing the benefits;

- Award or benefit notification letters prepared and signed by the authorizing agency. (Since checks or bank deposit slips show only net amounts remaining after deducting supplemental security income or Medicare, they may be used only when award letters can't be obtained.) If the applicant does not have his or her award letter, the applicant may obtain it by calling 800-772-1213.

b. Annual recertification. At annual recertification, the owner *must* verify benefit information by obtaining a Benefit History Report from *EIV*. If the owner cannot obtain this report from *EIV*, the owner uses the verification methods for initial occupancy.

NOTE: Failure to obtain a Benefit History Report from *EIV* is not an indication that the tenant does not receive benefits. Due to data sharing limitations between existing data systems, it is possible for a tenant to receive benefits on which the owner cannot obtain a Benefit History Report.

D. Pensions and Disability Income Other Than from the Social Security Administration

This paragraph is not suggesting that owners group verifications of these different sources of income into one verification. Owners may have to adapt the questions, depending on the source of income being verified. This paragraph provides suggestions on the types of questions that are appropriate to ask a third party.

1. Relevant information to verify with third party:

a. Name of original annuitant;

b. Pension claim number or social security number of person receiving the pension claim;

c. Current monthly gross amount of pension or annuity;

d. Deductions from gross amount for medical insurance premiums;

e. Date benefits began;

f. Effective date of current amount;

g. For annuities, ask: Did the individual invest in an annuity? If yes, what is the amount invested? What is the amount received to date from the annuity? Does the individual receive regular payments? When are they received (monthly, annually)?

h. For pensions and annuities, ask: Is the individual reimbursed for medical costs?

2) Acceptable forms of verification:

a. Benefit verification form completed by the company/agency providing the benefits;

b. Award or benefit notification letters prepared and signed by the authorizing company/agency. (Checks or bank deposit slips show only net amounts remaining after deductions.)

E. **Unemployment Compensation**

1. Relevant information to verify with third party:

a. Gross weekly payment;

b. Date of initial payment;

c. Duration of benefits: ______ weeks;

d. Is the claimant eligible for further benefits?

e. If yes, how many weeks?

f. If no, what is the date the benefits are terminated?

2. Acceptable forms of verification:

a. Verification form completed by the unemployment compensation agency; and

b. Records from unemployment office stating payment dates and amounts.

F. **Public Benefits**

1. Relevant information to verify with third party:

a. Number of members in the family;

b. Names of the children for whom benefits are received and their social security numbers;

c. Date of initial assistance;

d. Is recipient covered by Medicaid? If yes, what is the Medicare spend down amount?

e. Does the recipient meet his/her spend down amount each period?

f. What is the rate per month under the following grant:

(1) Temporary Assistance to Needy Families (TANF),

(2) Supplemental Social Security,

(3) Other assistance: Type ___________________, and

g. The following question applies only to "as-paid" States only: Amount specifically designated for shelter and utilities (This is the maximum allowance for rent and utilities);

h. The grant is increased by the following amounts (Specify purpose):

(1) Employment income $ ______________

(2) Child care allowance $ ______________

(3) Transportation $ ______________

(4) Other _____________ $ ______________;

i. The grant is reduced by the following amounts:

(1) Alimony $_______________

(2) Child support $_______________

(3) Other (specify) $____________________________;

j. Is there anything else that will influence the amount of the grant? If yes, specify purpose and amount. $_______________

k. Has the monthly payment been reduced for overpayment of previous benefits? If so, by how much? $_______________

l. TOTAL MONTHLY GRANT $ _____________.

2. Acceptable forms of verification:

a. All welfare programs. Welfare agency's written statements as to type and amount of assistance family is now receiving and any changes in assistance expected during the next 12 months;

b. Additional information for "as-paid" programs. Welfare agency's written schedule or statement that describes how the "as-paid" system works, the maximum amount a family may receive for shelter and utilities and, if applicable, any factors used to ratably reduce the client's grant.

G. **Alimony or Child Support Payments**

1. Relevant information to verify with third party:

a. Amount of alimony or child support being provided to the family;

b. Will such amounts be terminated within the next 12 months. If so, when?

2. Acceptable forms of verification:

a. Copy of a separation or settlement agreement or divorce decree stating amount and type of support and payment schedules;

b. A letter from the person paying the support;

c. Copy of latest check. Owner must record the date, amount, and number of check; and

d. Applicant's notarized statement or affidavit of amount received or that support payments are not being received and the likelihood of support payments being received in the future.

H. **Net Income from a Business**

The following documents show income for the prior years. Owners must consult with tenants and use this data to estimate income for the next 12 months.

1. IRS Tax Return, Form 1040, including any:

a. Schedule C (Small Business);

b. Schedule E (Rental Property Income); and

c. Schedule F (Farm Income).

2. An accountant's calculation of depreciation expense, computed using straight-line depreciation rules. (Required when accelerated depreciation was used on the tax return or financial statement.)

3. Audited or unaudited financial statement(s) of the business.

4. Loan Application listing income derived from the business during the previous 12 months.

5. Applicant's notarized statement or affidavit as to net income realized from the business during the previous years.

I. **Recurring Gifts**

<u>Acceptable forms of verification</u>:

1. Notarized statement or affidavit signed by the person providing the assistance. It must give the purpose, dates and value of gifts.

2. Applicant's notarized statement or affidavit that provides the purpose, dates and value of gifts.

J. **Family Assets Now Held**

1) <u>Relevant information to verify with third party:</u>

For non-liquid assets, collect enough information to determine the current cash value—the net amount the family would receive if the asset were converted to cash. (See paragraph 5.7.)

a. Type of account;

b. Current balance or, for checking accounts, the average balance for the last six months;

c. Date account opened;

d. Date account closed;

e. Is this an interest bearing account? If so, what is the interest rate?

f. For trusts:

(1) What is the value of the trust fund?

(2) What is the anticipated amount of income to be earned by the trust over the next 12 months?

(3) What is the amount anticipated to be distributed over the next 12 months?

g, For property, what is the equity value?

2) <u>Acceptable forms of verification:</u>

a. Verification forms, letters, or documents from a financial institution, broker, etc.;

NOTE: When financial institutions charge a fee to the applicant or tenant for providing verifications, the forms of verification in paragraph b) below would be the preferred method.

b. Account statements, passbooks, broker's quarterly statements showing value of stocks or bonds, etc., and the earnings credited to the applicant’s account statements, or financial statements completed by a financial institution or broker;

NOTE: The owner must adjust the information provided by the financial institution to project earnings expected for the next 12 months.

c. Quotes from a stockbroker or realty agent as to net amount family would receive if they liquidated securities or real estate;

d. Copy of IRS Form 1099 prepared by the financial institution showing the amount of income provided by the asset;

e. Real estate tax statements if tax authority uses approximately market value;

f. Copies of closing documents showing the selling price, the distribution of the sales proceeds and the net amount to the individual;

g. Appraisals of personal property held as an investment; and

h. Applicant's notarized statements or signed affidavits describing assets or verifying cash held at the applicant's home or in safe deposit boxes.

