THE SPECTRUM COMPANIES

C3P

Low Income Housing Tax Credit

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High points

HR 3221 The Housing and Economic Recovery Act of 2008

RE: Low Income Housing Tax Credit

DEVELOPING AND FINANCE

1. Increases the credit by 20 cents to $2.25 with small states getting increase of 10% for 2008-09.

2. Repeals permanently alternative minimum tax for buildings placed in service after 12/31/07.

3. Sets the credit at 9% for all tax credit deals, including RD, with the exception of bond financed through 12/31/13.

4. Extends public use to allow credit developments for special needs, artists and occupations.

5. Allows tax credits to be used with mod-rehab HUD.

6. Increases the minimum rehab cost to the greater of 20% of the eligible basis or $6,000 per unit effective with the enactment of the law.

7. Extends the carryover allocation to an actual one year test from the actual date.

8. Repeals the credit recapture bond rule.

9. Repeals the 10 year rule for acquisition of subsidized projects.

10. Allows for a 30% boost in basis for HOME assisted properties in QCT's (Qualified Census Tract) or DDA's (Difficult Development Areas)

COMPLIANCE

1. Eliminates the annual income recertification requirement for 100% buildings.

2. All rural properties can use the greater of area median income or national non-metro median income. Does not apply to bond deals.

3. Changes the utility allowance calculation so that consultants may be used and owners may switch between PHA and Energy Company on a yearly basis.

4. Adds a new exemption to make full time students who were in foster care, tax credit eligible.

5. Introduces an exemption for military employees to no longer count the basic allowance for housing in the Definition of Income if they are housed in a building located in a county with a military base that has had its population grow by 20% or more between 12/31/05 and 6/01/08 or any county adjacent to such a county. This applies to new and existing 9% deals for determinations made after 7/30/08 and prior to 1/01/12

6. Income Limits cannot drop below the current year; therefore, neither can rents.

7. Re-certifications are no longer required in 100% buildings; however check with the state in regard to state policy.

Table of Contents

Introduction

The purpose of this training/reference manual is to present to professionals (i.e. owners, investors, syndicators, agency staff, managers, accountants, attorneys, etc.) involved with the Low Income Housing Tax Credit Program, the essentials in regard to compliance with Section 42 of the Internal Revenue Code.

The manual is cross referenced with the Tax Code and other pertinent regulations, so that the reader/ trainee will be able to find actual relevant citations from the tax regulation.

This book is divided into 2 parts. The SPECTRUM notes in the first half are written on the right hand side only so that additional notes may be taken on the left side. The second half is important reference documents. The SPECTRUM pages present a topic, list key discussion points, cite references from the code and other documents and offer important reminder notes.

This course manual deals only with the tax credit units in a property. It does not cover commercial space, market units or any other non tax credit use except in how it interacts with the tax credit regulation.

The abbreviation LIHTC in this manual abbreviates *Low Income Housing Tax Credit.*

When " " are used, that indicates a direct quote from the tax code or other legislation.

The information in this manual covers and pertains to LIHTC properties anywhere in the United States.

In January 2007, the IRS issued the 8823 Audit Guide for the State Monitors, and their Authorized Delegates. Owners and Managers will need to check with their particular state to see how suggestions and policy recommendations from the Audit Guide will be implemented.

The Internal Revenue Code (IRC) and the Audit Guide were both revised in October, 2009.

Glossary of Terms

140% Rule - The "Next Available Unit Rule" which applies if the household income increases more than 40% above the current maximum income limit per person.

Applicable Fraction -Relates to Qualified Basis formula selected for credits claimed.

Eligible Basis - That portion of the property allocated credits and for which credits are allowable either for acquisition, rehab, or construction.

Empty Unit - An LIHTC unit that has never been rented.

Extended Use Provision - The 15 year extension to the low income housing commitment by the owner after the IRS 15 year compliance ends.

HUD - U.S. Department of Housing & Urban Development.

Income Limits - 50% or 60% of the median on a per person basis.

Income Eligibility - The gross projected income to be received in the next 12 months following the effective date of the certification according to the HUD Section 8 Program.

Initial Compliance - The deadline to initially meet the Minimum Set Aside.

IRC - Internal Revenue Code.

IRS - Internal Revenue Service.

LIHTC - Low Income Housing Tax Credit.

Market Unit - Any non-LIHTC unit whether occupied or not.

Minimum Set Aside - The federally required minimum level of tax credit units in a property - 20%, 40% or in NYC 25%.

Move-in Certification - The form signed by both the resident and owner's representative, that summarizes household composition, projected income, and income from any assets.

Occupied Unit - An LIHTC unit which has been rented.
Placed in Service - (PIS) The key date which triggers compliance monitoring.

Qualified Basis - The "claimable" portion of credits in a property according to the IRC formula and eligible low income units.

RD - Rural Development, formerly Farmers Home Administration.

Recertification - The annual redetermination of household income.

Restricted Rent - The maximum allowable rent according to the IRS formula including any utilities or services that must be paid by the resident.

Utility Allowance - Part of the restricted rent (see above).

Vacant Unit - An LIHTC unit from which someone has moved.

Topic (1): ***LIHTC Basics***

Discussion: The LIHTC program, unlike any other federal housing program, is administered by the IRS. Credits are given to each State (or city in some cases, Puerto Rico and USVI) based on the census x $1.25. The funding was increased to $1.75 back in the year 2001. Further, no State will receive less than $2 million for an annual allocation. As part of HERA, the credit has been increased to $2.25 with the states getting $2,000,000, increased by 10%. The State Allocating Agency determines which projects will receive credits following the Qualified Allocation Plan (QAP). LIHTC properties are either 9% or 4% in nature based on a federal economic formula and whether it is new construction, rehab or acquisition. The tax credit is a 15 year program for compliance with the credit accelerated into 10 years (with certain extensions). The reason that there is so much focus on compliance is that the credit is literally that. Owners and/or investors get to deduct the credit directly from the tax liability. Individual investors, depending in the invested dollars, could reap a benefit of 9,000 per year for ten years = 90,000. Corporate and bank investors have no credit limit.

Reference: **R3-5, R17, R24, R37, R47, R50, R82-83**

Notes: Whether you have 9% or 4%, new construction, rehab has no bearing on compliance whatsoever. This relates to the amount of credits allocated!

Example: The State allocates $1 million dollars in credit. The ownership will want to claim $100,000 each year for 10 years. The property must remain in compliance for an additional 5 years.

Topic (2): Uncle Steve's Essential Compliance Checklist

Discussion: The Fundamentals for any project to be in compliance will follow this checklist!

a. What year of the credit does your tax credit property have?
b. What is the date the building or buildings was Placed in Service?
c. # of buildings in your project?
d. What is the Minimum Set Aside?
e. What % of the project is LIHTC?
f. In what year were (or will be) credits first claimed?
g. What is the Utility Allowance?

Reference: **R74 8609 Form**

Notes: Make sure you clearly know and understand the answers to these questions!

Example: Your Tax Credit property has nine buildings. You will receive nine 8609 forms and each building will have a separate BIN.

Topic (3): Different Sets of Rules

Discussion: If you have worked with HUD, Public Housing or RD (FmHA) Programs, then there is the familiarity with regulation changes. When a federal housing program issues a new regulatory handbook, the old version is expired and new rules apply across the board whether a person is a waiting list applicant or has lived in a property for years. THE LIHTC PROGRAM IS NOT THE SAME.

When Congress has changed or amended the laws, many changes have not been retroactive. This ties into why it is so essential to know the year of the credit.

Except for actual changes to the Tax Law, the way rules for this program change and vary are done by Revenue Rulings. Many of these are included in the course manual, and may also be found on the IRS website which is IRS.gov The Revenue Rulings are by year, thus anything that starts with 07 is from 2007. Owners and Managers must read the Revenue Rulings carefully to see how it applies to your particular project. Some Revenue Rulings are retroactive, which means they apply to all projects regardless of year of allocation; others are not, which means they may apply to specific projects.

Examples

I.	1990	Rent Calculated by # of bedrooms - NR Gross Rent Floor Adopted - NR
II.	1991	AFDC Student Rule - Retroactive
		FmHA Overage Rule - NR
		Extension Initial Compliance w/Set Aside - NR
III.	8/10/93	Married Students Rule - Retroactive
		Single Parent Student Rule - Retroactive
		Section 8 Requirement - Retroactive

References: Blue Book, Section 42, Congressional Laws (i.e., Omnibus Reconciliation Act 1993)

Notes: 1. Remember, the year referenced always is the year of <u>allocation</u>!

Topic (4): Placed in Service

Discussion: Placed in Service is the trigger for monitoring. This date is a building by building concern. You can have only one placed in service date in a single building. You can have the same date or different dates in different buildings. Placed in Service (PIS) means different things for different projects. For new construction or reconstruction (substantial rehabs) PIS 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." For new construction or substantial rehab, this is the certificate of occupancy date.

Other rehabs that are not substantial may be accomplished with residents still living in the building during the rehab. For these rehabs, placed in service can be "at the close of any 24 month period over which such expenditures are aggregated." Owner selects in this case unless local approval is needed. With these rehabs existing residents must be tax credit certified as of the PIS date.

In an acquisition/rehab that is being done with residents on the property, if they are certified no later than January 1st of the same year in which the rehab will be done, the ownership may claim both credits back to January 1st. Also, be aware of the beneficial effect of the "Safe Harbor" revenue ruling issued in November 2003 where in certs may be done as of the purchase date and even if tenants income increases prior to January 1st, they are still eligible.

Be careful when moving existing residents around a property during the rehab. They must be certified and income qualified when they are going to finally take occupancy of their unit when the rehab is finished. There is a risk, unlike in rehabs done with the tenants staying in the units, that income may increase above the limit.

Reference: **R35, R76, R106, R185**

Notes: Placed in Service can occur if a building is completely occupied or empty in a rehab or completely empty in new construction. It is when you could occupy not when you do!

Examples: Your certificate of occupancy was issued on 11/01/00. The first resident moved in on 12/01/00. The placed in service date is 11/01/00.

Topic (5): Section 8 Requirement

Discussion: The 1993 legislation placed the following regulation in the IRC. This was listed under Extended Use Provision but was retroactive. "...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."

This means you cannot refuse Section 8 participants just because they have Section 8. However, this does not assure tenant selection. There are several issues:

(1) Section 8 participants income could be higher than the Tax Credit limits.

(2) FMR (Fair Market Rent) may be less than LIHTC rent precluding certificate holders.

(3) Rent differential may not be affordable for voucher holders or the rent may not be allowed by the PHA if it exceeds 40% of the tenant's income.

(4) References may be negative on applicant.

(5) Project may have 100% project based subsidy.

(6) Rent increases are subject to PHA approvals.

Reference: **R53**

Notes:

1. It is strongly suggested that management certify Section 8 certificate/voucher holders on your own forms to be sure they are eligible. In fact, many States now have a required Tenant Income Certification (TIC) that must be used for all residents.

2. Be sure the owner and management firm is not refusing Section 8 because they don't wish to deal with a PHA. This violates the code and is noncompliance.

3. Four years ago HUD completed the merger of certificates and vouchers. The certificate program has been discontinued; but in metropolitan areas, there are still some applicants with certificates until they can be converted.

Topic (6): Monitoring / Compliance

Discussion: Once credits have been allocated, a property built or rehabilitated, the focus shifts for the next 15 years to compliance. Each State Agency or their Authorized Delegate must monitor owners to be sure the property is in compliance. While there are several critical issues involved, the two major keys to compliance are as follows: Income Eligible and Rent Restricted. If these two precepts and all other regulations are followed, there will be no noncompliance. While this program is complex, there is far too much noncompliance which stems from:

(1) Lack of training

(2) Lack of documents and information

(3) Confusion with the rules of other programs also on the LIHTC property.

The compliance period runs continuously for 15 years.

References: **R4, R14, R58 Compliance Period**

R88-92	**Final 9/92 Monitoring Regulations**
R78	**8823 Form**
R167	**01/14/00 Compliance Monitoring Regulations Effective 01/01/01**
R171	**Physical Inspections**

Notes:

1. Appoint someone in the organization to approve move-ins before they occur.
2. Audit your files and records or hire a firm that provides this service. (SPECTRUM will!!!)
3. Always be conservative in determining answers that are interpretable, as the IRS has always been so when rulings are made.
4. While there are many issues of noncompliance, there are 4 major areas: Lack of information, health life safety issues, failure to follow monitoring requirements, or mistakes.
5. All monitoring/compliance is a Building issue!!!

Topic (7): Non Compliance & 8823 Forms

Discussion: All Tax Credit properties must be monitored for compliance. All finding of noncompliance, whether corrected or not, must be reported to the IRS. This has been IRS policy since 1992. In the new 8823 Audit Guide, it now states that if a mistake was made and corrected before the notice of the State Audit was sent, the State no longer has to report these items. Check with your state to see how this will be done.

There is a big focus on the physical plant. In the old 8823 instructions, there was only one paragraph about Physical Inspections. That has been expanded to a page. The IRS has instructed the states that an addition to 20% of the units being inspected, they must also look at vacant units to be sure they are online. Offline units may lose credits.

There is also a strong policy about being open to the General Public. If the state discovers that is not the case, an 8823 must be filed. For example: if your project is Elderly Housing, any elderly person who wishes to apply must have the right to do so, as opposed to just taking names from a Public Housing Authority waiting list or a specific agency.

In the Audit Guide, there is a strong emphasis on the original tenant application. If it is missing an 8823 must be filed. This becomes incredibly serious when there is suspicion of tenant fraud. How can that be proved if there is no original application?
There is recognition by the IRS and the states that in some cases applicants intend to provide false information about income, assets, and/or household composition. While no one is asking that owners and managers become the FBI, the Audit Guide does focus on the need for Due Diligence. In fact, the IRS now states that if there is proof that a tenant has deliberately misrepresented their income it must be reported to the Whistleblower Hotline. When calling the hotline, the following information should be provided: Tenant name, SS Number if possible, the actual misrepresentation, and the variance between what were on the application and the fraud discovered.
It is strongly recommended that there be a clause in the lease that states Tenant Fraud is a substantial violation of the lease and will lead to immediate eviction. It is further suggested that a clause be inserted that with the exception of the birth, adoption or granting of custody of minor children, no adults may join the household during the first term of the lease.

Reference: **R78**

Topic (8): File Set-up

Discussion: Since LIHTC projects will be reviewed for compliance by the State and may be audited by the IRS, good files are critical. While the specific file set-up is not mandated, listed below are helpful suggestions:

Administrative Documents Folder:	8609's - Agency & Owner completed (2 sets) Certificates of Occupancy or Approval Allocation Documents Partnership Agreement Extended Use Provision Utility Allowance Minimum Set-Aside Compliance Income Limits for each year of Compliance
Tenant Files/Other Records:	Move In Certification Third Party Verification Annual Recerts (unless waived) Initial Lease Rent Card, List or Receipts Unit Inspection Form Utility Allowance Original Tenant Application

Reference:

R92	**Final Monitoring Regulations**
R59	**Unit Suitability**
R89, R95, R205-214	**Utility Allowance**
R202	**Electronic Storage**

Notes:

1. IRS mandates first year records must be maintained for 21 years!!
2. The IRS has ruled that electronic storage is acceptable but it is strongly recommended that the 1st year records also be kept hard copy.
3. If management has changed, have owner procure previous records!
4. There is incredible business potential for firms which understand this program!

Topic (9): Recapture of Credits

Discussion: 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. It is not recommended by the monitoring agency. If the ownership discovers at any time that credits were claimed in error, miscalculated or the basis was incorrectly listed, Form 8611 may be submitted to willfully pay back credits. However, in the event the IRS discovers that credits were claimed for a portion of the building not allowed in basis (i.e., commercial space or market units), the basis will be adjusted and credits not earned must be repaid. Further, the effect of a decrease in basis or in the IRS discovering noncompliance can institute recapture. In addition, recapture can occur due to incorrect calculations or deductions/fees on tax returns. This affects the accelerated portion (1/3) of credits claimed. Remember, this is a 15 year program with the credit accelerated into 10 years. In the year of recapture there is 100% loss of credits; in addition, the accelerated portion for all prior taxable years is recaptured as well! The IRS has stated that it will not recapture if mistakes are corrected in a reasonable time.

Most important, there is no recapture due to casualty loss if code requirements are followed.

Reference: **R15-16, R62-65, R84-87**

Notes:

1. To prevent recapture, audit your files or have a qualified third party do so. If any mistakes are discovered, you can then correct them!
2. Have a qualified person(s) in the organization approve all applicants before they are allowed to move in.
   Be sure the accounting firm you have understands the LIHTC program.
4. In regard to casualty loss it is strongly suggested that in addition to loss of rents coverage that owners/managers procure loss of credits coverage. A simple formula is to take the total allocation, divided by 10 years, divided by 12 months, divided by the number of units. That will give you the basic value of a credit for a month. Then determine how long for which you wish to have coverage.

Example: In year 6 of the Compliance period, a very serious mistake was made in unit #2. An ineligible household lived in this unit for 12 months. This was reported to the IRS. If the IRS determines that this is serious enough to warrant recapture, 100% of the credit is forfeited for unit #2 for year 6 and one-third of the credits previously claimed for unit #2 are recaptured for years 5, 4, 3, 2 and 1 along with interest and penalties.

Topic (10): *Eligible Basis / 9% - 4% / Credit Types*

Discussion: The allocation of credit dollars is based on a Federal economic formula and is linked to the type of financing involved. In the introduction, the 9% and 4% were mentioned. This ties into the credit dollars available and allocated. The 9% and 4% deal with financing, not compliance. With a federal economic formula, 9% is roughly equal to 70% of the value of the deal; 4%, 30%.

"The 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."

The eligible basis is tied to the credits that can be claimed. Eligible basis does not include commercial space. There are time frames for acquisition and rehab in the code as well as State QAP's. In the 2001 legislation, there are some beneficial changes in regard to the carry over allocation and that in some Qualified Census Tract area that a percentage of the eligible basis may be used for facilities that benefit the residents as well as outside participants.