K. **Assets Disposed of for Less than Fair Market Value During Two Years Preceding Effective Date of Certification or Recertification**

(See paragraph 5.7 G.6.) Suggested information to obtain and acceptable forms of verification are included below.

1. For all certifications and recertifications except those prepared for BMIR tenants, certification as to whether any member *of the family* has disposed of assets for less than fair market value during the two years preceding effective date of the certification or recertification.

2. If the family certifies that they did dispose of assets for less than fair market value a certification that shows:

    a. All assets disposed of for less than fair market value;

    b. The date they disposed of the assets;

c. The amount the family received; and

d. The market value *of the asset(s)* at the time of disposition.

L. Income from Sale of Real Property Pursuant to a Purchase Money Mortgage, Installment Sales Contract, or Similar Arrangement

The following provide suggested information to verify with a third party and acceptable forms of verification:

1. A letter from an accountant, attorney, real estate broker, the buyer, or a financial institution stating interest due for next 12 months. (A copy of the check paid by the buyer to the applicant is not sufficient since appropriate breakdowns of interest and principal are not included.)

2. Amortization schedule showing interest for the 12 months following the effective date of the certification or recertification.

M. Rental Income from Property Owned by Applicant/Tenant

The following provide suggested information to verify with a third party and acceptable forms of verification:

1. IRS Form 1040 with Schedule E (Rental Income).

2. Copies of latest rent checks, leases, or utility bills.

3. Documentation of applicant's/tenant's income and expenses in renting the property (tax statements, insurance premiums, receipts for reasonable maintenance and utilities, bank statements or amortization schedules showing monthly interest expense).

4. Lessee's written statement identifying monthly payments due the applicant and applicant's affidavit as to net income realized.

N. Full-Time Student Status

The following provide suggested information to verify with a third party and acceptable forms of verification:

1. Written verification from the registrar's office or appropriate school official.

2. School records indicating enrollment for sufficient number of credits to be considered a full-time student by the school.

O. Child Care Expenses

The following provide suggested information to verify with a third party and acceptable forms of verification:

1. Written verification from the person who receives the payments.

2. Verifications must specify the hours and days during which the care is provided, the names and ages of the children cared for, and the frequency and amount of compensation received. (Owners should recognize that child care costs may be higher during summer and holiday recesses.)

   NOTE: Owners may want to ask the verifying party to indicate children age 12 or younger.

3. Applicant's certification as to whether any of those payments have been or will be reimbursed by outside sources.

   NOTE: Owners may wish to use separate verification consents for child care and disability (handicap) care.

P. **Medical Expenses**

The following provide suggested information to verify with a third party and acceptable forms of verification:

1. Written verification by a doctor, hospital or clinic personnel, dentist, pharmacist, etc., of:

   a. The estimated medical costs to be incurred by the applicant and of regular payments due on medical bills;

   b. The extent to which those expenses will be reimbursed by insurance or a government agency; and

   c. Whether the provider accepts Medicare assignment.

2. The insurance company's or employer's written confirmation of health insurance premiums to be paid by the applicant.

3. Social Security Administration's written confirmation of Medicare premiums to be paid by the applicant over the next 12 months.

4. For attendant care:

   a. Doctor's certification that the assistance of an attendant is medically necessary;

   b. Attendant's written confirmation of hours of care provided and amount and frequency of payments received from the family (or copies of cancelled checks the family used to make those payments); and

   c. Applicant's certification as to whether any of those payments have been or will be reimbursed by outside sources.

5. Receipts, cancelled checks, or pay stubs that indicate health insurance premium costs, etc., that verify medical and insurance expenses likely to be incurred in the next 12 months.

6. Copies of payment agreements with medical facilities or cancelled checks that verify payments made on outstanding medical bills that will continue over all or part of the next 12 months.

7. Receipts or other record of medical expenses incurred during the past 12 months that can be used to anticipate future medical expenses. Owners may use this approach for "general medical expenses" such as non-prescription drugs and regular visits to doctors or dentists, but not for one-time, nonrecurring expenses from the previous year.

Q. **Need for Larger Unit Because of Physical or Mental Disability (Handicap)**

The owner may request additional information to verify the request for a larger unit as a reasonable accommodation. The owner may request reliable disability-related information to verify that the requestor meets the definition of disability, that the accommodation is needed, and that the need is related to the disability. Such information may be, but need not be, provided by a health care professional. It could be provided by a non-medical service coordinator or service provider, a peer support group, or other reliable third party who is in the position to know about the requestor's disability.

R. **Disabled (Handicap) Assistance Expense**

1. Attendant care:

   a. Attendant's written certification as to amount received from the applicant/tenant, frequency of receipt, hours of care provided, and/or copies of cancelled checks applicant/tenant used to make those payments; and

   b. Family's written certification as to whether they receive reimbursement for any of the attendant care expenses and the amount of any reimbursement received.

2) Auxiliary apparatus: Receipts for purchases of, or evidence of monthly payments for auxiliary apparatus.

3) In all cases:

   a. As routine practice, owners should accept the individual's written statement that an auxiliary apparatus or attendant care is necessary for employment. If the owner determines that verification is necessary in a particular case, the owner should obtain written certification from a *reliable source* that the family member who is a person with a disability (handicap) requires the services of an attendant or the use of auxiliary apparatus to permit this family member to be employed or to enable another family member to be employed. *See* Chapter 2 regarding individuals' requests for reasonable accommodations.

b. Family's written certification as to whether they receive reimbursement for any of the auxiliary apparatus expenses and the amount of any reimbursement received.

S. **Family Type and Membership in Family**

1. For elderly household where the head, co-head, or spouse is 62 years of age or older verification of age may be provided by:

   a. Copy of a birth certificate, baptismal certificate, census record, official record of birth or other authoritative document; or

   b. Receipt of supplemental security income old age benefits or social security retirement benefits.

2. For disability (because the individual's eligibility for admission is dependent on his/her being a person with a disability [handicap] or because the individual claims eligibility for income deductions that are given to persons with disabilities [handicaps]) verification of disability (handicap) may be provided by:

   a. Receipt of supplemental social security disability or social security disability benefits, which would provide verification that an individual met the definition of "person with disabilities" as shown in Definition E of Figure 3-6 in Chapter 3 of this handbook; or

   b. *Verification* by a *reliable source* that the individual meets the relevant definition of a "person with a disability (handicap)" for the particular project. *See Chapter 2 regarding individuals' requests for reasonable accommodations.*

   IMPORTANT: See **Appendix 6-B** for the limitations on information that may be verified. **Appendix 6-B** also requires the owner to provide an explanation to the applicant/tenant describing these limitations. In particular, the consent should request the third party to identify any of the relevant definitions that apply to the individual. Any other request for information about the individual is not relevant and may not be asked (e.g., diagnosis, treatment plan).

3. For family members younger than age 18, verification of age may be provided by birth certificate, adoption papers, and/or custody agreements.

T. **Statutory and HUD Regulatory Preferences – Displacement by Government Action or Presidentially Declared Disaster**

(Applicable only to 221(d)(3) BMIR and Section 236 units):

1. <u>Relevant information to verify with third party:</u>

Date of displacement, or, if displacement has not yet occurred, the anticipated date of displacement; The applicant will be displaced if the applicant has vacated or will have to vacate his/her housing unit as a result of one or both of the following actions:

a. A presidentially declared disaster, such as a hurricane, flood or fire, that has made the unit uninhabitable; or

b. Code enforcement, public improvement, or development program activities by a U.S. agency or a State or local government body or agency.

2) Acceptable forms of verification:

a. Displacement by disaster. Verification from a unit or agency of government that an applicant has been or will be displaced as a result of a presidentially declared disaster that results in the uninhabilitability of an applicant's unit.

b. Displacement by government action. Verification from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by an State or local government body or agency in connection with code enforcement or a public improvement or development program.

Section 25

IRS Memo 200137028 Clarification of Reasonable Attempts

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

June 14, 2001

Number: **200137028**
Release Date: 9/14/2001

CC:PSI:5:DSelig
WTA-N-115199-01
Index No.: 42.07-00

MEMORANDUM FOR William J. Healey
Team Manager, Examination Specialization and Processes
S:C:CP:RC:ES

FROM: Harold Burghart
Assistant to the Branch Chief, Branch 5
CC:PSI:5

SUBJECT: Low Income Housing Credit Program: Clarification of "Reasonable Attempts" for Purposes of § 1.42-5(c)(ix)

This Chief Counsel Advice responds to your memorandum dated March 13, 2001. In accordance with § 6110(k)(3) of the Internal Revenue Code, this Chief Counsel Advice should not be cited as precedent.

In your memorandum, you ask if the vacant unit rule in § 1.42-5(c)(ix) of the Income Tax Regulations can be applied on a building-by-building basis, rather than on a project basis. Also, you inquire about the definition of "reasonable attempts" made to rent a vacant low-income unit. Lastly, you ask whether the qualification under the available unit rule in § 42(g)(2)(D)(ii) that a unit is not available for rent when subject to a reservation that is binding under local law can be applied to the vacant unit rule.

The available unit rule under § 42(g)(2)(D)(i) provides that, except as provided in § 42(g)(2)(D)(ii), 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 § 42(g)(2)(D)(ii), if the income of the occupants of the unit increases above 140 percent of the applicable income limitation, the unit will no longer be treated as a low-income unit if any residential unit in the building (of a size comparable to, or smaller than, the unit) is occupied by a new resident whose income exceeds the applicable income limitation.

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).

The vacant unit rule in § 1.42-5(c)(1)(ix) provides that the owner of a low-income housing project must be required to certify that if a low-income unit in the project became vacant during the year, that 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.

Under the vacant unit rule of § 1.42-5(c)(ix), vacant units formerly occupied by low-income individuals may continue to be treated as occupied by a qualified low-income individual for purposes of the set-aside requirement (as well as for determining qualified basis) provided reasonable attempts are made to rent the unit and no other units of comparable or smaller size in the project are rented to nonqualifying individuals. As stated in the legislative history, the vacant unit rule is applied on a project-wide basis, rather than on a building-by-building basis. H.R. Conf. Rep. No. 99-41, 99th. Cong. 2d Sess. II-94 (1986). Therefore, we do not apply the vacant unit rule on a building-by-building basis. Note, however, that § 42(g)(2)D(ii) specifically requires that the available unit rule be applied on a building-by-building basis.

What constitutes a reasonable attempt to rent a vacant unit is factual, and may differ from project to project depending on the size, location, and dollar value of the particular project. Also, the different advertising media and technologies accessible (geographically and financially) to projects would affect what is considered reasonable. Therefore, we do not define what is a reasonable attempt to rent a vacant unit.

The fact that a unit is subject to a reservation under local law would indicate that reasonable attempts have been made to rent the unit. Although not specifically provided, it appears appropriate to apply this reservation standard for purposes of the available unit rule to determine when a unit is considered rented under the vacant unit rule.

If you have any questions regarding this memorandum or further questions relating to these issues, please call Dave Selig at (202) 622-3040.

Section 26

IRS Section 42-5 Regulations

whole or in part with funds from an Affordable Housing Program established under section 721 of FIRREA is not, solely by reason of the Affordable Housing Program funds, a below market Federal loan as defined in section 42(i)(2)(D). Thus, any building with respect to which the proceeds of the loan are used during the tax year is not, solely by reason of the Affordable Housing Program funds, treated as a federally subsidized building for that tax year and subsequent tax years for purposes of determining the applicable percentage for the building under section 42(b).

(b) *Effective date.* The rules set forth in paragraph (a) of this section are effective for loans made after August 8, 1989.

[56 FR 48734, Sept. 26, 1991]

§ 1.42–4 Application of not-for-profit rules of section 183 to low-income housing credit activities.

(a) *Inapplicability to section 42.* In the case of a qualified low-income building with respect to which the low-income housing credit under section 42 is allowable, section 183 does not apply to disallow losses, deductions, or credits attributable to the ownership and operation of the building.

(b) *Limitation.* Notwithstanding paragraph (a) of this section, losses, deductions, or credits attributable to the ownership and operation of a qualified low-income building with respect to which the low-income housing credit under section 42 is allowable may be limited or disallowed under other provisions of the Code or principles of tax law. See, e.g., sections 38(c), 163(d), 465, 469; *Knetsch* v. *United States,* 364 U.S. 361 (1960), 1961–1 C.B. 34 (''sham'' or ''economic substance'' analysis); and *Frank Lyon Co.* v. *Commissioner,* 435 U.S. 561 (1978), 1978–1 C.B. 46 (''ownership'' analysis).

(c) *Effective date.* The rules set forth in paragraphs (a) and (b) of this section are effective with respect to buildings placed in service after December 31, 1986.

[T.D. 8420, 57 FR 24729, June 11, 1992]

§ 1.42–5 Monitoring compliance with low-income housing credit requirements.

(a) *Compliance monitoring requirement*—(1) *In general.* Under section 42(m)(1)(B)(iii), an allocation plan is not qualified unless it contains a procedure that the State or local housing credit agency (''Agency'') (or an agent of, or other private contractor hired by, the Agency) will follow in monitoring for noncompliance with the provisions of section 42 and in notifying the Internal Revenue Service of any noncompliance of which the Agency becomes aware. These regulations only address compliance monitoring procedures required of Agencies. The regulations do not address forms and other records that may be required by the Service on examination or audit. For example, if a building is sold or otherwise transferred by the owner, the transferee should obtain from the transferor information related to the first year of the credit period so that the transferee can substantiate credits claimed.

(2) *Requirements for a monitoring procedure*—(i) *In general.* A procedure for monitoring for noncompliance under section 42(m)(1)(B)(iii) must include—

(A) The recordkeeping and record retention provisions of paragraph (b) of this section;

(B) The certification and review provisions of paragraph (c) of this section;

(C) The inspection provision of paragraph (d) of this section; and

(D) The notification-of-noncompliance provisions of paragraph (e) of this section.

(ii) *Order and form.* A monitoring procedure will meet the requirements of section 42 (m)(1)(B)(iii) if it contains the substance of these provisions. The particular order and form of the provisions in the allocation plan is not material. A monitoring procedure may contain additional provisions or requirements.