References:

R7, R27-30, R32	**Eligible Basis**
R8	**Commercial Space**
R9	**Acquisition**
R35	**Rehab**
R74	**8609**

Notes:

1. Do not rent LIHTC units as market even in a hard rent-up.
3. Do not turn part of eligible basis into commercial space!
4. Read the Extended Use Provision, if applicable.
4. All Tax Credit Deals are now 9% except for bond deals and acquisitions that remain at 4%

Topic (11): Extended Use

Discussion: Beginning in 1990 State Agencies began the requirement of extended use commitments. The owner has to agree to all terms and conditions in regard to the IRS compliance period of 15 years and then commit to an extended use agreement for at least another 15 years as a low-income project. In some States this is called a Land Use Restriction Agreement (LURA); in others, the extended use provision; in others, a deed extension. It is important for management to understand that this building/project is therefore committed to at least a 30 year time frame. In some States, the extended use is longer. For those tax credit deals in the 1987-9 era, check the allocation paperwork to see if any commitments were made to the State (such as continuing restricted rents for 1 – 3 years). If not, since there was no extended use provision, after the end of the 15 year compliance period, these properties may leave the tax credit portfolio. Be aware that many states are now looking at preservation of existing stock as a possible QAP priority. For those 1990 and later deals be sure to obtain a copy of the extended use provision and any regulatory agreements in regard to your Tax Credit property.

In August, 2004 the IRS issued a Q&A Revenue Ruling (2004-82) In which it clearly states that during the extended use provision, no tenant may be evicted except for good cause and the rent structure must conform to Section 42.

References: **R52-54, R89, R195**

Notes: It was previously mentioned that this deed extension should be in the Administrative Document file. The extended use may very well list the exact number of units that must be low income. This can have a major impact on staff units, swapping staff units, changing unit sizes and other uses in the project.

Example: The Tax Credit and Compliance periods begin in the year 2000. The credit period ends at the end of 2009. The compliance period ends at the end of 2014. The project has an extended use requirement for at least 15 more years until 2029.

Topic (12): Qualified Basis

Discussion: Eligible basis equals all eligible areas of the project inclusive of LIHTC units, common areas, hallways, elevators, doors, windows, rooftops, parking lots, management offices, etc. Qualified basis is equal to the number of LIHTC units only.

"The qualified basis of any qualified low income building for any taxable year is an amount equal to... the applicable fraction (determined as of the close of such taxable year) of...the eligible basis of each building..." The applicable fraction is the smaller (lesser) of the unit fraction or the floor space fraction. The obvious hope and anticipation on the part of the owner/investor is that the qualified basis will equal the maximum allowable. However, this may not occur due to rent-up problems since not-rented LIHTC (empty) units do not count, mistakenly renting to income ineligibles, having existing residents in a rehab not income qualify, misuse of units and other factors. The qualified basis determination at the end of the first year of claiming is essential and this will be discussed next. Be sure to keep track of eligible units by size and square footage.

References: **R6, R26**

Notes: Remember that if you are not a 100% LIHTC building or project, the qualified basis can change from year to year if you do not carefully pay attention to this formula and where market units are placed!

Example: 75 of 100 units are rented at year end. If all the units are the same size, the qualified basis is 75%. However, if the units are different sizes and the 75 rented units equal 60% of the square footage, the qualified basis is the lesser of the unit fraction or the floor space fraction. In this example, 60% is the answer.

Topic (13): Initially Claiming Credits / Original Qualified Basis; Building Issues / 2/3 Rule

Discussion: The qualified basis has been defined in relation to the applicable fraction of the eligible basis. Now, the most important decision to be made is what year to start claiming credits. The IRS gives an owner the option of claiming at the end of the year the buildings are placed in service or deferring until the next year. Credits are always claimed by building, so this decision is building by building. The issue is that once credits are claimed, the qualified basis is locked in and can never go down. Further, any units added on after the first year are not calculated by the 10 year accelerated formula. This means that while credits are allowed after the first year, only 2/3 of the value is useable. This becomes critical to determine the appropriate year to start the 15 year cycle and to always remember this is a building issue!

There are other issues to consider before initially claiming credits. Unless the building was completely occupied in January of a given year, credits must be prorated in the first year based on the number of occupied months with the amount not eligible in year one claimable in year eleven. Additionally, you must meet the minimum set-aside or no credits can be claimed. Finally, the building must be in service for a least one full month during the year to qualify for credits in that year.

References: **R14, R37-38**

Notes:

1. Read the partnership agreement to see if investors were promised credits in the first year!
2. No credits are allowed until the minimum set-aside has been met.
3. Any units added on after the first year of claiming receive 2/3 of the credit amount up through year fifteen.
4. Any credits not allowed in year one due to the requirement to prorate occupancy are allowed in year eleven.
5. If you place in service after December 1st of a year, no credits are allowed for that year.

Topic (14): Minimum Set-Aside

Discussion: Do not confuse qualified basis and minimum set-aside (MSA). Every property must have a minimum set-aside. Credits cannot be claimed until this has been met and recapture occurs for the entire building/project if it is ever violated thereafter. Do not confuse the MSA with other set-asides. This is an irrevocable decision and is clearly set forth in the code. "The term qualified low-income 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 sub-paragraph 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 requirement of this sub-paragraph if 40 percent or more of the residential units in such project are both rent restricted and occupied by individuals whose income is 60% or less of area median income.

"Any election under this paragraph, once made, shall be irrevocable."

Reference: **R10-11, R39, R97**

Notes:

1. Obtain a copy of the allocation paperwork and be sure to make note of the MSA selected for the property!

2. New York City sets the MSA at 25/60.

Example: A 100 unit building selects the 20-50 option. The minimum set-aside is 20% of 100 or 20 units. The building selects the 40-60 option. The minimum set-aside is 40% of 100 or 40 units.

Topic (15): MSA - Initial Compliance / Building or Project ?

Discussion: For a property to qualify to claim credits, the minimum set-aside must be met. There is a deadline and if not met, the property is not a "low-income building" and can never qualify to claim credits. Initial compliance with the MSA differs depending on the year of allocation:

1. For 1987-1990 allocations, initial compliance had to be met within 12 months of the date the building(s) was placed in service.

2. For 1991 and later allocations, initial compliance has to be met no later than 12/31 of the second year.

If the minimum set aside is not met by the initial compliance date, no tax credits are allowed for this project. If the minimum set aside is met by the initial compliance date, but is violated thereafter, all low income units are subject to recapture.

In addition to meeting the initial compliance date, the owner must determine if the MSA will be met building by building or across the project. This is one of the most important owner decisions on the 8609 Form. This is determined by the answer to question 8b on the 8609 Form.

References: **R11, R14, R42, R74, R77, R89**

Notes:

1. Know the year of allocation.
2. Is it a Building or Project MSA?
3. Keep records that prove when you met initial compliance!

Example: A building is placed in service on 02/01/89 with an allocation of 1988 credits. The minimum set-aside must be met by 02/01/90. A building is placed in service on 02/01/95 with an allocation of 1994 credits. The minimum set-aside must be met by 12/31/96.

Topic (16): Other Set-Asides / HOME

Discussion: In addition to the federally required MSA, your project may have other set-asides due to commitments to other programs such as HOME or State set-asides that earned extra points under the Qualified Allocation Plan. Always determine the MSA first, then deal with the other set-asides. This is especially important if HOME is involved since income is at 50%. Be aware that once the MSA is selected, it governs the remaining units in your project. In other words, the minimum becomes the maximum. You cannot have any 60% units in a 50% deal; but you can have 40% or 50% in a 60% deal. Also, realize that the State Agency and HOME Administrator may require certain units to be designated, possibly by floor or building, to determine compliance with the set-asides. While the LIHTC is a percentage of a building - NOT SPECIFIC UNITS per se - the HOME and other set-asides may differ. Be sure to read the HOME Regulatory Agreement to see if the HOME units are fixed or floating. In the August 2004 Revenue Ruling the IRS has included a section on HOME Funds being used with the Tax Credit.

Reference: **MSA citations, R195-197**

Notes:

1. Obtain the allocation paperwork to determine if there are other set-asides.
2. Read any Regulatory Agreements about monitoring the other set-asides.
3. Keep careful records including separate waiting lists for these other commitments.

Example: A Tax Credit deal selects the 20-50 option. This is a 100% Tax Credit property. All units must be rented to households with incomes below 50%. A Tax Credit deal selects the 40-60 option. This is a 100% Tax Credit property with 40% of the units allocated HOME funds with income established at 50%. 40% of the units must be rented to households with incomes below 50%; the remaining 60% of the units can be rented to households with incomes below 60%.

Topic (17): Vacant Unit Rule

Discussion: One of the most beneficial rules under Section 42 is the vacant unit rule. This allows credits to continue to be claimed if an LIHTC eligible household moves out and with a reasonable attempt to rent the unit, it stays vacant. The vacant unit counts toward the set-aside and the qualified basis. While this rule is favorable to the owner, the failure to rent the next available unit or units can lead to recapture. In other words, the rule states "...and no other units of comparable or smaller size... are rented to non-qualifying individuals."

In the fall of 2001 the IRS issued a policy statement regarding the vacant unit rule and stated that this is a project rule. However, there is a conflict between the Tax Reform Act and the Final Monitoring Regulations, which are codified, wherein the rule is classified as a building rule. Check with your State to be sure how they are monitoring this issue.

In August 2004 as part of a Q&A Revenue Ruling, the IRS gives good guidance about "Reasonable Attempts…"

Reference: **R12, R92, R199-201**

Notes:

1. Remember the difference between empty, occupied, market and vacant units.
2. Keep track of the next re-rented unit by move-in date and unit # as vacancies occur.
3. Vacant units are never market.
4. Never re-rent a vacant unit (unless necessary by Fair Housing) until all empty units are rented.
5. The vacant unit rule is violated if there is no marketing, the units are offline or if the unit is rented to an ineligible household.

Topic (18): Income Limits

Discussion: In the discussion on minimum set-asides; the 20% and 40% are equivalent to the number of units at minimum that must be low income. The corresponding 50% and 60% are the income limits that must be used to determine eligibility at admission. "The income of individuals and area median gross income shall be determined by the Secretary in a manner consistent with determinations of ...area median gross income under Section 8, of the United States Housing Act of 1937...Determination under the preceding sentence shall include adjustments for family size." The IRS has further clarified that in accordance with the definition of income in Section 8, it is the combined total household income, even if household members are not related, that is compared to the per person total. To qualify as a low-income unit, the household must initially meet the income limit.

Reference: **R41, R62, R97, R101, R105**

Notes:

1. Since 1989, HUD has updated income limits once a year. That does not necessarily indicate an increase; in fact in some cases limits have decreased.

2. Most State Agencies will issue income limits. These are also available on the internet for HUD Section 8 income limits since 1995 under www.huduser.org.

3. There are now three sets of income limits: for rural properties, use the greater of capitalized AMGI or HUD national non-metro; for properties placed in service on or before 12/31/08, HERA "hold harmless" applies; for properties on 1/1/09 or later, HERA does not apply.

Topic (19): Calculating Income Limits

Discussion: As previously mentioned, the code is clear that HUD Section 8 limits should be used. "The income limits for very low income families are computed and listed according to family size by the Department of HUD." Effective 2009, HUD is now issuing a separate Tax Credit Income chart; see below.

Very low income equals 50% of the median. Simply use the HUD very low income limit by the number of persons.

For 60% projects or units, use the 60% income limit which is equal to "...120 percent...for a very low income family of the same size." This is the HUD very low x 1.2.

Boston city, Massachusetts										
FY 2014 MTS Income Limit Area	**Median Income**	**FY 2014 MTS Income Limit Category**	**1 Person**	**2 Person**	**3 Person**	**4 Person**	**5 Person**	**6 Person**	**7 Person**	**8 Person**
Boston city	$94,100	**50 Percent Income Limits**	$32,950	$37,650	$42,350	***$47,050***	$50,850	$54,600	$58,350	$62,150
		60 Percent Income Limits	$39,540	$45,180	$50,820	***$56,460***	$61,020	$65,520	$70,020	$74,580

Be aware, "that (1) the income limitation used to initially qualify tenants in a low income unit fluctuates with changes in the area median gross income, and (2) owners must use the current area median gross income limit..."

Reference: **R97, R101, R105, R107**

Notes:

1. The most recent Tax Credit income limits became effective on 12/18/13
2. Owners must use new income limits no later than 45 days after the effective date.

Topic (20): Household Size RE: Income Limits

Discussion: A household need not be related to be a household. A household can consist of one or more persons. Do not confuse whether a member has income or if a member is a tenant when using income limits. Count all household members and compare to the per person income limits.

Do NOT count the following:

1. Live-in Attendants
2. Visitors or Guests
3. Foster Children
4. Foster Adults

However, the following persons could still be members of the household:

1. Children temporarily absent due to placement in a foster home.
2. Children away at school, but who live with the family during school recesses.
3. Temporarily absent family members who are still family members (i.e. tenant, co-tenant or spouse).
4. Persons confined to hospitals or nursing homes per family decision.

Finally, when HUD issued CHG-27 on September 29, 1995 the following determination appeared for the first time:

> Count unborn children and children in the process of being adopted as members of the household for income limit purposes

In the new 4350.3 Revision 1 this policy is now officially part of the Handbook. (3-8)

Reference: **SPECTRUM-24**

Notes: Remember to compare income (to be discussed next) to the per person income limits currently in effect at 50% or 60% based on the number of persons as listed above.

3. When determining family size for establishing income eligibility, the owner must include all persons living in the unit except the following:

   a. Live-in aides. A person who resides with one or more elderly persons, near-elderly persons, or Persons with disabilities, and who:

      (1) Is determined to be essential to the care and well –being of the person(s);

      (2) Is not obligated for the support of the person(s); and

      (3) Would not be living in the unit except to provide the necessary supportive services.

      While a relative may be considered to be a live-in aide/attendant, they must meet the above requirements, especially the last. The live-in aide qualifies for occupancy only as long as the individual needing supportive services requires the aide's services and remains a tenant, and may not qualify fo continued occupancy as a remaining family member. Owners are encouraged to use a HUD-approved lease addendum that denies occupancy of the unit to a live-in aide after the tenant, for whatever reason, is no longer living in the unit. (See paragraph 6-12 C for more information.) The lease addendum should also give the owner the right to evict a live-in aide who violates any of the house rules.

   b. Foster children or foster adults. (See Glossary for the definition.)

   c. Guests. (See the Glossary for the definition.)

4. When determining family size for income limits, the owner must include the following individuals who are not living in the unit:

   a. Children temporarily absent due to placement in a foster home;

   b. Children in joint custody arrangements who are present in the household 50% or more of the time;

   c. Children who are away at school but who live with the family during school recesses;

   d. Unborn children of pregnant women.

   e. Children who are in the process of being adopted.

   f. Temporarily absent family members who are still considered family members. For example, the Owner may consider a family member who is working in another state on assignment to be Temporarily absent;

   g. Family members in the hospital or rehabilitation facility for periods of limited or fixed duration. These persons are temporarily absent as defined in subparagraph above; and

   h. Persons permanently confined to a hospital or nursing home. The family decides if such persons are included when determining family size for income limits. If such persons are included, they must not be listed as the head, co-head, or spouse on the lease or in the data submitted to TRACS but may be listed as other adult family member. This is true even when the confined person is the spouse of the person who is or will become the head. If the family chooses to include the permanently confined person as a member of the household, the owner must include income received by these persons in calculating family income. See paragraph 5-6 C.

5. When determining income eligibility, the owner must count the income of family members only.

Topic (21): Determining Gross Annual Income

Discussion: Since the code refers to income eligibility by the Section 8 program- "Tenant income is calculated in a manner consistent with the determination of 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."

The owner/manager must understand and use the HUD 4350.3 Revision 1 (6-07) to determine income, including income from any assets. HUD defines

A ..."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 (6-07), Income Inclusions and Exclusions, provides the completer list of income inclusions and exclusions published in the regulations and Federal Register notices.

C. Annual income includes amount derived (during the 12-month period) from assets to which any member of the family has access.

Read the HUD 4350.3 Revision 1 (6-07) Chapter 5 for complete definitions of what is and is not income.

References: **R92, R112-145, R157-166, SPECTRUM- notes**

Notes:

1. Refer to the HUD Handbook on exempt income and what is counted.
2. Use the gross projected income for the next 12 months, even if another program in your property has a different formula or definitions, for LIHTC eligibility.
3. Gross income has no allowable deductions.
4. The gross income by the number of persons at 50% or 60% must be equal to or below the per person income limit for the household to be eligible.

Topic (22): Helpful Notes on Income / Assets

Discussion: While the 4350.3 HUD Handbook outlines completely the definitions of income, listed under the notes are some helpful hints and reminders to use in the certification/ qualification process.

HUD 4350.3 REVISION 1 INCOME CHANGES & CLARIFICATIONS

On June 2007 the new HUD Revisions became effective. Chapter 5 still deals with assets and income. Listed below are key changes, additions and/or clarifications which must be used to compute gross annual income for all 4350.3 listed programs as well as the low income housing tax credit.

1) Income of Dependent Minors: The chapter clarifies that a tenant, co-tenant, spouse of either or an emancipated minor who is the tenant, can never be considered a dependent regardless of their age. Example: a 21 year old tenant is married to a 17 year old who works and earns $10,000 a year. This is income and must be counted.

2) Full Time Students: The Handbook clarifies that if a full-time student 18 or older who is not the tenant works, the maximum counted is $480, even if the student is away at school and resides with the parent(s) only during the summer. The Handbook further clarifies that if the tenant is a full-time student, all income must be counted.

3) Educational Scholarships or Grants: The new Revision 1 incorporates the Student Definition of Income change that went into0 effect January 2006. Unless the student is 24 years of age or older, with a dependent child (in this case, everything from a scholarship or grant is exempted) tuition is exempt, student loans are exempt; everything else is now income.

4) Social Security Payments: The Regulation clarifies that Social Security received by adults on behalf of minor children is income

5) Federal Government Pension Funds Paid to a Former Spouse: This is a new definition wherein if by the terms of the divorce decree the former Federal employee must give part of any Federal Pension to an ex-spouse that money is not income to the former Federal employee.