(b) *Recordkeeping and record retention provisions*—(1) *Recordkeeping provision.* Under the recordkeeping provision, the owner of a low-income housing project must be required to keep records for each qualified low-income building in the project that show for each year in the compliance period—

(i) The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);

(ii) The percentage of residential rental units in the building that are low-income units;

(iii) The rent charged on each residential rental unit in the building (including any utility allowances);

(iv) The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under section 42(g)(2) (as in effect before the amendments made by the Omnibus Budget Reconciliation Act of 1989);

(v) The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented;

(vi) The annual income certification of each low-income tenant per unit. For an exception to this requirement, see section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building);

(vii) 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). For an exception to this requirement, see section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building). Tenant income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937 (''Section 8''), not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of this paragraph (b)(1)(vii) is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under section 42 (g);

(viii) The eligible basis and qualified basis of the building at the end of the first year of the credit period; and

(ix) The character and use of the nonresidential portion of the building included in the building's eligible basis under section 42 (d) (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).

(2) *Record retention provision.* Under the record retention provision, the owner of a low-income housing project must be required to retain the records described in paragraph (b)(1) of this section 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 of the building.

(3) *Inspection record retention provision.* Under the inspection record retention provision, the owner of a low-income housing project 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 paragraph (c)(1)(vi) of this section) for the Agency's inspection under paragraph (d) of this section. Retention of the original violation reports or notices is not required once the Agency reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

(c) *Certification and review provisions*—(1) *Certification.* Under the certification provision, the owner of a low-income housing project must be required to certify at least annually to the Agency that, for the preceding 12-month period—

(i) The project met the requirements of:

(A) The 20–50 test under section 42 (g)(1)(A), the 40–60 test under section 42 (g)(1)(B), or the 25–60 test under sections 42 (g)(4) and 142 (d)(6) for New York City, whichever minimum set-aside test was applicable to the project; and

(B) If applicable to the project, the 15–40 test under sections 42(g)(4) and 142 (d)(4)(B) for ''deep rent skewed'' projects;

(ii) There was no change in the applicable fraction (as defined in section 42(c)(1)(B)) of any building in the project, or that there was a change, and a description of the change;

(iii) The owner has received an annual income certification from each low-income tenant, and documentation to support that certification; or, in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority described in paragraph (b)(1)(vii) of this section. For an exception to this requirement, see section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building);

(iv) Each low-income unit in the project was rent-restricted under section 42(g)(2);

(v) All units in the project were for use by the general public (as defined in §1.42–9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601–3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court;

(vi) The buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the annual certification submitted to the Agency under paragraph (c)(1) of this section. In addition, the owner must state whether the violation has been corrected;

(vii) There was no change in the eligible basis (as defined in section 42(d)) of any building in the project, or if there was a change, the nature of the change (e.g., a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);

(viii) All tenant facilities included in the eligible basis under section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

(ix) If a low-income unit in the project became vacant during the year, that 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;

(x) If the income of tenants of a low-income unit in the building increased above the limit allowed in section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the building was or will be rented to tenants having a qualifying income;

(xi) An extended low-income housing commitment as described in section 42(h)(6) was in effect (for buildings subject to section 7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989, 103 Stat. 2106, 2308–2311), including the requirement under section 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 section 13142(b)(4) of the Omnibus Budget Reconciliation Act of 1993, 107 Stat. 312, 438–439); and

(xii) All low-income units in the project were used on a nontransient basis (except for transitional housing for the homeless provided under section 42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under section 42(i)(3)(B)(iv)).

(2) *Review.* The review provision must—

(i) Require that the Agency review the certifications submitted under paragraph (c)(1) of this section for compliance with the requirements of section 42;

(ii) Require that with respect to each low-income housing project—

(A) The Agency must conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service and, for at least 20 percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units; and

(B) At least once every 3 years, the Agency must conduct on-site inspections of all buildings in the project and, for at least 20 percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units; and

(iii) Require that the Agency randomly select which low-income units and tenant records are to be inspected and reviewed by the Agency. The review of tenant records may be undertaken wherever the owner maintains or stores the records (either on-site or off-site). The units and tenant records to be inspected and reviewed must be chosen in a manner that will not give owners of low-income housing projects advance notice that a unit and tenant records for a particular year will or will not be inspected and reviewed. However, an Agency may give an owner reasonable notice that an inspection of the building and low-income units or tenant record review will occur so that the owner may notify tenants of the inspection or assemble tenant records for review (for example, 30 days notice of inspection or review).

(3) *Frequency and form of certification.* A monitoring procedure must require that the certifications and reviews of paragraph (c)(1) and (2) of this section be made at least annually covering each year of the 15-year compliance period under section 42(i)(1). The certifications must be made under penalty of perjury. A monitoring procedure may require certifications and reviews more frequently than on a 12-month basis, provided that all months within each 12-month period are subject to certification.

(4) *Exception for certain buildings*—(i) *In general.* The review requirements under paragraph (c)(2)(ii) of this section may provide that owners are not required to submit, and the Agency is not required to review, the tenant income certifications, supporting documentation, and rent records for buildings financed by the Rural Housing Service (RHS), formerly known as Farmers Home Administration, under the section 515 program, or buildings of which 50 percent or more of the aggregate basis (taking into account the building and the land) is financed with the proceeds of obligations the interest on which is exempt from tax under section 103 (tax-exempt bonds). In order for a monitoring procedure to except these buildings, the Agency must meet the requirements of paragraph (c)(4)(ii) of this section.

(ii) *Agreement and review.* The Agency must enter into an agreement with the RHS or tax-exempt bond issuer. Under the agreement, the RHS or tax-exempt bond issuer must agree to provide information concerning the income and rent of the tenants in the building to the Agency. The Agency may assume the accuracy of the information provided by RHS or the tax-exempt bond issuer without verification. The Agency must review the information and determine that the income limitation and rent restriction of section 42 (g)(1) and (2) are met. However, if the information provided by the RHS or tax-exempt bond issuer is not sufficient for the Agency to make this determination, the Agency must request the necessary additional income or rent information from the owner of the buildings. For example, because RHS determines tenant eligibility based on its definition of ''adjusted annual income,'' rather than ''annual income'' as defined under Section 8, the Agency may have to calculate the tenant's income for section 42 purposes and may need to request additional income information from the owner.

(iii) *Example.* The exception permitted under paragraph (c)(4)(i) and (ii) of this section is illustrated by the following example.

Example. An Agency selects for review buildings financed by the RHS. The Agency has entered into an agreement described in paragraph (c)(4)(ii) of this section with the RHS with respect to those buildings. In reviewing the RHS-financed buildings, the Agency obtains the tenant income and rent information from the RHS for 20 percent of the low-income units in each of those buildings. The Agency calculates the tenant income and rent to determine whether the tenants meet the income and rent limitation of section 42 (g)(1) and (2). In order to make this determination, the Agency may need to request additional income or rent information from the owners of the RHS buildings if the information provided by the RHS is not sufficient.

(5) *Agency reports of compliance monitoring activities*. The Agency must report its compliance monitoring activities annually on Form 8610, ''Annual Low-Income Housing Credit Agencies Report.''

(d) *Inspection provision*—(1) *In general*. Under the inspection provision, the Agency must have the right to perform an on-site inspection of any low-income housing project at least through the end of the compliance period of the buildings in the project. The inspection provision of this paragraph (d) is a separate requirement from any tenant file review under paragraph (c)(2)(ii) of this section.

(2) *Inspection standard*. For the on-site inspections of buildings and low-income units required by paragraph (c)(2)(ii) of this section, the Agency must review any local health, safety, or building code violations reports or notices retained by the owner under paragraph (b)(3) of this section and must determine—

(i) Whether the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards); or

(ii) Whether the buildings and units satisfy, as determined by the Agency, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703). The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A low-income housing project under section 42 must continue to satisfy these codes and, if the Agency becomes aware of any violation of these codes, the Agency must report the violation to the Service. However, provided the Agency determines by inspection that the HUD standards are met, the Agency is not required under this paragraph (d)(2)(ii) to determine by inspection whether the project meets local health, safety, and building codes.

(3) *Exception from inspection provision*. An Agency is not required to inspect a building under this paragraph (d) if the building is financed by the RHS under the section 515 program, the RHS inspects the building (under 7 CFR part 1930), and the RHS and Agency enter into a memorandum of understanding, or other similar arrangement, under which the RHS agrees to notify the Agency of the inspection results.

(4) *Delegation*. An Agency may delegate inspection under this paragraph (d) to an Authorized Delegate retained under paragraph (f) of this section. Such Authorized Delegate, which may include HUD or a HUD-approved inspector, must notify the Agency of the inspection results.

(e) *Notification-of-noncompliance provision*—(1) *In general*. Under the notification-of-noncompliance provisions, the Agency must be required to give the notice described in paragraph (e)(2) of this section to the owner of a low-income housing project and the notice described in paragraph (e)(3) of this section to the Service.

(2) *Notice to owner*. The Agency must be required to provide prompt written notice to the owner of a low-income housing project if the Agency does not receive the certification described in paragraph (c)(1) of this section, or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in paragraph (c)(2)(ii) of this section, or discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of section 42.

(3) *Notice to Internal Revenue Service*—(i) *In general*. The Agency must be required to file Form 8823, ''Low-Income Housing Credit Agencies Report of Noncompliance,'' with the Service no later than 45 days after the end of the

correction period (as described in paragraph (e)(4) of this section, including extensions permitted under that paragraph) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The Agency must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis under paragraph (c)(1)(ii) and (vii) of this section, respectively, that results in a decrease in the qualified basis of the project under section 42 (c)(1)(A) is noncompliance that must be reported to the Service under this paragraph (e)(3). If an Agency reports on Form 8823 that a building is entirely out of compliance and will not be in compliance at any time in the future, the Agency need not file Form 8823 in subsequent years to report that building's noncompliance. If the noncompliance or failure to certify is corrected within 3 years after the end of the correction period, the Agency is required to file Form 8823 with the Service reporting the correction of the noncompliance or failure to certify.

(ii) *Agency retention of records.* An Agency must retain records of noncompliance or failure to certify for 6 years beyond the Agency's filing of the respective Form 8823. In all other cases, the Agency must retain the certifications and records described in paragraph (c) of this section for 3 years from the end of the calendar year the Agency receives the certifications and records.

(4) *Correction period.* The correction period shall be that period specified in the monitoring procedure during which an owner must supply any missing certifications and bring the project into compliance with the provisions of section 42. The correction period is not to exceed 90 days from the date of the notice to the owner described in paragraph (e)(2) of this section. An Agency may extend the correction period for up to 6 months, but only if the Agency determines there is good cause for granting the extension.

(f) *Delegation of Authority*—(1) *Agencies permitted to delegate compliance monitoring functions*—(i) *In general.* An Agency may retain an agent or other private contractor (''Authorized Delegate'') to perform compliance monitoring. The Authorized Delegate must be unrelated to the owner of any building that the Authorized Delegate monitors. The Authorized Delegate may be delegated all of the functions of the Agency, except for the responsibility of notifying the Service under paragraphs (c)(5) and (e)(3) of this section. For example, the Authorized Delegate may be delegated the responsibility of reviewing tenant certifications and documentation under paragraph (c) (1) and (2) of this section, the right to inspect buildings and records as described in paragraph (d) of this section, and the responsibility of notifying building owners of lack of certification or noncompliance under paragraph (e)(2) of this section. The Authorized Delegate must notify the Agency of any noncompliance or failure to certify.

(ii) *Limitations.* An Agency that delegates compliance monitoring to an Authorized Delegate under paragraph (f)(1)(i) of this section must use reasonable diligence to ensure that the Authorized Delegate properly performs the delegated monitoring functions. Delegation by an Agency of compliance monitoring functions to an Authorized Delegate does not relieve the Agency of its obligation to notify the Service of any noncompliance of which the Agency becomes aware.

(2) *Agencies permitted to delegate compliance monitoring functions to another Agency.* An Agency may delegate all or some of its compliance monitoring responsibilities for a building to another Agency within the State. This delegation may include the responsibility of notifying the Service under paragraph (e)(3) of this section.

(g) *Liability.* Compliance with the requirements of section 42 is the responsibility of the owner of the building for which the credit is allowable. The Agency's obligation to monitor for compliance with the requirements of section 42 does not make the Agency liable for an owner's noncompliance.

(h) *Effective date.* Allocation plans must comply with these regulations by June 30, 1993. The requirement of section 42 (m)(1)(B)(iii) that allocation plans contain a procedure for monitoring for noncompliance becomes effective on January 1, 1992, and applies to buildings for which a low-income housing credit is, or has been, allowable at any time. Thus, allocation plans must comply with section 42(m)(1)(B)(iii) prior to June 30, 1993, the effective date of these regulations. An allocation plan that complies with these regulations, with the notice of proposed rulemaking published in the FEDERAL REGISTER on December 27, 1991, or with a reasonable interpretation of section 42(m)(1)(B)(iii) will satisfy the requirements of section 42(m)(1)(B)(iii) for periods before June 30, 1993. Section 42(m)(1)(B)(iii) and these regulations do not require monitoring for whether a building or project is in compliance with the requirements of section 42 prior to January 1, 1992. However, if an Agency becomes aware of noncompliance that occurred prior to January 1, 1992, the Agency is required to notify the Service of that noncompliance. In addition, the requirements in paragraphs (b)(3) and (c)(1)(v), (vi), and (xi) of this section (involving recordkeeping and annual owner certifications) and paragraphs (c)(2)(ii)(B), (c)(2)(iii), and (d) of this section (involving tenant file reviews and physical inspections of existing projects, and the physical inspection standard) are applicable January 1, 2001. The requirement in paragraph (c)(2)(ii)(A) of this section (involving tenant file reviews and physical inspections of new projects) is applicable for buildings placed in service on or after January 1, 2001. The requirements in paragraph (c)(5) of this section (involving Agency reporting of compliance monitoring activities to the Service) and paragraph (e)(3)(i) of this section (involving Agency reporting of corrected noncompliance or failure to certify within 3 years after the end of the correction period) are applicable January 14, 2000.