6) Withdrawal of Cash or Assets from an Investment: The new Revision 1 changed this definition to state that any money received in periodic payments is income. Under the old regulation, it was only income after the original principal was paid out. Now it does not matter what the money is from, if it is regular payments it is income. The confusion arises where it goes on to state that any remaining amounts in the account are NOT assets. However, under annuities and Exhibit 5-2, if the tenant has access to the balance it is still an asset. In other words, if once periodic payments are being made and the tenant has no access to the funds than there is no asset; but, if they can access the money, then can still count it as an asset.

Notes: **General**

A. Certain income will be exempt. The key is to ask about all sources and then management can make the determination whether or not to include in annual income. SEE What is excluded from income Exhibit. 5-1 **(R158-161)**

B. Income should always be projected and annualized; even if actual receipt period is less. Example: schoolteacher pay received over 9 or 10 months should be considered annual pay. **(R112)**

C. The temporarily absent family member reference in the above definition can be determined with these 3 steps:

1. Is the individual away from the household still a member of that household? If no, you are done.

2. Is the individual who is temporarily absent employed while away? If no, you are done.

3. If there is any income attributable to the absent individual, is it countable? If so, it should be included in annual income. **(R117)**

Annual Income

A. Wages, salaries, overtime pay, commissions, fees, tips, and bonuses:

1. Be sure full time employment is clarified to state whether that is 35, 37.5 or 40 hours per week. **(R113)**

2. Be clear on the differences between pay received bi-weekly (26 pay periods) or semi-monthly (24 pay periods).

3. Even if there are deductions from employment income, the amount to be counted is always GROSS annual income.

4. Total Income is counted for employment even if household member is temporarily absent. **(R117)**
5. Even if there are deductions from employment income, the amount to be counted is always GROSS annual income.

B. Self Employment: Self employment, if a business, will follow the definitions listed under "Net income" in the Handbook. Verification of other types of self employment such as selling products (i.e. Avon, Amway, Tupperware, etc.) may

require review of receipts for several months or quarters until an average earning can be determined. **(R-119)**

C. **Earned Income vs. Benefit Income:** Benefit Income is always counted whereas Earned Income depends on the status of the household member. Refer to the definitions as well as exemptions for minors earning income. **(R115)**

D. **Social Security/SSI:** These are considered benefit income and are counted for all members of the household regardless of age or status including tenants, co-tenants and payments received by minors for their own support or by adults on behalf of minors. Count the gross income before any Medicare deduction (if applicable) for Social Security & Disability. SSI, as a rule is linked to Medicaid, with no Medicare deduction. Social Security and SSI increased on January 1, 2007 by 3.3% Note: If an over payment is being subtracted from a check, take the gross minus the deduction. **(R120)**

E. **Alimony and Child Support:** Count the amount the tenant or co-tenant can reasonably be expected to receive. If this amount varies from amounts listed on the divorce or other legal decrees, a revised amount can be used with proof of a lesser payment or non-payment so long as the applicant or tenant has taken legal action to obtain the benefits. **(R118-119)**

F. **Regularly recurring contributions or gifts received from persons not residing in the unit:** This may include rental or utility payments (such as electric or heating bills paid by family not living in the unit) made on behalf of tenant or co-tenant. **(R112-119)**

G. **Military Pay:** Count all regular pay, special pay and allowances of a member of the armed forces who is the tenant, co-tenant or spouse whether or not that family member lives in the unit.

1. Hazardous duty pay for persons in a war zone or under hostile fire is NOT counted.

2. Be sure to determine whether or not members of the household in the armed forces should be counted as household members any longer. Example: 19 year old (non-tenant) going in the service for three years. When household members leave dependents in the household, income determination and household status needs to be made. Unless separated or divorced - tenants, co-tenants and spouses of either would be members of the household even if away on active military duty or in the reserves for extended periods of time. **(R117, R158)**

H. **Assets:** An integral part of the certification process is the determination of assets a household may have. Managers should never assume that simply because a household is very low income that they have no assets, nor should there be confusion that someone would not be eligible if they did have assets. The key element in dealing with assets is ACCESS. Does the individual or household possess and have accessible any assets? If so, the assets should be considered regardless of whether or not the asset produces actual income.

I. **Valuing Assets:** The Key with assets of any kind is valuation. As part of the 1983 HURRA, the concept of CASH VALUE was introduced. Cash value is the market or face value of an asset minus any reasonable costs that would be incurred in converting the asset to cash unless it is already in that form. These costs may include:

1. Penalties for withdrawing funds before maturity.
2. Broker/legal fees in selling an asset.
3. Settlement costs for real estate transactions.

Example: An applicant or tenant has savings in an I.R.A. in the amount of $2000. If withdrawn, a penalty of 10% is imposed (bank estimate). The CASH VALUE $2000.
-200. 10% penalty
$1800.

Note: In the case of invested funds in Certificates of Deposit and similar savings mechanisms, if a penalty is only on the interest (CD's often impose an interest penalty for withdrawal before maturing date), the cash value would not differ from the verified value of the CD.

J. **Net Family Assets**: In applying the concept of Cash Value, the asset becomes the NET FAMILY ASSET **(Exhibit 5-2; R162-166)**

K. **Excluded Assets** **(R165-166)**

L. **Included Assets**

Note: While the IRS Memo from 1994 mentions that under $5000 in assets do not need to be verified, SPECTRUM advises:

1. That ALL assets should be verified along with actual income.
2. Checking account is average 6 month daily balance.

3. There is a sample Asset Disposal Form following this section.

M. Income from Assets: Do not confuse the asset and the income from assets. List the assets first and then determine if any or all of the assets have any projected income.

Note: Actual income means exactly that. Do not change interest rates on bank accounts to determine actual income.

Example: A tenant has $300 in the bank earning 5% interest. Annual income is $300 x 5%.

In dealing with bank accounts, actual income is determined by taking the verified balance times the interest rate. That amount equals a projected annual income since interest rates are based on an annual yield.

Actual Income Includes:

1. Interest or dividend income from assets (count even if income stays in a bank account or accrues as part of a CD).

2. Interest portion of monthly or annual payments on contracts of sale, deeds, or mortgages held.

3. Net income from rental property. Take gross income less any costs for mortgage interest payments, real estate taxes, insurance and maintenance.

4. Imputed income from assets.

Imputing income from assets is a formula to be used in certain circumstances ONLY. After a list of assets has been made inclusive of assets disposed of less than fair market value (if applicable), at that time the question "do you impute" can be answered.

If <u>total</u> net family assets equal $5000 or less, DO NOT IMPUTE. As part of ANNUAL INCOME, count the actual income derived from net family assets.

If <u>total</u> net family assets exceed $5000, IMPUTE, and as part of annual income, count the GREATER of:

the actual income from assets
OR
the imputed income from assets

The imputed rate as set by HUD is currently 2% **(R133)**

NOTE: Be sure to read and refer to all of the new Chapter 5 plus Exhibit 5-1 in regard to what is counted as income and what is excluded as well as Exhibit 5-2 as to what are counted as assets and what is excluded.

Topic (23): Verification of Income

Discussion: One of the most common noncompliance findings is that the certification process is not complete, especially due to the lack of proper verification. Too often there are no verifications in the file or simply a tenant signed and/or notarized statement. HUD 4350.3 clearly gives guidance on verifying individual items, and also states that written third party verification is the best and most preferred method. You will know that you have good tenant files if each item listed on the certification has a back up verification. It is strongly suggested that a back up worksheet be used that clearly shows where all numbers on the certification are derived. Verifications are valid for 120 days from the date of receipt by the owner. When preparing the certification form be sure that verifications are valid. Verifications that are more than 120 days old are not valid.

Reference: **R149, R154**

Notes:

1. As part of the Handbook Revision, written verifications are now good for 120 days. The old rule about 90 days in writing with a 30 day oral extension has been deleted.

2. Social Security may be verified by the computer card sent out by SS or with a verification from the Agency. It is never acceptable to use a copy of the check or bank statement showing direct deposit, since that shows the net income and we need to use gross income. Check with your Monitoring Agency to see if the computer letter sent by Social Security in November or December is valid for use as a verification for the entire year.

3. If a household claims no assets, which is highly unlikely, have them sign a form indicating no assets or that all assets are cash on hand.

4. If you cannot verify the income of the household, then the household is not Tax Credit eligible.

Topic (24): Move-In Certification

Discussion: Since one of the major important issues of compliance is income eligibility, it is imperative that owners/managers be clear on income limits, definitions of household, and income. To claim credit for a unit, the household must be income qualified. The document that shows the total income and certifies eligibility is the move-in certification. Some State Agencies mandate certification of LIHTC eligibility forms and others do not. Check the compliance manual. If you use your own form, be sure it includes a place for household composition, income including income from assets, effective date and signatures by all tenants and co-tenants along with owner representative. A certification is required!

When residents have subsidy from Section 8 certificates or vouchers (or project based subsidy) the subsidy is NOT income to the household. The 9/2/92 Final Monitoring Regulations state that..."in the case of tenant receiving housing assistance payments under Section 8, the documentation requirement ...is satisfied if the Public Housing Authority provides a statement to the building owner declaring the tenant's income does not exceed the applicable income limit under Section 42(g)."

Reference: **R92**

Notes:

1. Check with your state to see if they will accept a letter from the PHA in regard to voucher holders. Many states now have a required Tenant Income Certification (TIC) which may have to be used for all tenants.

2. If you have other programs on your LIHTC property, be sure they are LIHTC eligible <u>first</u>.

3. On the following pages are government certifications and a sample SPECTRUM form. Eligibility for LIHTC is on:

   Line 18f-RD 1944-8
   Line 31-HUD 50059
   Line 8 - SPECTRUM

Topic (26): Recertification

Discussion: For twenty-one years, the Internal Revenue Code contained this quote:

"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." Recertification is required at least annually in all LIHTC properties unless you have received a waiver from the IRS. While the recert does not determine continued eligibility, it does identify the 140% situation, student status and possible household composition changes.

The code states that..."Except as provided in clause (ii) [reference to 140% rule], notwithstanding an increase in the income of the occupants of a low income unit above the income limitation applicable under paragraph (1) [MSA], 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." Translation - once a household is income eligible, they are always income eligible.

In 1994, the IRS offered a recert waiver (process updated in 2004) for 100% buildings. As part of HERA, recertification is no longer required in 100% buildings. In addition to checking with your state or SPECTRUM about its policy, be sure to check with the syndicators/investors.

Reference: **R41, R44**

Notes:

1. Check with your State to see if the recert waiver is in effect.
2. You must re-certify if your project is not 100% LIHTC.
3. Do not exceed 12 months when performing recerts.
4. Check your monitoring procedure to see if recerts are to be done on a specific date.
5. Even if you receive the recert waiver, which must come from the IRS, you must continue to perform move-in certifications for new move-ins and relocations at the property.

Topic (27): Tenant Selection Criteria

Discussion: It is strongly suggested each LIHTC property have a written tenant selection policy which clearly states how an applicant will be selected, any priorities in effect for tenant selection (i.e., wheelchair adapted units, HOME or 50%, other government programs priorities) and the fact that all applicants must be LIHTC eligible to be considered for an LIHTC unit, even if they are already eligible for another program. Also, consider including a policy whereby if an applicant does not submit a complete application, sign release forms for certification, or come to a personal interview, that the application will be canceled. Also, address the issue of affordability in regard to the rent.

Reference: None specific in code. SPECTRUM has sample forms that can be ordered.

Notes:

1. State clearly in writing that all applicants for LIHTC units must be Tax Credit income eligible with no exceptions.

2. Remember that you cannot refuse Section 8 program participants, solely because of their involvement with that program. State clearly in your tenant selection policy that Section 8 applicants are welcome at your LIHTC property so long as they meet all of your selection criteria.

3. Have a clear policy in regard to affordability whether by a base amount of income (except for Section 8 where subsidy should be considered) or by a percentage of income. This policy is a manager/owner decision unless another program on your LIHTC property has an established definition.

4. Be sure to check references of all applicants. State clearly that management reserves the right to reject solely based on negative references.

5. If your LIHTC deal is elderly housing, make sure you understand the appropriate definition from the Fair Housing law and state clearly in writing in your tenant selection criteria exactly who is eligible. There is incredible confusion in the market place as to what is elderly housing.

Topic (28) Confusion / Conflicts with Other Programs

Discussion: While there are some conventional LIHTC deals with no other programs involved, often LIHTC properties are coupled with other subsidy programs (both project based and tenant based), other government housing regulations and there are times when conflicts between programs arise. The IRS has been asked on several occasions if they cannot do something about the conflicts and the response has simply been that if you have other programs, identify potential or existing conflicts, then don't do a 100% LIHTC deal and use your non-LIHTC (market) units to handle the conflict. This goes back to the importance of having a tenant selection policy that states applicants must be LIHTC eligible first. Some issues you may confront:

1. **Section 8 Certificate/Voucher holders** - Just because someone has Section 8 does not mean they are automatically LIHTC eligible. This is portable subsidy and the household income could exceed LIHTC limits.

2. **In Place RD (FmHA) and HUD Tenants** - In an acquisition/rehab where persons do not have to vacate to accomplish the rehab, there may be in-place residents who are RD or HUD eligible but are above LIHTC income limits. You cannot displace these persons. You may offer moving incentives, but if they refuse, this can affect the first year qualified basis.

3. **HUD Applicants** - In an old pre-1981 HUD Section 8 project, persons who are eligible with incomes of 80% median or below, Section 236 is 80% median. Section 221D-3 BMIR is 95%. LIHTC max is 60%. Be aware that HUD has no regulations to allow bypassing HUD eligible persons even if they are not LIHTC eligible. You may have a difficult decision between subsidy, noncompliance with HUD or LIHTC.

4. **RD Applicants** - Rural Development is the only program in federal housing that has recognized the problem between its eligibility (adjusted annual income) and LIHTC (gross income) and has included regulations whereby you can skip over LIHTC ineligibles on your waiting list, even if they are RD eligible.

5. **HOME** - There are some LIHTC applicants who are below 60% and therefore tax credit eligible, but are above 50% and not HOME eligible. Be clear on your requirements for HOME selection.

6. **State 40%/50% Units** - Same potential conflict as HOME.

7. **Subsidy Priorities** - A household may be LIHTC eligible but not a priority for subsidy provided by a certain program. In this case you would have to select a subsidy eligible/LIHTC eligible candidate.

8. **Post '81, Section 8** - A household may be LIHTC eligible at 60% or below but not HUD eligible if above 50%.

9. **Bonds** – The vacant unit rule for bonds deals with renting the next available same or smaller size unit in the project whereas LIHTC deals with building. This may necessitate renting more than one unit to meet the requirements of bonds and LIHTC.

Topic (29): Waiting Lists

Discussion: Obviously, linked with tenant selection is how you choose applicants from the waiting list. No one should be placed on the waiting list unless a complete application has been submitted. It is required by many housing programs, and strongly suggested for LIHTC that all applications be logged by date and time received. Keep either one master list that has columns for bedroom size, need for subsidy (if available), any other program priorities (i.e., HUD preferences at HUD projects if owner still uses), need for handicapped apartment, gross income. If you have more that one income level in your LIHTC property, keep sub-list or columns by 50%, 60%, HOME, etc. Remember, in a 50% LIHTC property no one is eligible, except for any market units, if gross income is more than 50%. In a 60% deal, there may be some 40%, 50% units along with 60%.

Reference: **No IRC Reference**

Notes:

1. For RD 515, one major compliance issue is that managers forget there are two separate steps for tenant selection - gross income must be LIHTC eligible; adjusted income must be RD eligible, and a priority for rental assistance, if available.

2. You should maintain HUD eligible but LIHTC ineligible and RD eligible but LIHTC ineligible names on waiting list since they are still project eligible and could be LIHTC eligible if income limits increase or income decreases.

3. Unless there is another program requirement to follow (such as Grievance Procedure with HUD or RD), there is no IRS mandate to follow up rejection of applicants, purging names from the waiting list, or canceling application for failure to respond with any sort of meeting or appeal.

4. You may select persons from waiting lists due to membership in a class so long as that is not considered discriminatory.

Example: You have an available handicapped adapted apartment. The first applicant on your waiting list who needs the features is #10. #10 should be given the unit. A 40% household vacates in a Tax Credit deal with 40%, 50% and 60% units. The next applicant household below 40% is #7 on the waiting list. #7 should be selected.

Topic (30): Leasing

Discussion: "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...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." It is strongly suggested that a unit inspection be done as part of the leasing process to prove suitability for occupancy. This also will enable you to list any minor deficiencies discovered and may be critical in proving if a resident committed any damage during tenancy.

The transient issue is key here. "Residential units must be for the use of the general public and all of the units must be used on a non-transient basis...Generally, a unit is considered to be used on a non-transient basis if the initial lease term is six months or greater." The only exception to this rule is single room occupancy (SRO) units which may be month to month so long as they are transitional for homeless or other individuals seeking permanent housing.

Be very careful to sign at least a six month lease (except for SRO) at initial occupancy or a six month addendum for in-place persons who do not have six months left on an existing lease when you place the building in service. Also do <u>not</u> let an agency rent LIHTC units from you so that they can place their clients themselves, whether due to confidentiality, mental illness, etc. The tenant must enter into the lease agreement.

Reference: **R14, R59, R95**

Notes:

1. It is permissible to have a co-signer endorse the lease for persons with no established credit or references.

2. It is permissible to have a guarantor sign if the household cannot afford the rent. Any money received from the guarantor is income.

3. Be aware that under Fair Housing, it is a reasonable accommodation to allow a guardian to sign for a legally incompetent, but otherwise eligible, individual.

4. Be very careful about pre-leasing units months in advance due to possible income changes.

Topic (31): Leasing Addendums

Discussion: A lease is a legal contract. In order to change anything during the term of the lease, there must be clauses in the lease or addenda that deal with these issues. Listed below are some items to consider for an LIHTC property.