[T.D. 8430, 57 FR 40121, Sept. 2, 1992; 57 FR 57280, Dec. 3, 1992; 58 FR 7748, Feb. 9, 1993; T.D. 8563, 59 FR 50163, Oct. 3, 1994; T.D. 8859, 65 FR 2326, Jan. 14, 2000; 65 FR 16317, Mar. 28, 2000]

§ 1.42–6 Buildings qualifying for carryover allocations.

(a) *Carryover allocations*—(1) *In general.* A carryover allocation is an allocation that meets the requirements of section 42(h)(1)(E) or (F). If the requirements of section § 42(h)(1)(E) or (F) that are required to be satisfied by the close of a calendar year are not satisfied, the allocation is not valid and is treated as if it had not been made for that calendar year. For example, if a carryover allocation fails to satisfy a requirement in § 1.42–6(d) for making an allocation, such as failing to be signed or dated by an authorized official of an allocating agency by the close of a calendar year, the allocation is not valid and is treated as if it had not been made for that calendar year.

(2) *10 percent basis requirement.* A carryover allocation may only be made with respect to a qualified building. A qualified building is any building which is part of a project if, by the date specified under paragraph (a)(2)(i) or (ii) of this section, a taxpayer's basis in the project is more than 10 percent of the taxpayer's reasonably expected basis in the project as of the close of the second calendar year following the calendar year the allocation is made. For purposes of meeting the 10 percent basis requirement, the determination of whether a building is part of a single-building project or multi-building project is based on whether the carryover allocation is made under section 42(h)(1)(E) (building-based allocation) or section 42(h)(1)(F) (project-based allocation). In the case of a multi-building project that receives an allocation under section 42(h)(1)(F), the 10 percent basis requirement is satisfied by reference to the entire project.

(i) *Allocation made before July 1.* If a carryover allocation is made before July 1 of a calendar year, a taxpayer must meet the 10 percent basis requirement by the close of that calendar year. If a taxpayer does not meet the 10 percent basis requirement by the close of the calendar year, the carryover allocation is not valid and is treated as if it had not been made.

(ii) *Allocation made after June 30.* If a carryover allocation is made after June 30 of a calendar year, a taxpayer must meet the 10 percent basis requirement

<u>Section 27</u>

Student Exception Change (single parent rule)

IRC 42(1)(3)(D)(ii)(I)

The new law allows a unit to be treated as a low-income unit if it is occupied 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 an such children are not dependents (as so defined) of another individual other than a parent of such children."

The new law allows full-time students who are single parents and their children to live in LIHTC units, provided that their children are not dependents of another individual, other than a parent of such children.

Section 28

CHFA Post Year 15 Compliance Monitoring Policy

CONNECTICUT HOUSING FINANCE AUTHORITY
POST YEAR-15 (Y-15) COMPLIANCE MONITORING POLICY

PURPOSE

This document serves as the Connecticut Housing Finance Authority's (CHFA) Post Year-15 Compliance Monitoring Policy for properties allocated Low-Income Housing Tax Credits by CHFA beginning in 1990. The purpose of this policy is to ensure compliance with the Extended Low-Income Housing Commitment (ELIHC) while allowing for the waiving of certain requirements during the Extended Use Period. CHFA's goal is to preserve these properties while maintaining reasonable monitoring requirements.

BACKGROUND

The Federal Low-Income Housing Tax Credit Program was created by Congress in 1986 and is administered in Connecticut by the Connecticut Housing Finance Authority. As Housing Credit Agency (HCA) for the State of Connecticut, CHFA monitors compliance as required by Section 42 of the Internal Revenue Code (IRC) and Section 1.42-5 of the Regulations and reports instances of noncompliance to the Internal Revenue Service (IRS). The compliance period for all tax-credit properties begins on the first day of the year in which tax credits are first claimed and ends at the end of the 15th year.

PRE-1990 PROPERTIES

Properties awarded housing credits by CHFA in 1987, 1988 and 1989 had a tax credit compliance period of 15 years. Tax credit properties with allocations prior to 1990 have no additional restrictions. The compliance period for these properties has ended. There is no further involvement of the IRS or CHFA except for properties where CHFA is the mortgagee. With the exception of these and any other lender or government program restrictions, owners are free to do whatever they wish with the property.

POST – 1989 PROPERTIES

The compliance period issue is much more complex for properties with an allocation of credits from 1990 or later. A change in federal law required a minimum of an additional 15 years of compliance, which is known as the Extended Use Period. As a result, properties that were awarded housing credits in 1990 or afterwards must comply with program restrictions for a minimum of 30 years, subject to certain exceptions. These restrictions are embodied in a recorded real estate document called the Extended Low-Income Housing Commitment. Extended Low-Income Housing Commitments are restricted covenants between the property owner and the state HCA that allocated the credits. The ELIHC stipulates the terms on which the credits were awarded by the state and outlines any special set-asides or terms to which the owner agreed in return for the credits. CHFA is solely responsible for enforcing the property's ELIHC after Year-15 through the end of the Extended Use Period.

Since the IRS is no longer involved in these properties after the initial 15-year compliance period, States must develop compliance monitoring procedures for the remaining years of the Extended Use Period.

EXTENDED USE PERIOD CONTINUING PROVISIONS

The following provisions contained in the Extended Low-Income Housing Commitment (executed before the end of the first year of the credit period) will remain in force for the entire Extended Use Period:

1. Failure to comply with the provisions of the ELIHC is an event of default, and the Authority or its successors may exercise any of the remedies available under the ELIHC. Furthermore, the Authority may seek specific performance of the ELIHC by the Owner or any successor in interest thereto, without declaring an event of default and without waiving any remedies in the ELIHC, by filing an action in any court of competent jurisdiction in the state of Connecticut. **Note:** *Noncompliance may result in an owner being placed in the status of "not in good standing with CHFA." The owner may not be eligible to apply for future Housing Credits in the State of Connecticut.*

2. After the close of the compliance period, the Extended Use Period shall be for the same number of years as stipulated in the ELIHC.

3. The applicable fraction (as defined in §(c)(1) of Section 42 of the Code) for each taxable year in the Extended Use Period shall not be less than the applicable fraction stipulated in the ELIHC. The applicable fraction must be maintained during the ELIHC.

4. Individuals who meet the income limitation applicable under §(g)(1) of Section 42 of the Code (whether prospective, present, or former occupants who qualify, qualified, or would qualify) hereby have the right to enforce in any state court the requirements of the ELIHC and may apply to any state court for specific performance of the provisions of the ELIHC, not withstanding any action which may or may not be taken by the Authority.

5. The Extended Use Period shall continue after the close of the compliance period, unless terminated (Early Termination) on the date of foreclosure or deed in-lieu-of foreclosure or by Qualified Contract (if permitted by the ELIHC).

6. The development shall be occupied or be available for occupancy by Qualified Persons as defined in the Applicable Fraction.

7. The rent for each Qualified Unit shall not exceed the Qualified Rent, which will be uniform for each particular housing unit size, regardless of the number of persons residing in the household and in accordance with Section 42(g) of the Code.

8. For the 3-year period following an Early Termination of the Extended Use Period:

   (i) No resident who was occupying a Qualified Unit at the end of the Extended Use Period may be removed (whether by eviction, lease expiration or any reason other than good cause); and
   (ii) No rent may be increased for any Qualified Unit beyond the Qualified Rent as long as it is occupied by the resident who was occupying the unit at the early termination of the Extended Use Period.

9. The ELIHC prohibits the disposition to any person of any portion of the building to which the ELIHC applies unless all of the building to which such ELIHC applies is disposed of to such persons.

10. The ELIHC must be recorded promptly on the land records of the town or city where the property is located prior to the recording of any other lien or restriction.

11. The Owner may not refuse to lease to a holder of a voucher or certificate of eligibility under Section 8 of the U.S. Housing Act of 1937 because of the status of the prospective tenant as such a holder.

12. The restrictive covenants of the ELIHC shall be binding on all successors and assigns of the Owner and this commitment shall be recorded pursuant to Connecticut law and a restrictive covenant.

13. The ELIHC shall be governed by and construed in accordance with the laws of the State of Connecticut and federal law, where applicable.

14. The invalidity of any provisions of the ELIHC shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of the provisions of the ELIHC, which shall continue in full force and effect as if such invalid provision had never been included herein.

15. The owner must comply with all requirements of the Fair Housing Act.

CHFA'S COMPLIANCE MONITORING REQUIREMENTS AFTER END OF INITIAL 15-YEAR COMPLIANCE PERIOD

There is no IRS compliance monitoring requirement during the Extended Use Period and Housing Credit Agencies no longer report to the IRS. Therefore, CHFA established a policy regarding how properties will be monitored and consequences for noncompliance during the Extended Use Period. Based on the requirements of the Extended Low-Income Housing Commitment specified in Section 42 of the Code, CHFA has the authority to establish different compliance criteria during the Extended Use Period.

The Post Year-15 compliance requirements will be in place and monitored during the Extended Use Period. CHFA believes these changes, which eliminate and/or streamline current IRS requirements, will prove to be beneficial to owners and managers of Housing Credit properties.

The following is a comparison of CHFA Pre and Post Year-15 compliance monitoring requirements:

1. INCOME AND RENT RESTRICTIONS

Initial 15-year Compliance Period:

IRS Code requires that Qualified Units be income and rent restricted.

Extended Use Compliance Period:

No change. Qualified Persons must be income qualified in accordance with current Housing Credit Income Limits. Qualified Households may not pay more than the Qualified Rent.

2. INITIAL ELIGIBILITY AND CERTIFICATION

Initial 15-Year Compliance Period:

IRS Code requires that the owner determine an applicant's eligibility for a Housing Credit Unit prior to initial occupancy. Income and assets must be verified by third-party verification in accordance with HUD Handbook 4350.3.

Extended Use Compliance Period:

No change in verification process. The Tenant Income Certification Form (TIC) must be completed. Initial eligibility must be confirmed in accordance with HUD guidelines as stated in HUD Handbook 4350.3.

3. ANNUAL RECERTIFICATION OF HOUSEHOLDS

Initial 15-Year Compliance Period:

Until July 30, 2008 and the adoption of HR 3221, the Housing and Economic Recovery Act of 2008, Section 1.42-5 of the Regulations required that a recertification of household income, including third-party verification, be completed at least once every 12 months after initial occupancy. HR 3221 waived this requirement for 100% Housing Credit and Bond Properties. Recertification is still required for all other properties, including Assisted Living.

Extended Use Compliance Period:

Change. CHFA will require that an initial Tenant Certification and an anniversary recertification be completed. Thereafter, the owner may self-certify tenants for all properties except Assisted Living. However, CHFA will require that the owner provide certain information annually to include tenant data, changes in household composition and student status.

4. BUILDING RULE

Initial 15-Year Compliance Period:

Change. IRS Code requires that compliance monitoring be conducted on a building-by-building basis.

Extended Use Compliance Period:

Change. CHFA will conduct compliance monitoring on a project-wide basis.

5. MINIMUM SET-ASIDE

Initial 15-Year Compliance Period:

IRS Code requires that an owner satisfy minimum set-aside requirements of either 20/50 or 40/60 throughout the compliance period.

Extended Use Compliance Period:

Change. Minimum set-aside requirements (MSA) must continue to be met. However, MSA may now be satisfied on a project basis instead of each individual building.

6. APPLICABLE FRACTION

Initial 15-Year Compliance Period:

IRS Code states that the applicable fraction for determining qualified basis is the lesser of the number of low-income units as a percentage of all residential units; or the total floor space of low-income units as a percentage of the total floor space of all residential units.

Extended Use Compliance Period:

Change. The applicable fraction will be determined by the unit fraction.

7. STUDENT RULE

Initial 15-Year Compliance Period:

IRS Code states that households consisting entirely of full-time students are not eligible to occupy housing credit units unless certain exceptions are met.

Extended Use Compliance Period:

Change. Housing credit units may now be occupied by households consisting entirely of income-eligible, full-time students with one exception. Full-time students must verify that they are not dependents on their parents' tax return (proof required) so that these units are not substitutes for dormitories.

8. UNIT TRANSFERS

Initial 15-Year Compliance Period:

IRS Code allows for unit transfers within a building and between buildings in the same project without recertification of eligibility.

Extended Use Compliance Period:

Unit transfers in a building and between buildings in the same property will be permitted without recertification of eligibility.

9. NEXT AVAILABLE UNIT / 140% RULE

Initial 15-Year Compliance Period:

Change. IRS Code states that if the household income for residents in a qualified unit increases to more than 140% of the current applicable income limit, the unit is considered an "over-income unit" but may continue to be counted as a low-income unit as long as two conditions are met. The unit must continue to be rent restricted and the next comparable size unit in the building must be rented to a qualified low-income tenant. The owner of a low-income building must rent to qualified residents *all* comparable units that are available or that subsequently become available in the same building until the applicable fraction (excluding the over-income units) is restored to the percentage on which the credit is based.

Extended Use Compliance Period:

CHFA has eliminated the Next Available Unit Rule.

10. VACANT UNIT RULE

Initial 15-Year Compliance Period:

IRS Code states that if a qualified unit becomes vacant and the owner makes reasonable attempts to re-rent the unit, the vacant unit continues to generate credits. Vacant units must be rent-ready.

Extended Use Compliance Period:

No change. The owner must make reasonable attempts to rent all vacant units.

11. DEEP INCOME TARGETING

Initial 15-Year Compliance Period:

Properties are bound by CHFA to the deep-targeting commitments made by the owner as a condition of the allocation process.

Extended Use Compliance Period:

No change. Owners were awarded points in the competitive allocation process for deep targeting of income. Points for deep targeting had a significant impact on those properties awarded credits. Therefore, this requirement remains in place.

12. UTILITY ALLOWANCES

Initial 15-Year Compliance Period:

The IRS requires utility allowances to be updated annually.

Extended Use Compliance Period:

No change. Utility Allowances must be updated annually as determined by IRS regulations.

13. ANNUAL STATUS REPORT

Initial 15-Year Compliance Period:

Owners currently provide a unit status report to CHFA's Authorized Delegate by April 1.