1. **Rent Concessions** - In a tight market, or where affordability is an issue, you may have to charge less than the LIHTC max. Do you have a provision to raise the rent during the lease term?

2. **Income Limits** - Since rent is tied to income limits, if the income limits increase, can you increase the rent?

3. **New Household Members** – Have a clear clause in the lease that Management must be notified if any minor children join the household, with proof of custody and that there must be prior permission from Management for any adult to join or it is considered fraud.

4. **Smoke Detectors** - This is the leading finding in unit inspection - that the tenant has disconnected the smoke detector; clearly state that this is a substantial lease violation that may lead to eviction and that the tenant is responsible for its maintenance in good working order during tenancy.

5. **Tenant Fraud** - It is strongly suggested that should you discover fraudulent income, asset or household composition reporting by the tenant, that this be listed as a substantial violation and leads to termination by State law.

6. **140% Rule** - In a building that is not 100% LIHTC, in the event you correctly follow the 140% procedure and rent a market unit to an LIHTC, do you have the ability to make the 140% a market unit?

7. **Utility Allowance** - If the utility allowance decreases during the lease term, can you raise the rent?

8. **Subletting** - Clearly prohibit this practice in LIHTC units.

9. **Recertification** – State clearly in the lease that failure to recertify is a substantial violation and will lead to termination of tenancy.

Reference: **Not specific in Code**

Topic (32): Commercial Space

Discussion: Commercial space is not LIHTC basis eligible. The code does allow, however, for commercial use in an LIHTC property. "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 commercial use."

"... 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."

Reference: **R8, R39**

Notes:

1. Do not take eligible LIHTC common areas and turn them into commercial space after claiming credits. This will result in recapture of credits.
2. Be sure you are licensed for any commercial activity on your property and have all local approvals.
3. Do not allow tenants to conduct commercial business from their unit.
4. If you serve meals or provide daycare, whether in commercial or common areas, do you have adequate liability insurance coverage?
5. A permanent model apartment on a property may be considered commercial space.

Example: A 100 unit LIHTC property proposes that the entire first floor, except for the lobby entrance to the residential portion, will be set aside for office space, retail shops, a drug store and a cafe. This is completely acceptable, however the commercial space is not included in the basis.

Topic (33): Common Areas

Discussion: The eligible basis of the property (along with the qualified basis) includes all LIHTC units as well as common areas. There are two important areas to discuss here in addition to the previous reminder under commercial space to not convert common areas to commercial usage. The first deals with charges for items and amenities in any common area or market apartment. "Thus residential 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 (i.e. stoves, refrigerators, air conditioning units, etc.) only if the included amenities are comparable to the cost of the amenities in the low income units." Be careful about trying to charge market rate tenants costs that are proportionately higher than LIHTC.

"Additionally, the allocable cost of tenant facilities, such as swimming pools, other recreational facilities and parking areas, may be included (in the eligible basis) provided there is not a separate fee for the use of the facilities and they are made available on a comparable basis to all tenants in a project." If parking, pools, tennis courts, etc. are included in the eligible basis, no separate fees can be charged.

Reference: **R7-8, R92**

Notes:

1. Laundry is acceptable along with vending areas so long as LIHTC are charged the same costs and it is solely for the purpose of residents and guests.

2. Do you know if your parking lot or garage is part of basis? This is critical if fees are being charged.

3. If a common area is in basis, fees may not be charged even to market rate tenants, i.e., covered parking, pool use, etc.

Topic (34): Medical / Supportive Services

Discussion: Many questions have arisen in regard to the IRS statement that the property must be residential in nature. Many questions were asked to the IRS about services and medical use in an LIHTC property.

"The furnishing to tenants of services other than housing (whether or not the services are significant) does not prevent the units occupied by tenants from qualifying as residential rental property eligible for credit under Section 42(g)..." A service is optional if payment for the services is not required as a condition of occupancy." This provision allows for supportive services such as meals, transportation, housekeeping etc. The charge, if any, will be discussed under utility allowances.

There is a difference between supportive services and medical use. "...no hospital, nursing home, sanitarium, life care facility, retirement home providing significant services other than housing...may be a qualified low income project."

References: **R14, R40, R96, R178-180**

Notes:

1. You cannot prevent a resident from contracting privately for services including medical nor can you require "capacity for independent living." That is a violation of Fair Housing.

2. Supportive services fees are not an issue if they are truly optional or paid by an outside agency.

3. The IRS has ruled that if there is a separate building on a site that provides assisted living medically needed services, that building is ineligible for the credit.

Topic (35): Staff Units

Discussion: One of the most confusing issues in LIHTC properties is whether or not staff units may be set-aside for resident managers, caretakers and maintenance personnel. This has been dealt with as follows. In the blue book, part of TRA 1986, it states "Residential rental units are not for use by the general public, for example, if the units are provided...by an employer for its employees." This regulation stood until Revenue Ruling 92-61 was issued dealing with the qualified/eligible basis as follows: "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 qualified basis." Translation - this ruling on 9/9/92 allows a unit for a full-time staff to be considered part of common area.

The bottom line is that the staff person must be full-time for the unit to be "common area." This differs greatly from HUD, PHA and RD regulations. You have one of two situations: If the staff unit is a rental unit then the staff must be income eligible, be certified, in other words be a tenant, and sign a lease. If the unit is not a unit, but for use as common area by full-time staff, then it is not a rental unit and the staff does not have to be income eligible, certified, leased or considered a tenant. In this case, use of an employee contract specifying when occupancy will cease, is important.

Reference: **R14, R92, R99**

Notes:

1. Did the owner set-aside a unit common area in the LIHTC application and allocation paperwork?

2. If not, you will need State Agency permission to change your deed provision.

3. Review your extended use provision to be sure in regard to this issue.

4. The 9/9/92 ruling is not retroactive unless the owner filed a tax return reflecting the substance of the ruling!

5. To be a non rental unit, staff must be full-time.

6. IRS has issued at least one project ruling allowing security or drug enforcement officials to occupy temporarily to defuse a situation. However, a police substation on a Tax Credit property does not fall under this rule and is considered commercial space.

Topic (36): Students

Discussion: Many students are not LIHTC eligible. IRS regulations state that "no dormitory...may be a qualified low income project." The IRS and Congress did not want LIHTC housing to substitute for a college dormitory.

The student issue is complex and often misunderstood. The regulation refers to the fact that "in no case is a unit considered to be occupied by low income individuals if all of the occupants are students (as determined under Sec.151(c)(4)." That pertains to the definition of a full-time student enrolled 5 months a year as a full time student. Section 151(c)(4) also states "the term student means an individual who during each of 5 calendar months during the calendar year..." This presents an interesting situation whereby if a student graduated in June, they are not tax credit eligible until January of the following year.

The issue with students is only a concern when everyone is a full-time student. Be aware that unlike income, there is no grandfathering because the tenant was not a student when they moved in and later became one; or a household where one person wasn't a student qualified household with other students in it and later vacated. This is a big application and recert issue. IT IS INCOME THAT IS GRANDFATHERED, NOT STUDENT STATUS!

Single Full-Time Students - Ineligible if in college, university, grad school, medical school or even a single elderly full-time student. Possible exception is job training.

Married Full-Time Students - Must have filed a joint tax return. Could be a single and married student together if a joint return is filed by a married person.

Single Full-Time Students w/Children - Eligible if on Welfare (Title IV Soc. Sec.), Job training or if children are not dependents of anyone outside the household, OTHER THAN A PARENT. (Effective 1/02/08)

Persons Leaving the Foster Care System – HERA

References: **R12, R14, R60**
R118 - Important Student Income Definitions
R184 – Section 151 c4

Notes:

1. Ask on the application about student status and verify it.

2. Verify students are not claimed on parent's tax return or they should not be housed.

3. If everyone is not a full-time student the household is eligible until that situation changes, if ever.

4. A person working full-time attending school part-time is eligible. A person working, filing a tax return and attending school full-time, if alone is not eligible.

5. If a single student claims they are part time, obtain verification of such from the educational institution.

6. Verify that families who claim the children are their dependents, when everyone is a full time student, have documentation of the dependents. (i.e., tax returns or other legal documents)

7. When a married couple who are both full time students apply, be sure to obtain a copy of page 1 of the tax return indicating that the selection for joint was checked.

8. Students are not a protected class under Fair Housing. Therefore, a decision by management to refuse to rent to students is in no way considered discriminatory.

Note: The new 8823 Audit Guide clearly states that a Full time Student status begins in First Grade. It is possible in some states if Kindergarten is mandated to be full day, that it begins that year. The proposal to ignore K-12 has been set aside.

Topic (37): Fair Housing / 504 /ADA Issues & LIHTC Properties

Discussion: LIHTC projects, like all other housing in the U.S., are covered by the Fair Housing Legislation. There is a great deal of confusion as to what regulations apply to LIHTC properties and which do not. Listed below is a checklist to assist in key areas of concern in regard to protected classes and civil rights.

1. **Protected Classes** - Race, color, religion, sex, handicap, familial status and national origin are protected against discrimination. However, households must still be eligible which encompasses four areas: income, occupancy, selection criteria by management and type of property. Eligibility is always the key.

2. **New Construction Requirements** - Since 3/13/91 Fair Housing has required that downstairs units in non-elevator buildings and all units in elevator buildings be handicap accessible. This is a federal law! Obtain 3/6/91 Federal Register.

3. **Reasonable Accommodation** - The law requires that reasonable accommodation in rules, regulations, policies and procedures may have to be made for handicapped applicants or residents.

4. **Reasonable Modification** - The law requires that reasonable physical alterations cannot be refused to a handicapped applicant or tenant.

5. **Where 504 Applies** - Section 504 of the Rehabilitation Act of 1973 covers all federal programs. This includes Community Development Block Grant (CDBG), HOME funds, RD, PHA and HUD properties. New construction and substantial rehab require that a minimum of 5% of units or a minimum of one and additional 2% of units or a minimum of one be adapted for wheelchair and visual/hearing impaired respectively. All common areas must be accessible to and useable by the physically mobility impaired. While Fair Housing states that reasonable modification costs may be charged to tenants, Section 504 states it is a project expense unless it poses a financial/administrative burden.

6. **Fair Housing, / 504 / ADA & LIHTC** - Fair Housing applies to all LIHTC projects. 504 does not apply to conventional 9% deals without other federal funds. This ruling may be subject to change. If 504 doesn't apply the Americans with Disabilities Act (ADA) provision in regard to public accommodations still would require offices & other common areas to be accessible.

7. **Assigning Handicapped Units** - When marketing wheelchair adapted or visually/hearing impaired accessible units, persons who need or would benefit from the features should always have priority. In a market where these individuals cannot be found, you may lease to others but do so on a temporary basis and discuss continuing tenancy options in your lease.

8. **Familial Status Issues** - It is critical to understand the difference between household and familial status and not to discriminate against families with children in policies. This can be an issue with occupancy standards as well as saving 50% or HOME units that are smaller size forcing families into larger units. This may be discriminatory. Never assign bedrooms based on age or sex of children or other familial relationships.

9. **Occupancy Standards** - No federal agency sets occupancy policy. This is up to the owner. Check to see if any local ordinances exist in your location; if so you must use them. If not, when designing standards do not discriminate against families by simply limiting the number of persons due to opinions/emotion as this can be discriminatory.

10. **Elderly Housing** - This is the biggest Fair Housing issue in the market place. Designated elderly housing is the only housing where you can exclude families with children. The key question is do you have elderly housing? Federal elderly housing like RD, PHA, and HUD states that elderly housing is for persons 62 and older or handicapped along with other members of the household including children. Certain HUD programs for the elderly limit the number and type of handicap for persons under 62. The other types of elderly housing are 62 and older (do not confuse with HUD/RD) where everyone must be 62 and older; or 55 and older where at least one person must be 55 or older in at least 80% of the units. Any other elderly program must have the permission of HUD Secretary to be considered elderly.

11. **Independent Living** - It is illegal to inquire whether applicants have this capacity. Realize that residents may have service providers including live-in care attendants.

12. **Affirmative Fair Housing Marketing Plans** - If your LIHTC property is HUD or RD (or another federal program with this requirement) AFHMP is required. Otherwise, there is no such IRS mandate. Always keep track of marketing activities, to be able to verify reasonable attempts to rent vacant units.

13. **Communication** - It is strongly recommended that a TDD # be posted, either audiotape or braille for visually impaired and handicapped accessible interview areas for physically handicap be available.

Reference: **Nothing specific in the Tax code, but federal laws still apply.**
MOU – R174-177
8823 – R78-80

Notes:

1. SPECTRUM provides a comprehensive one day training on FH/504/ADA.

2. Attached Pages:
   - FH Familial Status & Handicap Definitions
   - FH Elderly Housing Exemptions
   - 504 New Construction /Rehab Requirements
   - Reasonable Modification Regulations

(k) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with --

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

"Handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance. For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite. As used in this definition:

(a) "Physical or mental impairment" includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; disgestive; genitor-urinary; hemic and lymphatic; skin and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment: includes but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

(b) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking breathing, learning and working.

(c) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment.

Fair Housing Act as Amended (Title 8)

Subpart E -- Housing for Older Persons

§ 100.300 Purpose.

The purpose of this subpart is to effectuate the exemption in the Fair Housing Amendments Act of 1988 that relates to housing for older persons.

§ 100.301 Exemption.

(a) The provisions regarding familial status in this part do not apply to housing which satisfies the requirements of §§ 100.302, 100.303 or § 100.304

(b) Nothing in this part limits the applicability of any reasonable local, State or Federal restrictions regarding the maximum number or occupants permitted to occupy a dwelling.

§ 100.302 State and Federal elderly housing programs

The provisions regarding familial status in this part shall not apply to housing provided under any Federal or State program that the Secretary determines is specifically designed and operated to assist elderly persons, as defined in the State or Federal program.

§ 100.303 62 or over housing

(a) The provisions regarding familial status in this part shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this section even though:

(1) There are persons residing in such housing on September 13, 1988 who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;

(2) There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over;

(3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

§ 100.34 55 or over housing

(a) The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, *Provided That* the housing satisfies the requirements of § 100.304 (b)(1) *or* (b)(2) *and* the requirements of § 100.304(c).

(vii) The vacancy rate of the housing facility.

(c)(1) At least 80% of the units in the housing facility are occupied by at least one person 55 years of age or older per unit *except that* a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with this paragraph (c)(1) of this section until 25% of the units in the facility are occupied; and

Housing Amendments Act) amended title VIII of the Civil Rights Act of 1968 (Fair Housing Act or Act) to add prohibitions against discrimination in housing on the basis of disability and familial status. The Fair Housing Amendments Act also made it unlawful to design and construct certain multifamily dwellings for first occupancy after March 13, 1991, in a manner that makes them inaccessible to persons with disabilities, and established design and construction requirements to make these dwellings readily accessible to and usable by persons with disabilities. Section 100.205 of the Departments regulations at 24 CFR Part 100 implements the Fair Housing Act's design and construction requirements (also referred to as accessibility requirements).

On March 6, 1991 (56 FR 9472), the Department published final Fair Housing Accessibility Guidelines (Guidelines) to provide builders and developers with technical guidance on how to comply with the accessibility requirements of the Fair Housing Act. (The Guidelines are codified at 24 CFR Ch.I, Subch.A., App. II. The preamble to the Guidelines is codified at 24 CFR Ch.I, Subch. A., App.III.) The Guidelines are organized to follow the sequence of requirements as they are presented in the Fair Housing Act and 24 CFR 100.205. The Guidelines provide technical guidance on the following seven requirements.

Requirement 1. Accessible building entrance on an accessible route.
Requirement 2. Accessible common and public use areas.
Requirement 3. Usable doors (usable by a person in a wheelchair).
Requirement 4. Accessible route into and through the dwelling unit.
Requirement 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
Requirement 6. Reinforced walls for grab bars.
Requirement 7. Usable kitchens and bathrooms.

The design specifications presented in the Guidelines are recommended guidelines only. Builders and developers may choose to depart from these guidelines and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act. The Fair Housing Act and the Department's implementing regulation provides, for examples, for use of the appropriate requirements of the ANSI A117.1 standard. However, adherence to the Guidelines does constitute a safe harbor in the Department's administrative enforcement process for compliance with the Fair Housing Act's design and construction requirements.

Since publication of the Guidelines, the Department has received many questions regarding applicability of the design specifications set forth in the Guidelines to certain types of new multifamily dwellings and to certain types of new multifamily dwellings that are subject to compliance with the design and construction requirements of the Fair Housing Act. Given the wide variety in the types of multifamily dwellings and the types of dwelling units, and the continual introduction into the housing market of new buildings and interior designs, it was not possible for the Department to prepare accessibility guidelines that would address every housing type or housing design. Although the Guidelines cannot address every housing design, it is the Department's intention to assist the public in complying with the design and construction requirements of the Fair Housing Act through workshops and seminars, telephone assistance, written replies to written inquires, and through the publication of documents such as this one. The Department has contracted for the preparation of a design manual that will further explain and illustrate the Fair Housing Act Accessibility Guidelines.

The questions and answers set forth in this notice address the issues most frequently raised by the public

http://www.hud.gov/fhe/fhefhasp.html

Section 504 of the Rehabilitation Act of 1973 FR 20233, June 2, 1988

Sec. 8.22 New construction -- housing facilities.

(a) New multifamily housing projects (including public housing and Indian housing projects as required by Sec. 8.25) shall be designed and constructed to be readily accessible to and usable by individuals with handicaps.

(b) Subject to paragraph (c) of this section, a minimum of five percent of the total dwelling units or at least one unit in a multifamily housing project, whichever is greater, shall be made accessible for person with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in Sec. 8.32 is accessible for purposes of this section. An additional two percent of the units (but not less than one unit) in such a project shall be accessible for persons with hearing or vision impairments.

(c) HUD may prescribe a higher percentage or number than that prescribed in paragraph (b) of this section for any area upon request therefor by any affected recipient or by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD of a need for a higher percentage or number, based on census data or other available current data (including a currently effective Housing Assistance Plan or Comprehensive Homeless Assistance Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD shall take into account the expected needs of eligible persons with and without handicaps.

Sec. 8.23 Alterations of existing housing facilities.

(a) Substantial alteration. If alterations are undertaken to a project (including a public housing project as required by Sec. 8.25 (a)(2)) that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the provisions of Sec. 8.22 shall apply.

Sec. 8.26 Distribution of accessible dwelling units.

Accessible dwelling units required by Sec. 8.22, 8.23, 8.24 or 8.25 shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that a qualified individual with handicaps' choice of living arrangements is, as a whole, comparable to that of other persons, eligible for housing assistance under the same program. This provision shall not be construed to require provision of an elevator in any multifamily housing project solely for the purpose of permitting location of accessible units above or below the accessible grade level.

2-38. TENANT MODIFICATIONS OF PREMISE (FH Act).

a. A person with handicaps has the right under the Fair Housing Act to make reasonable modifications to any part of his or her unit or the common areas at his or her own expense.

1) The owner must permit the modifications if they are reasonable and may be necessary to afford a handicapped person full enjoyment of the premises.

2) The owner may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing that when s/he vacates the unit s/he will restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

EXAMPLE: For marketing reasons or operational considerations, the owner may require the tenant to raise cabinets that have been lowered or replace roll-under lavatories with the previously existing vanity/sink combination.

3) The owner may not increase for persons with handicaps any required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for restorations at the end of the tenancy, the owner may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest of such an account shall accrue to the benefit of the tenant.

4) The owner may condition permission for a modification on the renter providing reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

b. This provision in no way relieves an owner of a federally assisted project of the duty under Section 504 to make reasonable housing adjustments and alterations at an owner's own expense and to operate their housing to be accessible to persons with handicaps. If an individual with handicaps requests and accommodation which would result in a fundamental alteration in the nature of the project or program or in undue financial and administrative burdens, if done at the owner's expense, the owner may suggest that the individual may wish to make the modification at his or her own expense as indicated in this paragraph. (See Exhibit 2-2 for definitions of "fundamental alteration: and "undue burdens".

Topic (38): Unit Transfers

Discussion: There is major confusion in regard to transfers from one Tax Credit Unit to another. For the first 10 years of this program, (1987-August 1997) transfers did not exist; if someone moved from one apartment to another, whether in the same or a different building, it was a 'move out' and a 'move in' (even if it was across the hall) and the household had to qualify with a move-in cert. In fact, the code always referenced that the household was still eligible for the same unit even if their income increased after move in.

This regulation stood until September 26, 1997 when the IRS issued a Revenue Ruling to update the 140% rule (to be discussed next). As part of that ruling, (26 USC 7805) a household could now move to any other unit within the same building regardless of income being above the income limit, and was still eligible and counted toward the qualified basis and the minimum set-aside. A very important part of this rule change was that the same household could not qualify more than one unit in the basis. This was accomplished by the fact that when someone moves the new unit adopts the status of the old unit and vice versa, in other words they swap their status.

In Revenue Ruling 2004-82, issued July 2004, the IRS clarified that the units would swap their status even if in different buildings. However, the example used cited an eligible household from one building to the other.

When the Audit Guide was issued, it states that households can move from one building to another so long as the income does not exceed the 140% limit. There is nothing in Section 42 or any Revenue Rulings to back up this position. Spectrum strongly advises that unless a household is income qualified, check first with your allocating agency and the owner to see what their positions are on this issue. Further, even if the state and/or the owner has no problem moving over income people from one building to another, before doing so, (unless the household is still income qualified) check with your accounting firm as well as the syndicator/equity fund and/or investors.

Reference: **R110, R200**

NOTES

1. Prior to 9/26/97 any relocation to be in compliance meant the household had to be income qualified based on the current income limits in effect and numbers of persons in the household at the time of the move.

2. Management should have a clear policy as to when households are allowed to relocate. Fair Housing should definitely be considered.

3. Be sure to check with your state to see if any paperwork must be done when moving people within the same building or to a different one.

Topic (39): 140% Rule

Discussion: The most confusing rule for managers is the 140% rule. Many persons have misinterpreted this rule to mean that if someone goes above the 140% limitation, they must move-out. This is not the case. In fact, the 140% affects the next rental, thus the official name for this regulation is the next available unit rule. "If the income of the occupants of the unit increases above 140% of the income limitation...[the low income status] 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." Thus, if someone goes above 140%, the credit is still available so long as the next available, the same or smaller size unit (even if a market unit) is rented to an LIHTC eligible household. "...not withstanding 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)." Every next available unit in the building must be rented to LIHTC or all 140% units are forfeited!

References: **R12, R41, R110**

Notes:

1. The IRS has clarified the 140% rule is a building rule and that the 140% unit still counts toward basis and MSA.

2. There is absolutely no effect in a 100% LIHTC building if a household exceeds 140% since every unit must be rented to LIHTC eligibles, to maintain the 100% basis.

3. Remember the unit must be kept rent-restricted at all times in a 100% building when 140% occurs. In less than 100%, if you have the appropriate lease clause credits can be transferred and the tenant made a market tenant but the unit must be rent restricted until an LIHTC occupies a market unit.

4. In a Tax Credit property with market units have a clear clause in the lease, due to the 140% Rule, as to when the 140% unit may be made a market unit. Note that if the rent is not going to change and simply the status of the unit is, there is no need for a 30 day notice by state law.

Topic (40): Continuing Eligibility

Discussion: It is important to be clear on continuing eligibility when mixing other programs with LIHTC and the student issue. Listed below is a continuing eligibility check list.

1. **Income Eligibility** - Once initially qualified, the household is always income eligible for the same unit but be aware of the 140% rule if income exceeds that limit.

2. **Income & HUD** - HUD says once income eligible, always eligible for the project. In LIHTC, this goes back to the issue discussed under unit transfers.

3. **Income & RD** – The same situation as mentioned above with HUD, RD does have one rule which is required lease clause for all 515 complexes that if the household's income exceeds the moderate income limit, they must move out at the end of the lease. This would apply in an RD / LIHTC property.

4. **Students** - If the household was originally eligible, but later became a student household you would not admit as a new move-in, the household is no longer LIHTC eligible. This can pose a problem in HUD/RD projects where those agencies state that you cannot displace tenants. Moving incentives may be necessary.

5. **HOME / State Set-Asides** - Read your allocation paperwork and Regulatory Agreement to see what is required if a HOME or 40%/50% household in a 60% LIHTC deal exceeds the income limit for that program. Often, you are required to rent the next available unit to HOME or 40%/50%.

6. **Relocation** - Effective 9/26/97 you may relocate an over-income household to another unit in the same building. Again, see Unit Transfers (p.58 in regard tot his issue)

7. **Adding a New Household Member** – The Audit Guide suggests that when someone joins a household there must be a re-qualification. Check with your state in regard to this policy.

Reference: **Previous Citations**

Notes:

1. Do not confuse LIHTC eligibility and other housing programs.

2. There is a very good reason to have some market units to deal with students, HUD or RD issues that may occur.

Topic (41): Rent Calculations

Discussion: For an LIHTC unit to be in compliance, the rent must be restricted. The rent is based on current income limits in effect.

In 1990 the formula adopted for rent was based on an "imputed" number or a fictitious 1.5 person per bedroom with an efficiency/studio using the one person limit. To calculate that, multiply the bedrooms (actual, not sleeping areas) by 1.5. Income Limits would be as follows:

Bedroom Size	0	1	2
Income Limit	1	1.5	3

In the same way that the State provides the owner with the correct income limits, the same thing is done with maximum allowable LIHTC rent. To get the 1.5 limit the state will either take the one person income limit, add to the 2 person and divide by 2, then divide by 12 x 30% or take the 1 person rent plus 2 person rent, divide by 2.

For 1990 and later years, there is a gross rent floor, which means that the rent would not fall below the original gross level, even if income levels decrease. While the new limits must be used for income eligibility, the rent would not drop below original approved levels. Revenue Ruling 94-57 gives the formula for the gross rent floor as either the rent in effect on the date of allocation or the placed in service date.

Reference: **R13, R39-40, R92, R103-104**

Notes:

1. Tenants often get confused and feel the rent is not reasonable because the assumption is that rent should equal 30% of their income. The LIHTC max rent is based on 30% of an income limit.

2. Changes in household composition do not affect rent in 1990 and later year properties.

3. Whenever you get a decimal point in rent calculation always round down.

Topic (42): Utility Allowance

Discussion: The gross rent calculation includes any utilities that must be paid by the tenant. The formula is rent charged to the tenant plus utility allowance cannot exceed the LIHTC gross maximum rent. The IRS gives clear and important guidance on this subject.

1. In a HUD regulated building, use the HUD approved utility allowance.

2. In an RD (FmHA) regulated building, use the RD approved utility allowance.

3. In a conventional building **with** Section 8 Certificates or Vouchers, use the PHA (Public Housing Authority) approved utility allowance. This applies to those Section 8 units only. This was a major change in regulations in May 1994.

4. In a conventional building or unit **without** Section 8, use either the PHA utility allowance or utility company data, if lower. HERA introduces many other options for conventional buildings.

   Utilities normally are items such as electric, heat, water, sewer, oil or gas. However, if a supportive service or any other charge is mandatory it becomes part of the gross rent calculation. This may include parking fees, a telephone if one is required to open the door for visitors, meal service, or other required costs. Do not take this lightly since the utilities are part of rent, and overcharging rent can take the unit out of compliance.

   Very importantly, the utility allowance should be reviewed at least annually. The IRS policy is when the utility allowance changes, it must be put in effect no later than 90 days after the change.

Reference: **R40, R89, R96, R205-214**

Notes:

1. Have clear proof of your utility allowance amounts, where they were obtained and annual updates in your file. An update does not necessarily mean a change, but you must document your annual review.

2. It is suggested that you have a lease addendum, especially for electric use that allows you to obtain annual data directly from the utility company on an annual basis for RD and HUD properties.

3. The concept of a utility allowance is an average. If the utility company bills your firm and you bill the tenants, as opposed to the bill coming directly from the utility provider to the tenant, you cannot charge more than the LIHTC max for rent and utilities.

Topic (43): Maximum Rents/Subsidy

Discussion: For a unit to be considered Tax Credit eligible, the rent must be restricted. The maximum LIHTC rent, including any utility allowance, is what you can charge the tenant. When the Tax Credit rent conflicts with rents set by other programs (such as RD, HUD or HOME) never charge more than the Tax Credit maximum. Thus, if the HUD 236 basic rent, Rural Development basic rent or the high HOME rent exceeds the Tax Credit maximum, it cannot be charged. With HUD and HOME there will be obviously be a budgetary impact when excess income or even basic rent cannot be charged or the tenant cannot be charged 30% of annual income under HOME regulations.

For RD 515 / LIHTC Properties 3560 Regulation and Asset Management Handbook that went into effect on February 24, 2005, clearly states that if the borrower cannot charge the RD approved basic rent because it is higher than the LIHTC maximum allowable rent, the owner must contribute the difference into the project's operating account, but cannot use project fuds to do so.

Reference 3560 Regulation page 106.
Asset Management Handbook 7-9

(g) LIHTC. Borrowers who receive LIHTCs may establish rents in accordance with LIHTC requirements. However, borrowers are obligated to ensure that sufficient annual funds are available to cover expenses in the housing project's approved budget, including the required payments on the borrower's Agency loan. Borrowers must not use housing project funds to make up any difference between rents required under Agency program requirements and the maximum allowed rents under the LIHTC program.

§3560.203 Tenant contributions.

(a) Tenant contributions. A tenant's contribution to rent charged for a rental unit in an Agency financed housing project is based on the tenant's income, as calculated on the Agency's tenant certification forms, and the availability of Agency or non-Agency rental subsidies.

2. Agency Review and Monitoring of LIHTC Rents

The law does not excuse the borrower from paying the basic rents required to the Agency; these rents must be deposited in toth eoperating account in full. Borrowers must be informed by Loan Servicers that the borrowers are responsible for funding any gap between basic rents and tax credit rents collected from tenants when basic rent exceeds LIHTC rents. This fact should be noted when the Loan Servicer reviews the project operating budget.

Borrowers must not use project funds to make up any difference between rents required under Agency program rules and the maximum allowed rents under the LIHTC program, and they must collect the required rents. During the annual review process, Loan Services should review the previous year's budget with a focus on any cash shortfalls. If the Loan Servicer determines that a shortfall exists due to differences between tax credit limitations and basic rents, they must ensure that a provision is made in the coming year's budget and future years on line 11, "Cash-non project" of Form RD 3560-7 for the owner to contribute necessary funds to meet the required rents.

Topic (43): ... Continued

Another issue relates to overage in the RD program. If the tenant income increases after occupancy, the household is still eligible. However, in an RD/FmHA 515 property the resulting increase could exceed the LIHTC max. Any amount over the Basic is called overage. You can charge this overage for any amounts turned over to RD in 1991 and later allocated properties.

The maximum Tax Credit rent does not include any subsidy from Section 8, rental assistance or any other comparable federal or state subsidy program. There is also a stipulation in the code with Section 8 only, that if the tenant portion exceeds the Tax Credit maximum after initial occupancy, it can be charged to lower the subsidy burden to HUD and the tax payer. This applies to Section 8 only.

Reference: **R13, R39, R41-42, R181-183**

Notes:

1. Subsidy received is not income to the tenant on the tenant cert. It is a payment to the owner.

2. A rent concession of any kind to a tenant lowering rent is simply that. It does not constitute income to the household. However, if a source outside of the household (family or agency) is paying the rent or any portion of it on a regular basis, that amount of money is income to the household.

3. You can never charge more than the Tax Credit maximum rent to the household except in three circumstances: any form of subsidy; Section 8 increases in income after initial certification that lead to a rent higher than the Tax Credit max; and RD overage in a 1991 or later allocated deal.

4. HUD issued a memo in November 2002 in regard to PHA's and comparability and stated that tax credit rents are assisted and cannot be used for this purpose.

Topic (44): Budgeting Issues

Discussion: One serious concern in LIHTC properties is the financial process of budgeting. The proper way to budget in any management scenario is to calculate the expenditures and then determine the required income needed to pay the bills. Unfortunately, for an LIHTC property the income max is known and people then back into the expenses. Linked to the budget is a fact that managers discover rather quickly. The persons who can afford the rent are not tax credit income eligible and the persons who are eligible often cannot afford the rent. One reality is that when you follow the formula for calculating the LIHTC max and determine that amount, the question that arises is, you can charge this, but can you really charge it? What is meant here is that while the program formula allows a charge, local competition may force you to lower your rent. The existence of applicants who are very low income may also force owners to lower rents for affordability.

Reference: **R13, R40**

Notes:

1. Even if you can charge the LIHTC max, the only way this can increase is if income limits increase. Will the income limits go up as quickly as operating expenditures?

2. Remember, this is a 15 year compliance period. Will your deal have the cash flow necessary?

3. Do a realistic market study to determine the real market, comparable rents and what is affordable.

4. You are only fooling yourself if you create a "dummy budget" to get approval from an agency.

Topic (45): Summary

Discussion: There is no question that compliance is a serious and complex issue with many rules and regulations to learn. However, the basic premise of compliance is achievable if persons are properly trained and have the documents and information about the property. The basic foundation, despite all the complexity, is a two-fold concept: income eligible/rent restricted..."the term low-income unit means any unit in a building if (i) such unit is rent restricted ...and (ii) the individuals occupying such unit meet the income limitation applicable..."

Reference: **R58-59**

Notes:

1. Have a person in your organization in charge of compliance and have that individual be responsible for approving all applicants before the units are rented. In that way, you will always be in compliance.

2. SPECTRUM can provide a private audit for you and go over any file and documentation issues so that you can correct noncompliance and be clear on any areas that were confusing!

3. Attached is a SPECTRUM status report which, if used, can help with the compliance process.

Internal Revenue Code § 42 Low-income housing credit.

(a) In general.
For purposes of section 38 , the amount of the low-income housing credit determined under this section for any taxable year in the credit period shall be an amount equal to—

(1) the applicable percentage of

(2) the qualified basis of each qualified low-income building.

(b) Applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings.

(1) Determination of applicable percentage.

(A [sic]) For purposes of this section , the term "applicable percentage" means, with respect to any building, the appropriate percentage prescribed by the Secretary for the earlier of—

(i) the month in which such building is placed in service, or

(ii) at the election of the taxpayer—

(I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

(II) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

(B) Method of prescribing percentages. The percentages prescribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to—

(i) 70 percent of the qualified basis of a new building which is not federally subsidized for the taxable year, and

(ii) 30 percent of the qualified basis of a building not described in clause (i) .

(C) Method of discounting. The present value under subparagraph (B) shall be determined—

(i) as of the last day of the 1st year of the 10-year period referred to in subparagraph (B) ,

(ii) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month applicable under clause (i) or (ii) of subparagraph (A) and compounded annually, and

(iii) by assuming that the credit allowable under this section for any year is received on the last day of such year.

(2) Temporary minimum credit rate for non-federally subsidized new buildings.
In the case of any new building—

(A) which is placed in service by the taxtayer after the date of the enactment of this paragraph and before December 31, 2013, and

(B) which is not federally subsidized for the taxable year,

the applicable percentage shall not be less than 9 percent.

(3) Cross references.

(A) For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e) .

(B) For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3) .

(C) For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(7) .

(c) Qualified basis; qualified low-income building.
For purposes of this section —

(1) Qualified basis.

(A) Determination. The qualified basis of any qualified low-income building for any taxable year is an amount equal to—

(i) the applicable fraction (determined as of the close of such taxable year) of

(ii) the eligible basis of such building (determined under subsection (d)(5)).

(B) Applicable fraction. For purposes of subparagraph (A) , the term "applicable fraction" means the smaller of the unit fraction or the floor space fraction.

(C) Unit fraction. For purposes of subparagraph (B) , the term "unit fraction" means the fraction—

(i) the numerator of which is the number of low-income units in the building, and

(ii) the denominator of which is the number of residential rental units (whether or not occupied) in such building.