Extended Use Compliance Period:

No change. A status report is still required to be e-mailed to CHFA's Authorized Delegate by April 1.

NOTE: *Owners are required to submit to CHFA's Authorized Delegate a status report by April 1 following the end of the fifteenth year of the compliance period. Failure to do so will result in the transmittal of Form 8823 to the IRS.*

14. OWNER'S CERTIFICATE OF CONTINUING LIHTC PROGRAM COMPLIANCE

Initial 15-Year Compliance Period

IRS Code requires the annual submission of the Owner's Certificate of Continuing LIHTC Program Compliance.

Extended Use Compliance Period

Change. CHFA will require the annual submission of a modified Owner's Certificate of Continuing LIHTC Program Compliance on April 1 of each year of the ELIHC period.

15. UNIT AND FILE INSPECTIONS

Initial 15-Year Compliance Period:

IRS Code requires inspections of all buildings and at least 20% of buildings, units and files once every three years.

Extended Use Compliance Period:

Change. CHFA will require inspections of all buildings and 20% of the project's units and files once every five years. CHFA reserves the right to inspect more frequently if necessary.

16. IRS FORM 8823

Initial 15-Year Compliance Period:

Change. IRS Code requires the Housing Credit Agency to report findings of noncompliance using IRS Form 8823.

Extended Use Compliance Period:

Change. CHFA will continue to use IRS Form 8823 to report findings of noncompliance to the Owner. However, CHFA will not submit this form to the IRS.

17. TRANSFER OF OWNERSHIP/MANAGEMENT

Initial 15-Year Compliance Period:

Owners must advise CHFA of any change in ownership or management. CHFA approval of transfers of ownership and change in management is required.

Extended Use Compliance Period:

No change. CHFA must be advised of and approve all changes.

18. MONITORING FEES

Initial 15-Year Compliance Period:

Monitoring fees were collected up front as a percentage of the first year's credit allocation.

Extended Use Compliance Period:

The Authority may collect from the Owner reasonable monitoring fees in an amount to be determined to cover expenses. Such fees will be applicable to all properties awarded tax credits after January 1, 2011. Fees are due annually on April 1 along with the Owner's Annual Certification and Status Report. CHFA reserves the right to adjust fees due to changing circumstances, rules or regulations.

DISCLAIMER:

The above Policy applies to Nine Percent (9%) Housing Credit Properties and Four Percent (4%) Credit Properties with Tax Exempt Bonds. Properties with RD, HUD Subsidy, and HOME Funds, etc must continue to meet the requirements of each respective Program.

Prior to implementing any changes in management practices, owners should seek counsel from their tax professionals and have discussion with other lenders, investors and syndicators.

Compliance with requirements of the ELIHC is the responsibility of the owner of the building for which the credit is allowed. CHFA's obligation to monitor for compliance with the requirements of the ELIHC does not make CHFA liable for an owner's noncompliance.

Section 29

CHFA Policy on Annual Recertification for 100% Low-Income Tax Credit and Tax-Exempt Bond Projects

POLICY

The Housing and Economic Recovery Act of 2008 (HR 3221) was signed into law on July 30, 2008. One provision of the HERA Act is that 100% LIHTC projects may waive the annual tenant recertification requirement.

The following is a summary of CHFA requirements that an owner must comply with in order to implement the recertification waiver.

1. CHFA requires that owners continue to perform the initial tenant certification prior to move-in and one additional recertification upon the first anniversary date of any resident who had moved into the project in the previous year.
2. Regardless of the recertification waiver, CHFA must continue to track student status and changes in household composition. Therefore CHFA is requiring residents to complete a self-certification form. (attached)
3. The information obtained from the self-certification form must be incorporated into the End of Year Status Report provided to Spectrum annually on April 1st.
4. Other programs may require recertifications, so owners will, at a minimum, still need to do recertifications if required by those programs.

An owner that decides to implement the recertification waiver must do so by notifying CHFA and Spectrum in writing and obtaining a Recertification Waiver Approval from CHFA. Any questions regarding the wavier can be directed to Collette Slover and James Welter II via email at Colette.Slover@CHFA.org and James.Welter@CHFA.org

NOTE: Post Year 15 Properties

Post Year 15 properties may implement the self-certification form at any time without CHFA approval. The self-certification may be used in Post Year 15 properties that are 100% LIHTC and Mixed-Use (Market Rate).

SELF-CERTIFICATION OF ANNUAL INCOME (LIHTC Only)

To be completed for the second annual recertification and all subsequent recertifications in 100% tax credit projects or Properties in their Post Year 15 Compliance period.

DEVELOPMENT DATA			
Property Name:		BIN #:	PISD:
Address:	County:	Unit No:	# BR:

SECTION TO BE COMPLETED BY RESIDENT

HOUSEHOLD: Enter all household member name(s) and date(s) of birth below. Also note whether or not any household member is or will be a fulltime student in next 12 months. Continue on separate sheet of paper if necessary.

	Household Member Name	Date of Birth	Fulltime Student Yes/No?
Head			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

* Please attach a completed Housing Student Status Verification form.

INCOME: Enter household income including income from assets of each adult household member. If some members have no income put “Zero.” Every adult Household member must sign below to certify their gross annual income anticipated for the next 12 months. See NOTES on second page of this form. Continue on separate sheet of paper if necessary.

	Household Member Name	Total Gross Annual Income & Income from Assets	Signature of Adult(s)
Head			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

Property Name:		Unit #:	
BIN#:		Household Name:	

I agree to notify management IMMEDIATELY if:

Anyone in my household becomes a fulltime student, and/or
My household composition changes in any way.

I certify under penalties of perjury that the above information is true and complete to the best of my knowledge. I understand that false or incomplete information is a violation of the terms of my lease and is grounds for eviction. I agree to furnish any additional income or other documentation required by the property owner/management to document my/our household income:

Head of Household Signature	Print Name	Date
Other Household Adult Signature	Print Name	Date
Other Household Adult Signature	Print Name	Date
Other Household Adult Signature	Print Name	Date

NOTES

TYPES OF INCOME: Possible types of income include but are not limited to: wages, salary, tips, bonuses, commissions, military pay, public assistance, Social Security/SSI, retirement benefits, VA benefits, child support, regular gifts, unemployment, and some types of financial aid. Include what you receive now and what you anticipate receiving in the next 12 months. All income listed must be GROSS income (income before taxes and deductions).

INCOME FROM ASSETS: Income from assets must also be included in Total Gross Annual Income. Possible types of assets include, but are not limited to: checking accounts, savings accounts, cash on hand, money market accounts, certificates of deposit, stocks, bonds, 401(k) and real estate. Include the annual interest from these accounts in your total income.

SECTION TO BE COMPLETED BY MANAGEMENT

MOVE-IN DATA:	**CURRENT RECERTIFICATION:**
Original Move-in Date:	Effective Date of Recertification:
Set-aside %:	Total Gross Annual Income:
Total Gross Annual Income:	Tenant Paid Rent:
	Utility Allowance:
	Gross Rent for Unit:
	Maximum Rent Limit:
	Subsidy Portion:
	Subsidy Type:

Signature of Management Representative	Print Name	Date