(D) Floor space fraction. For purposes of subparagraph (B) , the term "floor space fraction" means the fraction—

(i) the numerator of which is the total floor space of the low-income units in such building, and

(ii) the denominator of which is the total floor space of the residential rental units (whether or not occupied) in such building.

(E) Qualified basis to include portion of building used to provide supportive services for homeless. In the case of a qualified low-income building described in subsection (i)(3)(B)(iii) , the qualified basis of such building for any taxable year shall be increased by the lesser of—

(i) so much of the eligible basis of such building as is used throughout the year to provide supportive services designed

to assist tenants in locating and retaining permanent housing, or

(ii) 20 percent of the qualified basis of such building (determined without regard to this subparagraph).

(2) Qualified low-income building.
The term "qualified low-income building" means any building—

(A) which is part of a qualified low-income housing project at all times during the period—

(i) beginning on the 1st day in the compliance period on which such building is part of such a project, and

(ii) ending on the last day of the compliance period with respect to such building, and

(B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

(d) Eligible basis.
For purposes of this section —

(1) New buildings.
The eligible basis of a new building is its adjusted basis as of the close of the 1st taxable year of the credit period.

(2) Existing buildings.

(A) In general. The eligible basis of an existing building is—

(i) in the case of a building which meets the requirements of subparagraph (B) , its adjusted basis as of the close of the 1st taxable year of the credit period, and

(ii) zero in any other case.

(B) Requirements. A building meets the requirements of this subparagraph if—

(i) the building is acquired by purchase (as defined in section 179(d)(2)),

(ii) there is a period of at least 10 years between the date of its acquisition by the taxpayer and the date the building was last placed in service,

(iii) the building was not previously placed in service by the taxpayer or by any person who was a related person with respect to the taxpayer as of the time previously placed in service, and

(iv) except as provided in subsection (f)(5) , a credit is allowable under subsection (a) by reason of subsection (e) with respect to the building.

(C) Adjusted basis. For purposes of subparagraph (A) , the adjusted basis of any building shall not include so much of the basis of such building as is determined by reference to the basis of other property held at any time by the person acquiring the building.

(D) Special rules for subparagraph (B) .

(i) Special rules for certain transfers. For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service—

(I) in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom acquired,

(II) by a person whose basis in such building is determined under section 1014(a) (relating to property acquired from a decedent),

(III) by any governmental unit or qualified nonprofit organization (as defined in subsection (h)(5)) if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such unit or organization and all the income from such property is exempt from Federal income taxation,

(IV) by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such person and such building is resold within 12 months after the date such building is placed in service by such person after such foreclosure, or

(V) of a single-family residence by any individual who owned and used such residence for no other purpose than as his principal residence.

(ii) Related person. For purposes of subparagraph (B)(iii) , a person (hereinafter in this subclause referred to as the "related person") is related to any person if the related person bears a relationship to such person specified in section 267(b) or 707(b)(1) , or the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52).

(3) Eligible basis reduced where disproportionate standards for units.

(A) In general. Except as provided in subparagraph (B) , the eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.

(B) Exception where taxpayer elects to exclude excess costs.

(i) In general. Subparagraph (A) shall not apply with respect to a residential rental unit in a building which is not a low-income unit if—

(I) the excess described in clause (ii) with respect to such unit is not greater than 15 percent of the cost described in clause (ii)(II) , and

(II) the taxpayer elects to exclude from the eligible basis of such building the excess described in clause (ii) with respect to such unit.

(ii) Excess. The excess described in this clause with respect to any unit is the excess of—

(I) the cost of such unit, over

(II) the amount which would be the cost of such unit if the average cost per square foot of low-income units in the building were substituted for the cost per square foot of such unit.

The Secretary may by regulation provide for the determination of the excess under this clause on a basis other than square foot costs.

(4) Special rules relating to determination of adjusted basis.
For purposes of this subsection —

(A) In general. Except as provided in subparagraphs (B) and (C) , the adjusted basis of any building shall be determined without regard to the adjusted basis of any property which is not residential rental property.

(B) Basis of property in common areas, etc., included. The adjusted basis of any building shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation) used in common areas or provided as comparable amenities to all residential rental units in such building.

(C) Inclusion of basis of property used to provide services for certain nontenants.

(i) In general. The adjusted basis of any building located in a qualified census tract (as defined in paragraph (5)(C)) shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation and not otherwise taken into account) used throughout the taxable year in providing any community service facility.

(ii) Limitation. The increase in the adjusted basis of any building which is taken into account by reason of clause (i) shall not exceed the sum of—

(I) 25 percent of so much of the eligible basis of the qualified low-income housing project of which it is a part as does not exceed $15,000,000, plus

(II) 10 percent of so much of the eligible basis of such project as is not taken into account under subclause (I) .

For purposes of the preceding sentence, all community service facilities which are part of the same qualified low-income housing project shall be treated as one facility.

(iii) Community service facility. For purposes of this subparagraph , the term "community service facility" means any facility designed to serve primarily individuals whose income is 60 percent or less of area median income (within the meaning of subsection (g)(1)(B)).

(D) No reduction for depreciation. The adjusted basis of any building shall be determined without regard to paragraphs (2) and (3) of section 1016(a) .

(5) Special rules for determining eligible basis.

(A) Federal grants not taken into account in determining eligible basis. The eligible basis of a building shall not include any costs financed with the proceeds of a federally funded grant.

(B) Increase in credit for buildings in high cost areas.

(i) In general. In the case of any building located in a qualified census tract or difficult development area which is designated for purposes of this subparagraph —

(I) in the case of a new building, the eligible basis of such building shall be 130 percent of such basis determined without regard to this subparagraph , and

(II) in the case of an existing building, the rehabilitation expenditures taken into account under subsection (e) shall be 130 percent of such expenditures determined without regard to this subparagraph .

(ii) Qualified census tract.

(I) In general. The term "qualified census tract" means any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.

(II) Limit on MSA's designated. The portion of a metropolitan statistical area which may be designated for purposes of this subparagraph shall not exceed an area having 20 percent of the population of such metropolitan statistical area.

(III) Determination of areas. For purposes of this clause , each metropolitan statistical area shall be treated as a separate area and all nonmetropolitan areas in a State shall be treated as 1 area.

(iii) Difficult development areas.

(I) In general. The term "difficult development areas" means any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income.

(II) Limit on areas designated. The portions of metropolitan statistical areas which may be designated for purposes of this subparagraph shall not exceed an aggregate area having 20 percent of the population of such metropolitan statistical areas. A comparable rule shall apply to nonmetropolitan areas.

(iv) Special rules and definitions. For purposes of this subparagraph —

(I) population shall be determined on the basis of the most recent decennial census for which data are available,

(II) area median gross income shall be determined in accordance with subsection (g)(4) ,

(III) the term "metropolitan statistical area" has the same meaning as when used in section 143(k)(2)(B) , and

(IV) the term "nonmetropolitan area" means any county (or portion thereof) which is not within a metropolitan statistical area.

(v) Buildings designated by State housing credit agency. Any building which is designated by the State housing credit agency as requiring the increase in credit under this subparagraph in order for such building to be financially feasible as part of a qualified low-income housing project shall be treated for purposes of this subparagraph as located in a difficult development area which is designated for purposes of this subparagraph . The preceding sentence shall not apply to any building if paragraph (1) of subsection (h) does not apply to any portion of the eligible basis of such building by reason of paragraph (4) of such subsection .

(6) Credit allowable for certain buildings acquired during 10-year period described in paragraph (2)(B)(ii).

(A) In general. Paragraph (2)(B)(ii) shall not apply to any federally- or State-assisted building.

(B) Buildings acquired from insured depository institutions in default. On application by the taxpayer, the Secretary may waive paragraph (2)(B)(ii) with respect to any building acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

(C) Federally- or State-assisted building. For purposes of this paragraph —

(i) Federally-assisted building. The term "federally-assisted building" means any building which is substantially

assisted, financed, or operated under section 8 of the United States Housing Act of 1937, section 221(d)(3), 221(d)(4), or 236 of the National Housing Act, section 515 of the Housing Act of 1949, or any other housing program administered by the Department of Housing and Urban Development or by the Rural Housing Service of the Department of Agriculture.

(ii) State-assisted building. The term "State-assisted building" means any building which is substantially assisted, financed, or operated under any State law similar in purposes to any of the laws referred to in clause (i) .

(7) Acquisition of building before end of prior compliance period.

(A) In general. Under regulations prescribed by the Secretary, in the case of a building described in subparagraph (B) (or interest therein) which is acquired by the taxpayer—

(i) paragraph (2)(B) shall not apply, but

(ii) the credit allowable by reason of subsection (a) to the taxpayer for any period after such acquisition shall be equal to the amount of credit which would have been allowable under subsection (a) for such period to the prior owner referred to in subparagraph (B) had such owner not disposed of the building.

(B) Description of building. A building is described in this subparagraph if—

(i) a credit was allowed by reason of subsection (a) to any prior owner of such building, and

(ii) the taxpayer acquired such building before the end of the compliance period for such building with respect to such prior owner (determined without regard to any disposition by such prior owner).

(e) Rehabilitation expenditures treated as separate new building.

(1) In general.
Rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated for purposes of this section as a separate new building.

(2) Rehabilitation expenditures.
For purposes of paragraph (1) —

(A) In general. The term "rehabilitation expenditures" means amounts chargeable to capital account and incurred for property (or additions or improvements to property) of a character subject to the allowance for depreciation in connection with the rehabilitation of a building.

(B) Cost of acquisition, etc, not included. Such term does not include the cost of acquiring any building (or interest therein) or any amount not permitted to be taken into account under paragraph (3) or (4) of subsection (d) .

(3) Minimum expenditures to qualify.

(A) In general. Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if—

(i) the expenditures are allocable to 1 or more low-income units or substantially benefit such units, and

(ii) the amount of such expenditures during any 24-month period meets the requirements of whichever of the following subclauses requires the greater amount of such expenditures:

(I) The requirement of this subclause is met if such amount is not less than 20 percent of the adjusted basis of the building (determined as of the 1st day of such period and without regard to paragraphs (2) and (3) of section 1016(a)).

(II) The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units in the building, is $6,000 or more.

(B) Exception from 10 percent rehabilitation. In the case of a building acquired by the taxpayer from a governmental unit, at the election of the taxpayer, subparagraph (A)(ii)(I) shall not apply and the credit under this section for such rehabilitation expenditures shall be determined using the percentage applicable under subsection (b)(2)(B)(ii) .

(C) Date of determination. The determination under subparagraph (A) shall be made as of the close of the 1st taxable year in the credit period with respect to such expenditures.

(D) Inflation adjustment. In the case of any expenditures which are treated under paragraph (4) as placed in service during any calendar year after 2009, the $6,000 amount in subparagraph (A)(ii)(II) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 2008" for "calendar year 1992" in subparagraph (B) thereof .

Any increase under the preceding sentence which is not a multiple of $100 shall be rounded to the nearest multiple of $100.

(4) Special rules.
For purposes of applying this section with respect to expenditures which are treated as a separate building by reason of this subsection —

(A) such expenditures shall be treated as placed in service at the close of the 24-month period referred to in paragraph (3)(A) , and

(B) the applicable fraction under subsection (c)(1) shall be the applicable fraction for the building (without regard to paragraph (1)) with respect to which the expenditures were incurred.

Nothing in subsection (d)(2) shall prevent a credit from being allowed by reason of this subsection .

(5) No double counting.
Rehabilitation expenditures may, at the election of the taxpayer, be taken into account under this subsection or subsection (d)(2)(A)(i) but not under both such subsections.

(6) Regulations to apply subsection with respect to group of units in building.
The Secretary may prescribe regulations, consistent with the purposes of this subsection , treating a group of units with respect to which rehabilitation expenditures are incurred as a separate new building.

(f) Definition and special rules relating to credit period.

(1) Credit period defined.
For purposes of this section , the term "credit period" means, with respect to any building, the period of 10 taxable years beginning with—

(A) the taxable year in which the building is placed in service, or

(B) at the election of the taxpayer, the succeeding taxable year,

but only if the building is a qualified low-income building as of the close of the 1st year of such period. The election under subparagraph (B) , once made, shall be irrevocable.

(2) Special rule for 1st year of credit period.

(A) In general. The credit allowable under subsection (a) with respect to any building for the 1st taxable year of the credit period shall be determined by substituting for the applicable fraction under subsection (c)(1) the fraction—

(i) the numerator of which is the sum of the applicable fractions determined under subsection (c)(1) as of the close of each full month of such year during which such building was in service, and

(ii) the denominator of which is 12.

(B) Disallowed 1st year credit allowed in 11th year. Any reduction by reason of subparagraph (A) in the credit allowable (without regard to subparagraph (A)) for the 1st taxable year of the credit period shall be allowable under subsection (a) for the 1st taxable year following the credit period.

(3) Determination of applicable percentage with respect to increases in qualified basis after 1st year of credit period.

(A) In general. In the case of any building which was a qualified low-income building as of the close of the 1st year of the credit period, if—

(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of such building exceeds

(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the applicable percentage which shall apply under subsection (a) for the taxable year to such excess shall be the percentage equal to 2/3 of the applicable percentage which (after the application of subsection (h)) would but for this paragraph apply to such basis.

(B) 1st year computation applies. A rule similar to the rule of paragraph (2)(A) shall apply to any increase in qualified basis to which subparagraph (A) applies for the 1st year of such increase.

(4) Dispositions of property.
If a building (or an interest therein) is disposed of during any year for which credit is allowable under subsection (a) , such credit shall be allocated between the parties on the basis of the number of days during such year the building (or interest) was held by each. In any such case, proper adjustments shall be made in the application of subsection (j) .

(5) Credit period for existing buildings not to begin before rehabilitation credit allowed.

(A) In general. The credit period for an existing building shall not begin before the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building.

(B) Acquisition credit allowed for certain buildings not allowed a rehabilitation credit.

(i) In general. In the case of a building described in clause (ii) —

(I) subsection (d)(2)(B)(iv) shall not apply, and

(II) the credit period for such building shall not begin before the taxable year which would be the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building under the modifications described in clause (ii)(II) .

(ii) Building described. A building is described in this clause if—

(I) a waiver is granted under subsection (d)(6)(C) with respect to the acquisition of the building, and

(II) a credit would be allowed for rehabilitation expenditures with respect to such building if

subsection (e)(3)(A)(ii)(I) did not apply and if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.

(g) Qualified low-income housing project.
For purposes of this section —

(1) In general.
The term "qualified low-income housing project" means any project for residential rental property if the project meets the requirements of subparagraph (A) or (B) whichever is elected by the taxpayer:

(A) 20-50 test. The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

(B) 40-60 test. The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

Any election under this paragraph , once made, shall be irrevocable. For purposes of this paragraph , any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Rent-restricted units.

(A) In general. For purposes of paragraph (1) , a residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit. For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.

(B) Gross rent. For purposes of subparagraph (A) , gross rent—

(i) does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable

rental assistance program (with respect to such unit or occupants thereof),

(ii) includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937,

(iii) does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and

(iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949.

For purposes of clause (iii) , the term "supportive service" means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subsection (i)(3)(B)(iii) , such term includes any service provided to assist tenants in locating and retaining permanent housing.

(C) Imputed income limitation applicable to unit. For purposes of this paragraph , the imputed income limitation applicable to a unit is the income limitation which would apply under paragraph (1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

(i) In the case of a unit which does not have a separate bedroom, 1 individual.

(ii) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

In the case of a project with respect to which a credit is allowable by reason of this section and for which financing is provided by a

bond described in section 142(a)(7) , the imputed income limitation shall apply in lieu of the otherwise applicable income limitation for purposes of applying section 142(d)(4)(B)(ii) .

(D) Treatment of units occupied by individuals whose incomes rise above limit.

(i) In general. Except as provided in clause (ii) , notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under paragraph (1) , such unit shall continue to be treated as a low-income unit if the income of such occupants initially met such income limitation and such unit continues to be rent-restricted.

(ii) Next available unit must be rented to low-income tenant if income rises above 140 percent of income limit. If the income of the occupants of the unit increases above 140 percent of the income limitation applicable under paragraph (1) , clause (i) shall cease to apply to such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation. In the case of a project described in section 142(d)(4)(B) , the preceding sentence shall be applied by substituting "170 percent" for "140 percent" and by substituting "any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income" for "any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation".

(E) Units where federal rental assistance is reduced as tenant's income increases. If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the income limitation applicable under paragraph (1) , such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if—

(i) a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and

(ii) the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if—

(I) the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1) , and

(II) such units were rent-restricted within the meaning of subparagraph (A) .

The preceding sentence shall apply to any unit only if the result described in clause (ii) is required by Federal statute as of the date of the enactment of this subparagraph and as of the date the Federal rental assistance payment is made.

(3) Date for meeting requirements.

(A) In general. Except as otherwise provided in this paragraph , a building shall be treated as a qualified low-income building only if the project (of which such building is a part) meets the requirements of paragraph (1) not later than the close of the 1st year of the credit period for such building.

(B) Buildings which rely on later buildings for qualification.

(i) In general. In determining whether a building (hereinafter in this subparagraph referred to as the "prior building") is a qualified low-income building, the taxpayer may take into account 1 or more additional buildings placed in service during the 12-month period described in subparagraph (A) with respect to the prior building only if the taxpayer elects to apply clause (ii) with respect to each additional building taken into account.

(ii) Treatment of elected buildings. In the case of a building which the taxpayer elects to take into account under clause (i) , the period under subparagraph (A) for such building shall end at the close of the 12-month period applicable to the prior building.

(iii) Date prior building is treated as placed in service. For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in

service on the most recent date any additional building elected by the taxpayer (with respect to such prior building) was placed in service.

(C) Special rule. A building—

(i) other than the 1st building placed in service as part of a project, and

(ii) other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified low-income building,

shall in no event be treated as a qualified low-income building unless the project is a qualified low-income housing project (without regard to such building) on the date such building is placed in service.

(D) Projects with more than 1 building must be identified. For purposes of this section , a project shall be treated as consisting of only 1 building unless, before the close of the 1st calendar year in the project period (as defined in subsection (h)(1)(F)(ii)), each building which is (or will be) part of such project is identified in such form and manner as the Secretary may provide.

(4) Certain rules made applicable.
Paragraphs (2) (other than subparagraph (A) thereof), (3) , (4) , (5) , (6) , and (7) of section 142(d) , and section 6652(j) , shall apply for purposes of determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit; except that, in applying such provisions for such purposes, the term "gross rent" shall have the meaning given such term by paragraph (2)(B) of this subsection

(5) Election to treat building after compliance period as not part of a project.
For purposes of this section , the taxpayer may elect to treat any building as not part of a qualified low-income housing project for any period beginning after the compliance period for such building.

(6) Special rule where de minimis equity contribution.
Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if—

(A) all amounts so paid are refunded to the occupant on the cessation of his occupancy of a unit in the project, and

(B) the purchase of the unit is not permitted until after the close of the compliance period with respect to the building in which the unit is located.

Any amount paid to the lessor as described in the preceding sentence shall be included in gross rent under paragraph (2) for purposes of determining whether the unit is rent-restricted.

(7) Scattered site projects.
Buildings which would (but for their lack of proximity) be treated as a project for purposes of this section shall be so treated if all of the dwelling units in each of the buildings are rent-restricted (within the meaning of paragraph (2)) residential rental units.

(8) Waiver of certain de minimis errors and recertifications.
On application by the taxpayer, the Secretary may waive—

(A) any recapture under subsection (j) in the case of any de minimis error in complying with paragraph (1) , or

(B) any annual recertification of tenant income for purposes of this subsection , if the entire building is occupied by low-income tenants.

(9) Clarification of general public use requirement.
A project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants—

(A) with special needs,

(B) who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group, or

(C) who are involved in artistic or literary activities.

(h) Limitation on aggregate credit allowable with respect to projects located in a state.

(1) Credit may not exceed credit amount allocated to building.

(A) In general. The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under this subsection .

(B) Time for making allocation. Except in the case of an allocation which meets the requirements of subparagraph (C) , (D) , (E) , or (F) an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.

(C) Exception where binding commitment. An allocation meets the requirements of this subparagraph if there is a binding commitment (not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing credit dollar amount to such building beginning in a specified later taxable year.

(D) Exception where increase in qualified basis.

(i) In general. An allocation meets the requirements of this subparagraph if such allocation is made not later than the close of the calendar year in which ends the taxable year to which it will 1st apply but only to the extent the amount of such allocation does not exceed the limitation under clause (ii) .

(ii) Limitation. The limitation under this clause is the amount of credit allowable under this section (without regard to this subsection) for a taxable year with respect to an increase in the qualified basis of the building equal to the excess of—

(I) the qualified basis of such building as of the close of the 1st taxable year to which such allocation will apply, over

(II) the qualified basis of such building as of the close of the 1st taxable year to which the most recent prior housing credit allocation with respect to such building applied.

(iii) Housing credit dollar amount reduced by full allocation. Notwithstanding clause (i) , the full amount of the allocation shall be taken into account under paragraph (2) .

(E) Exception where 10 percent of cost incurred.

(i) In general. An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.

(ii) Qualified building. For purposes of clause (i) , the term "qualified building" means any building which is part of a project if the taxpayer's basis in such project (as of the date which is 1 year after the date that the allocation was made) is more than 10 percent of the taxpayer's reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)). Such term does not include any existing building unless a credit is allowable under subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year.

(F) Allocation of credit on a project basis.

(i) In general. In the case of a project which includes (or will include) more than 1 building, an allocation meets the requirements of this subparagraph if—

(I) the allocation is made to the project for a calendar year during the project period,

(II) the allocation only applies to buildings placed in service during or after the calendar year for which the allocation is made, and

(III) the portion of such allocation which is allocated to any building in such project is specified not later than the close of the calendar year in which the building is placed in service.

(ii) Project period. For purposes of clause (i) , the term "project period" means the period—

(I) beginning with the 1st calendar year for which an allocation may be made for the 1st building placed in service as part of such project, and

(II) ending with the calendar year the last building is placed in service as part of such project.

(2) Allocated credit amount to apply to all taxable years ending during or after credit allocation year.
Any housing credit dollar amount allocated to any building for any calendar year—

(A) shall apply to such building for all taxable years in the compliance period ending during or after such calendar year, and

(B) shall reduce the aggregate housing credit dollar amount of the allocating agency only for such calendar year.

(3) Housing credit dollar amount for agencies.

(A) In general. The aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar year is the portion of the State housing credit ceiling allocated under this paragraph for such calendar year to such agency.

(B) State ceiling initially allocated to state housing credit agencies. Except as provided in subparagraphs (D) and (E) , the State housing credit ceiling for each calendar year shall be allocated to the housing credit agency of such State. If there is more than 1 housing credit agency of a State, all such agencies shall be treated as a single agency.

(C) State housing credit ceiling. The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to the sum of—

(i) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,

(ii) the greater of—

(I) $1.75 ($1.50 for 2001) multiplied by the State population, or

(II) $2,000,000,

(iii) the amount of State housing credit ceiling returned in the calendar year, plus

(iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

For purposes of clause (i) , the unused State housing credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (ii) through (iv) over the aggregate housing credit dollar amount allocated for such year. For purposes of clause (iii) , the amount of State housing credit ceiling returned in the calendar year equals the housing credit dollar amount previously allocated within the State to any project which fails to meet the 10 percent test under paragraph (1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which does not become a qualified low-income housing project within the period required by this section or the terms of the allocation or to any project with respect to which an allocation is cancelled by mutual consent of the housing credit agency and the allocation recipient.

(D) Unused housing credit carryovers allocated among certain states.

(i) In general. The unused housing credit carryover of a State for any calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

(ii) Unused housing credit carryover. For purposes of this subparagraph , the unused housing credit carryover of a State for any calendar year is the excess (if any) of—

(I) the unused State housing credit ceiling for the year preceding such year, over

(II) the aggregate housing credit dollar amount allocated for such year.

(iii) Formula for allocation of unused housing credit carryovers among qualified states. The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused housing credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence,

population shall be determined in accordance with section 146(j) .

(iv) Qualified State. For purposes of this subparagraph , the term "qualified State" means, with respect to a calendar year, any State—

(I) which allocated its entire State housing credit ceiling for the preceding calendar year, and

(II) for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii) .

(E) Special rule for states with constitutional home rule cities. For purposes of this subsection —

(i) In general. The aggregate housing credit dollar amount for any constitutional home rule city for any calendar year shall be an amount which bears the same ratio to the State housing credit ceiling for such calendar year as—

(I) the population of such city, bears to

(II) the population of the entire State.

(ii) Coordination with other allocations. In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying this paragraph with respect to housing credit agencies in such State other than constitutional home rule cities, the State housing credit ceiling for any calendar year shall be reduced by the aggregate housing credit dollar amounts determined for such year for all constitutional home rule cities in such State.

(iii) Constitutional home rule city. For purposes of this paragraph , the term "constitutional home rule city" has the meaning given such term by section 146(d)(3)(C) .

(F) State may provide for different allocation. Rules similar to the rules of section 146(e) (other than paragraph (2)(B) thereof) shall apply for purposes of this paragraph .

(G) Population. For purposes of this paragraph , population shall be determined in accordance with section 146(j) .

(H) Cost-of-living adjustment.

(i) In general. In the case of a calendar year after 2002, the $2,000,000 and $1.75 amounts in subparagraph (C) shall each be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 2001" for "calendar year 1992" in subparagraph (B) thereof.

(ii) Rounding.

(I) In the case of the $2,000,000 amount, any increase under clause (i) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

(II) In the case of the $1.75 amount, any increase under clause (i) which is not a multiple of 5 cents shall be rounded to the next lowest multiple of 5 cents.

(I) Increase in State housing credit ceiling for 2008 and 2009. In the case of calendar years 2008 and 2009—

(i) the dollar amount in effect under subparagraph (C)(ii)(I) for such calendar year (after any increase under subparagraph (H)) shall be increased by $0.20, and

(ii) the dollar amount in effect under subparagraph (C)(ii)(II) for such calendar year (after any increase under subparagraph (H)) shall be increased by an amount equal to 10 percent of such dollar amount (rounded to the next lowest multiple of $5,000).

(4) Credit for buildings financed by tax-exempt bonds subject to volume cap not taken into account.

(A) In general. Paragraph (1) shall not apply to the portion of any credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if —

(i) such obligation is taken into account under section 146 , and

(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing or such financing is refunded and described in section 146(i)(6) .

(B) Special rule where 50 percent or more of building is financed with tax-exempt bonds subject to volume cap. For purposes of subparagraph (A) , if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation described in subparagraph (A) , paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building.

(5) Portion of state ceiling set-aside for certain projects involving qualified nonprofit organizations.

(A) In general. Not more than 90 percent of the State housing credit ceiling for any State for any calendar year shall be allocated to projects other than qualified low-income housing projects described in subparagraph (B) .

(B) Projects involving qualified nonprofit organizations. For purposes of subparagraph (A) , a qualified low-income housing project is described in this subparagraph if a qualified nonprofit organization is to own an interest in the project (directly or through a partnership) and materially participate (within the meaning of section 469(h)) in the development and operation of the project throughout the compliance period.

(C) Qualified nonprofit organization. For purposes of this paragraph , the term "qualified nonprofit organization" means any organization if—

(i) such organization is described in paragraph (3) or (4) of section 501(c) and is exempt from tax under section 501(a) ,

(ii) such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; and

(iii) 1 of the exempt purposes of such organization includes the fostering of low-income housing.

(D) Treatment of certain subsidiaries.

(i) In general. For purposes of this paragraph , a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

(ii) Qualified corporation. For purposes of clause (i) , the term "qualified corporation" means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

(E) State may not override set-aside. Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph .

(6) Buildings eligible for credit only if minimum long-term commitment to low-income housing.

(A) In general. No credit shall be allowed by reason of this section with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year.

(B) Extended low-income housing commitment. For purposes of this paragraph , the term "extended low-income housing commitment" means any agreement between the taxpayer and the housing credit agency—

(i) which requires that the applicable fraction (as defined in subsection (c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in such agreement and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii) ,

(ii) which allows individuals who meet the income limitation applicable to the building under subsection (g) (whether prospective, present, or former occupants of the building) the right to enforce in any State court the requirement and prohibitions of clause (i) ,

(iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies

unless all of the building to which such agreement applies is disposed of to such person,

(iv) which prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder,

(v) which is binding on all successors of the taxpayer, and

(vi) which, with respect to the property, is recorded pursuant to State law as a restrictive covenant.

(C) Allocation of credit may not exceed amount necessary to support commitment.

(i) In general. The housing credit dollar amount allocated to any building may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building, including any increase in such fraction pursuant to the application of subsection (f)(3) if such increase is reflected in an amended low-income housing commitment.

(ii) Buildings financed by tax-exempt bonds. If paragraph (4) applies to any building the amount of credit allowed in any taxable year may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building. Such commitment may be amended to increase such fraction.

(D) Extended use period. For purposes of this paragraph , the term "extended use period" means the period—

(i) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and

(ii) ending on the later of—

(I) the date specified by such agency in such agreement, or

(II) the date which is 15 years after the close of the compliance period.

(E) Exceptions if foreclosure or if no buyer willing to maintain low-income status.

(i) In general. The extended use period for any building shall terminate—

(I) on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period, or

(II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building.

Subclause (II) shall not apply to the extent more stringent requirements are provided in the agreement or in State law.

(ii) Eviction, etc. of existing low-income tenants not permitted. The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination—

(I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or

(II) any increase in the gross rent with respect to such unit not otherwise permitted under this section .

(F) Qualified contract. For purposes of subparagraph (E) , the term "qualified contract" means a bona fide contract to acquire (within a reasonable period after the contract is entered into) the non low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the extended low-income housing commitment) of—

(i) the sum of—

(I) the outstanding indebtedness secured by, or with respect to, the building,

(II) the adjusted investor equity in the building, plus

(III) other capital contributions not reflected in the amounts described in subclause (I) or (II) , reduced by

(ii) cash distributions from (or available for distribution from) the project.

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph , including regulations to prevent the manipulation of the amount determined under the preceding sentence.

(G) Adjusted investor equity.

(i) In general. For purposes of subparagraph (E) , the term "adjusted investor equity" means, with respect to any calendar year, the aggregate amount of cash taxpayers invested with respect to the project increased by the amount equal to—

(I) such amount, multiplied by

(II) the cost-of-living adjustment for such calendar year, determined under section 1(f)(3) by substituting the base calendar year for "calendar year 1987".

An amount shall be taken into account as an investment in the project only to the extent there was an obligation to invest such amount as of the beginning of the credit period and to the extent such amount is reflected in the adjusted basis of the project.

(ii) Cost-of-living increases in excess of 5 percent not taken into account. Under regulations prescribed by the Secretary, if the CPI for any calendar year (as defined in section 1(f)(4)) exceeds the CPI for the preceding calendar year by more than 5 percent, the CPI for the base calendar year shall be increased such that such excess shall never be taken into account under clause (i) .

(iii) Base calendar year. For purposes of this subparagraph , the term "base calendar year" means the calendar year with or within which the 1st taxable year of the credit period ends.

(H) Low-income portion. For purposes of this paragraph , the low-income portion of a building is the portion of such building equal to the applicable fraction specified in the extended low-income housing commitment for the building.

(I) Period for finding buyer. The period referred to in this subparagraph is the 1-year period beginning on the date (after the 14th year of the compliance period) the taxpayer submits a written request to the housing credit agency to find a person to acquire the taxpayer's interest in the low-income portion of the building.

(J) Effect of noncompliance. If, during a taxable year, there is a determination that an extended low-income housing agreement was not in effect as of the beginning of such year, such determination shall not apply to any period before such year and subparagraph (A) shall be applied without regard to such determination if the failure is corrected within 1 year from the date of the determination.

(K) Projects which consist of more than 1 building. The application of this paragraph to projects which consist of more than 1 building shall be made under regulations prescribed by the Secretary.

(7) Special rules.

(A) Building must be located within jurisdiction of credit agency. A housing credit agency may allocate its aggregate housing credit dollar amount only to buildings located in the jurisdiction of the governmental unit of which such agency is a part.

(B) Agency allocations in excess of limit. If the aggregate housing credit dollar amounts allocated by a housing credit agency for any calendar year exceed the portion of the State housing credit ceiling allocated to such agency for such calendar year, the housing credit dollar amounts so allocated shall be reduced (to the extent of such excess) for buildings in the reverse of the order in which the allocations of such amounts were made.

(C) Credit reduced if allocated credit dollar amount is less than credit which would be allowable without regard to placed in service convention, etc.

(i) In general. The amount of the credit determined under this section with respect to any building shall not exceed the clause (ii) percentage of the amount of the credit which would (but for this subparagraph) be determined under this section with respect to such building.

(ii) Determination of percentage. For purposes of clause (i) , the clause (ii) percentage with respect to any building is the percentage which—

(I) the housing credit dollar amount allocated to such building bears to

(II) the credit amount determined in accordance with clause (iii) .

(iii) Determination of credit amount. The credit amount determined in accordance with this clause is the amount of the credit which would (but for this subparagraph) be determined under this section with respect to the building if—

(I) this section were applied without regard to paragraphs (2)(A) and (3)(B) of subsection (f) , and

(II) subsection (f)(3)(A) were applied without regard to "the percentage equal to 2/3 of".

(D) Housing credit agency to specify applicable percentage and maximum qualified basis. In allocating a housing credit dollar amount to any building, the housing credit agency shall specify the applicable percentage and the maximum qualified basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum qualified basis so specified shall not exceed the applicable percentage and qualified basis determined under this section without regard to this subsection .

(8) Other definitions.
For purposes of this subsection —

(A) Housing credit agency. The term "housing credit agency" means any agency authorized to carry out this subsection .

(B) Possessions treated as states. The term "State" includes a possession of the United States.

(i) Definitions and special rules.
For purposes of this section —

(1) Compliance period.
The term "compliance period" means, with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

(2) Determination of whether building is federally subsidized.

(A) In general. Except as otherwise provided in this paragraph , for purposes of subsection (b)(1) , a new building shall be treated as federally subsidized for any taxable year if, at any time during such taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under section 103 the proceeds of which are or were used (directly or indirectly) with respect to such building or the operation thereof.

(B) Election to reduce eligible basis by proceeds of obligations. A tax-exempt obligation shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude from the eligible basis of the building for purposes of subsection (d) the proceeds of such obligation.

(C) Special rule for subsidized construction financing. Subparagraph (A) shall not apply to any tax-exempt obligation used to provide construction financing for any building if—

(i) such obligation (when issued) identified the building for which the proceeds of such obligation would be used, and

(ii) such obligation is redeemed before such building is placed in service.

(3) Low-income unit.

(A) In general. The term "low-income unit" means any unit in a building if—

(i) such unit is rent-restricted (as defined in subsection (g)(2)), and

(ii) the individuals occupying such unit meet the income limitation applicable under subsection (g)(1) to the project of which such building is a part.

(B) Exceptions.

(i) In general. A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis.

(ii) Suitability for occupancy. For purposes of clause (i) , the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes.

(iii) Transitional housing for homeless. For purposes of clause (i) , a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building—

(I) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302), as in effect on the date of the enactment of this clause) to independent living within 24 months, and

(II) in which a governmental entity or qualified nonprofit organization (as defined in subsection (h)(5)) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

(iv) Single-room occupancy units. For purposes of clause (i) , a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

(C) Special rule for buildings having 4 or fewer units. In the case of any building which has 4 or fewer residential rental units, no

unit in such building shall be treated as a low-income unit if the units in such building are owned by—

(i) any individual who occupies a residential unit in such building, or

(ii) any person who is related (as defined in subsection (d)(2)(D)(iii)) to such individual.

(D) Certain students not to disqualify unit. A unit shall not fail to be treated as a low-income unit merely because it is occupied—

(i) by an individual who is—

(I) a student and receiving assistance under title IV of the Social Security Act,

(II) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act, or

(III) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or

(ii) entirely by full-time students if such students are—

(I) single parents and their children and such parents are not dependents (as defined in section 152 , determined without regard to subsections (b)(1) , (b)(2) , and (d)(1)(B) thereof) of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children, or. [sic ,]

(II) married and file a joint return.

(E) Owner-occupied buildings having 4 or fewer units eligible for credit where development plan.

(i) In general. Subparagraph (C) shall not apply to the acquisition or rehabilitation of a building pursuant to a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in subsection (h)(5)(C)).

(ii) Limitation on credit. In the case of a building to which clause (i) applies, the applicable fraction shall not exceed 80 percent of the unit fraction.

(iii) Certain unrented units treated as owner-occupied. In the case of a building to which clause (i) applies, any unit which is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

(4) New building.
The term "new building" means a building the original use of which begins with the taxpayer.

(5) Existing building.
The term "existing building" means any building which is not a new building.

(6) Application to estates and trusts.
In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax under subsection (j) shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(7) Impact of tenant's right of 1st refusal to acquire property.

(A) In general. No Federal income tax benefit shall fail to be allowable to the taxpayer with respect to any qualified low-income building merely by reason of a right of 1st refusal held by the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency to purchase the property after the close of the compliance period for a price which is not less than the minimum purchase price determined under subparagraph (B) .

(B) Minimum purchase price. For purposes of subparagraph (A) , the minimum purchase price under this subparagraph is an amount equal to the sum of—

(i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and

(ii) all Federal, State, and local taxes attributable to such sale.

Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii) .

(8) Treatment of rural projects.
For purposes of this section , in the case of any project for residential rental property located in a rural area (as defined in section 520 of the Housing Act of 1949), any income limitation measured by reference to area median gross income shall be measured by reference to the greater of area median gross income or national non-metropolitan median income. The preceding sentence shall not apply with respect to any building if paragraph (1) of section 42(h) does not apply by reason of paragraph (4) thereof to any portion of the credit determined under this section with respect to such building.

(j) Recapture of credit.

(1) In general.
If—

(A) as of the close of any taxable year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than

(B) the amount of such basis as of the close of the preceding taxable year, then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount.

(2) Credit recapture amount.
For purposes of paragraph (1) , the credit recapture amount is an amount equal to the sum of—

(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if the accelerated portion of the credit allowable by reason of this section were not allowed for all prior taxable years with respect to the excess of the amount described in paragraph (1)(B) over the amount described in paragraph (1)(A) , plus

(B) interest at the overpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B) .

(3) Accelerated portion of credit.
For purposes of paragraph (2) , the accelerated portion of the credit for the prior taxable years with respect to any amount of basis is the excess of—

(A) the aggregate credit allowed by reason of this section (without regard to this subsection) for such years with respect to such basis, over

(B) the aggregate credit which would be allowable by reason of this section for such years with respect to such basis if the aggregate credit which would (but for this subsection) have been allowable for the entire compliance period were allowable ratably over 15 years.

(4) Special rules.

(A) Tax benefit rule. The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) Only basis for which credit allowed taken into account. Qualified basis shall be taken into account under paragraph (1)(B) only to the extent such basis was taken into account in determining the credit under subsection (a) for the preceding taxable year referred to in such paragraph.

(C) No recapture of additional credit allowable by reason of subsection (f)(3) . Paragraph (1) shall apply to a decrease in qualified basis only to the extent such decrease exceeds the amount of qualified basis with respect to which a credit was allowable for the taxable year referred to in paragraph (1)(B) by reason of subsection (f)(3) .

(D) No credits against tax. Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter.

(E) No recapture by reason of casualty loss. The increase in tax under this subsection shall not apply to a reduction in qualified

basis by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

(F) No recapture where de minimis changes in floor space. The Secretary may provide that the increase in tax under this subsection shall not apply with respect to any building if—

(i) such increase results from a de minimis change in the floor space fraction under subsection (c)(1) , and

(ii) the building is a qualified low-income building after such change.

(5) Certain partnerships treated as the taxpayer.

(A) In general. For purposes of applying this subsection to a partnership to which this paragraph applies—

(i) such partnership shall be treated as the taxpayer to which the credit allowable under subsection (a) was allowed,

(ii) the amount of such credit allowed shall be treated as the amount which would have been allowed to the partnership were such credit allowable to such partnership,

(iii) paragraph (4)(A) shall not apply, and

(iv) the amount of the increase in tax under this subsection for any taxable year shall be allocated among the partners of such partnership in the same manner as such partnership's taxable income for such year is allocated among such partners.

(B) Partnerships to which paragraph applies. This paragraph shall apply to any partnership which has 35 or more partners unless the partnership elects not to have this paragraph apply.

(C) Special rules.

(i) Husband and wife treated as 1 partner. For purposes of subparagraph (B)(i) , a husband and wife (and their estates) shall be treated as 1 partner.

(ii) Election irrevocable. Any election under subparagraph (B) , once made, shall be irrevocable.

(6) No recapture on disposition of building which continues in qualified use.

(A) In general. The increase in tax under this subsection shall not apply solely by reason of the disposition of a building (or an interest therein) if it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

(B) Statute of limitations. If a building (or an interest therein) is disposed of during any taxable year and there is any reduction in the qualified basis of such building which results in an increase in tax under this subsection for such taxable or any subsequent taxable year, then—

(i) the statutory period for the assessment of any deficiency with respect to such increase in tax shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of such reduction in qualified basis, and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(k) Application of at-risk rules.
For purposes of this section —

(1) In general.
Except as otherwise provided in this subsection , rules similar to the rules of section 49(a)(*1*) (other than subparagraphs (D)(ii)(II) and (D)(iv)(I) thereof), section 49(a)(2) , and section 49(b)(1) shall apply in determining the qualified basis of any building in the same manner as such sections apply in determining the credit base of property.

(2) Special rules for determining qualified person.
For purposes of paragraph (1) —

(A) In general. If the requirements of subparagraphs (B) , (C) , and (D) are met with respect to any financing borrowed from a qualified nonprofit organization (as defined in subsection (h)(5)), the determination of whether such financing is qualified

commercial financing with respect to any qualified low-income building shall be made without regard to whether such organization—

(i) is actively and regularly engaged in the business of lending money, or

(ii) is a person described in section 49(a)(1)(D)(iv)(II) .

(B) Financing secured by property. The requirements of this subparagraph are met with respect to any financing if such financing is secured by the qualified low-income building, except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if—

(i) a security interest in such building is not permitted by a Federal agency holding or insuring the mortgage secured by such building, and

(ii) the proceeds from the financing (if any) are applied to acquire or improve such building.

(C) Portion of building attributable to financing. The requirements of this subparagraph are met with respect to any financing for any taxable year in the compliance period if, as of the close of such taxable year, not more than 60 percent of the eligible basis of the qualified low-income building is attributable to such financing (reduced by the principal and interest of any governmental financing which is part of a wrap-around mortgage involving such financing).

(D) Repayment of principal and interest. The requirements of this subparagraph are met with respect to any financing if such financing is fully repaid on or before the earliest of—

(i) the date on which such financing matures,

(ii) the 90th day after the close of the compliance period with respect to the qualified low-income building, or

(iii) the date of its refinancing or the sale of the building to which such financing relates.

In the case of a qualified nonprofit organization which is not described in section 49(a)(1)(D)(iv)(II) with respect to a building, clause (ii) of this subparagraph shall be applied as if the date

described therein were the 90th day after the earlier of the date the building ceases to be a qualified low-income building or the date which is 15 years after the close of a compliance period with respect thereto.

(3) Present value of financing.
If the rate of interest on any financing described in paragraph (2)(A) is less than the rate which is 1 percentage point below the applicable Federal rate as of the time such financing is incurred, then the qualified basis (to which such financing relates) of the qualified low-income building shall be the present value of the amount of such financing, using as the discount rate such applicable Federal rate. For purposes of the preceding sentence, the rate of interest on any financing shall be determined by treating interest to the extent of government subsidies as not payable.

(4) Failure to fully repay.

(A) In general. To the extent that the requirements of paragraph (2)(D) are not met, then the taxpayer's tax under this chapter for the taxable year in which such failure occurs shall be increased by an amount equal to the applicable portion of the credit under this section with respect to such building, increased by an amount of interest for the period—

(i) beginning with the due date for the filing of the return of tax imposed by chapter 1 for the 1st taxable year for which such credit was allowable, and

(ii) ending with the due date for the taxable year in which such failure occurs,

determined by using the underpayment rate and method under section 6621 .

(B) Applicable portion. For purposes of subparagraph (A) , the term "applicable portion" means the aggregate decrease in the credits allowed to a taxpayer under section 38 for all prior taxable years which would have resulted if the eligible basis of the building were reduced by the amount of financing which does not meet requirements of paragraph (2)(D) .

(C) Certain rules to apply. Rules similar to the rules of subparagraphs (A) and (D) of subsection (j)(4) shall apply for purposes of this subsection .

(l) Certifications and other reports to secretary.

(1) Certification with respect to 1st year of credit period.
Following the close of the 1st taxable year in the credit period with respect to any qualified low-income building, the taxpayer shall certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes)—

(A) the taxable year, and calendar year, in which such building was placed in service,

(B) the adjusted basis and eligible basis of such building as of the close of the 1st year of the credit period,

(C) the maximum applicable percentage and qualified basis permitted to be taken into account by the appropriate housing credit agency under subsection (h) ,

(D) the election made under subsection (g) with respect to the qualified low-income housing project of which such building is a part, and

(E) such other information as the Secretary may require.

In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of subsection (a) with respect to such building for any taxable year ending before such certification is made.

(2) Annual reports to the Secretary.
The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth—

(A) the qualified basis for the taxable year of each qualified low-income building of the taxpayer,

(B) the information described in paragraph (1)(C) for the taxable year, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor.

(3) Annual reports from housing credit agencies.
Each agency which allocates any housing credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying—

(A) the amount of housing credit amount allocated to each building for such year,

(B) sufficient information to identify each such building and the taxpayer with respect thereto, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the report required by the preceding sentence on the date prescribed therefor.

(m) Responsibilities of housing credit agencies.

(1) Plans for allocation of credit among projects.

(A) In general. Notwithstanding any other provision of this section , the housing credit dollar amount with respect to any building shall be zero unless—

(i) such amount was allocated pursuant to a qualified allocation plan of the housing credit agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part,

(ii) such agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project,

(iii) a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project is conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by such agency, and

(iv) a written explanation is available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the housing credit agency.

(B) Qualified allocation plan. For purposes of this paragraph , the term "qualified allocation plan" means any plan—

(i) which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions,

(ii) which also gives preference in allocating housing credit dollar amounts among selected projects to—

(I) projects serving the lowest income tenants,

(II) projects obligated to serve qualified tenants for the longest periods, and

(III) projects which are located in qualified census tracts (as defined in subsection (d)(5)(C)) and the development of which contributes to a concerted community revitalization plan, and

(iii) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

(C) Certain selection criteria must be used. The selection criteria set forth in a qualified allocation plan must include—

(i) project location,

(ii) housing needs characteristics,

(iii) project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan,

(iv) sponsor characteristics,

(v) tenant populations with special housing needs,

(vi) public housing waiting lists,

Caution: Clauses (m)(1)(C)(vii)-(viii), following, are effective for allocations made before 1/1/2009. For clauses (m)(1)(C)(vii)-(x), effective for allocations made after 12/31/2008, see below.

(vii) tenant populations of individuals with children, and

(viii) projects intended for eventual tenant ownership.

Caution: Clauses (m)(1)(C)(vii)-(ix), following, are effective for allocations made after 12/31/2008. For clauses (m)(1)(C)(vii)-(viii), effective for allocations made before 1/1/2009, see above.

(vii) tenant populations of individuals with children,

(viii) projects intended for eventual tenant ownership,

(ix) the energy efficiency of the project, and

(x) the historic nature of the project.

(D) Application to bond financed projects. Subsection (h)(4) shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located.

(2) Credit allocated to building not to exceed amount necessary to assure project feasibility.

(A) In general. The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

(B) Agency evaluation. In making the determination under subparagraph (A) , the housing credit agency shall consider—

(i) the sources and uses of funds and the total financing planned for the project,

(ii) any proceeds or receipts expected to be generated by reason of tax benefits,

(iii) the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries, and

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

Clause (iii) shall not be applied so as to impede the development of projects in hard-to-develop areas. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

(C) Determination made-when credit amount applied for and when building placed in service.

(i) In general. A determination under subparagraph (A) shall be made as of each of the following times:

(I) The application for the housing credit dollar amount.

(II) The allocation of the housing credit dollar amount.

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

(ii) Certification as to amount of other subsidies. Prior to each determination under clause (i) , the taxpayer shall certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.

(D) Application to bond financed projects. Subsection (h)(4) shall not apply to any project unless the governmental unit which issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of subparagraphs (A) and (B) .

(n) Regulations.

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section , including regulations—

(1) dealing with—

(A) projects which include more than 1 building or only a portion of a building,

(B) buildings which are placed in service in portions,

(2) providing for the application of this section to short taxable years,

(3) preventing the avoidance of the rules of this section , and

(4) providing the opportunity for housing credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.

Form **8609**
(Rev. December 2008)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Allocation and Certification

▶ See separate instructions.

OMB No. 1545-0988

Part I Allocation of Credit

Check if: ☐ Addition to Qualified Basis ☐ Amended Form

A Address of building (do not use P.O. box) (see instructions)

B Name and address of housing credit agency

C Name, address, and TIN of building owner receiving allocation

TIN ▶

D Employer identification number of agency

E Building identification number (BIN)

1a	Date of allocation ▶ / /	b Maximum housing credit dollar amount allowable	1b	
2	Maximum applicable credit percentage allowable (see instructions)		2	%
3a	Maximum qualified basis		3a	
b	If the eligible basis used in the computation of line 3a was increased, check the applicable box and enter the percentage to which the eligible basis was increased (see instructions) ☐ Building located in the Gulf Opportunity (GO) Zone, Rita GO Zone, or Wilma GO Zone ☐ Section 42(d)(5)(B) high cost area provisions		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 ☐ Not federally subsidized by reason of 40-50 rule under sec. 42(i)(2)(E) g ☐ Allocation subject to nonprofit set-aside under sec. 42(h)(5)

Signature of Authorized Housing Credit Agency Official—Completed by Housing Credit Agency Only

Under penalties of perjury, I declare that the allocation made is in compliance with the requirements of section 42 of the Internal Revenue Code, and that I have examined this form and to the best of my knowledge and belief, the information is true, correct, and complete.

▶ Signature of authorized official ▶ Name (please type or print) ▶ Date

Part II First-Year Certification—Completed by Building Owners with respect to the First Year of the Credit Period

7	Eligible basis of building (see instructions)	7	
8a	Original qualified basis of the building at close of first year of credit period	8a	
b	Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?	☐ Yes	☐ No
9a	If box 6a or box 6d is checked, do you elect to reduce eligible basis under section 42(i)(2)(B)?	☐ Yes	☐ No
b	For market-rate units above the average quality standards of low-income units in the building, do you elect to reduce eligible basis by disproportionate costs of non-low income units under section 42(d)(3)(B)? ▶	☐ Yes	☐ No
10	Check the appropriate box for each election: **Caution:** *Once made, the following elections are irrevocable.*		
a	Elect to begin credit period the first year after the building is placed in service (section 42(f)(1)) ▶	☐ Yes	☐ No
b	Elect **not** to treat large partnership as taxpayer (section 42(j)(5)) ▶	☐ Yes	
c	Elect minimum set-aside requirement (section 42(g)) (see instructions) ☐ 20-50 ☐ 40-60	☐ 25-60 (N.Y.C. only)	
d	Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions)	☐ 15-40	

Under penalties of perjury, I declare that the above building continues to qualify as a part of a qualified low-income housing project and meets the requirements of Internal Revenue Code section 42. I have examined this form and attachments, and to the best of my knowledge and belief, they are true, correct, and complete.

▶ Signature ▶ Taxpayer identification number ▶ Date

▶ Name (please type or print) ▶ Tax year

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 63981U Form **8609** (Rev. 12-2008)

Instructions for Form 8609

(Rev. December 2008)

Low-Income Housing Credit Allocation and Certification

Department of the Treasury
Internal Revenue Service

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

What's New

Buildings placed in service after July 30, 2008. The following changes apply to these buildings:

- For new non-federally subsidized buildings, a minimum applicable credit percentage of 9% is in effect. See the line 2 instructions for details.
- A "difficult development area" will also include any building designated by the state credit agency as requiring an increase in credit in order to be financially feasible as part of a qualified low-income housing project. See the line 3b instructions for details.
- The definition of a "federally subsidized building" has been narrowed to include only buildings with outstanding tax-exempt bond financing. See the line 6a and 6d instructions for details.
- The eligible basis of a building shall not include any costs paid by a federal grant. Also, do not reduce the eligible basis by the principle amount of any below-market federal loan. See the line 7 instructions for details.

General Instructions

Purpose of Form

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

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

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

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

1. The allocation is the result of an advance binding commitment by the credit agency made not later than the close of the calendar year in which the building is placed in service (see section 42(h)(1)(C));
2. The allocation relates to an increase in qualified basis (see section 42(h)(1)(D));
3. The allocation is made to a building located in the Gulf Opportunity (GO) Zone, Rita GO Zone, or Wilma GO Zone, if the allocation is made in 2006, 2007, or 2008, and the building is placed in service during the period beginning on January 1, 2006, and ending on December 31, 2010 (see Pub. 4492, *Information for Taxpayers Affected by Hurricanes Katrina, Rita, and Wilma*, for a list of the counties and parishes in these specific zones);
4. The allocation is made for a building placed in service no later than the second calendar year following the calendar year in which the allocation is made if the building is part of a project in which the taxpayer's basis is more than 10% of the project's reasonably expected basis as of the end of that second calendar year; or
5. The allocation is made for a project that includes more than one building if:

a. The allocation is made during the project period,

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

c. The part of the allocation that applies to any building is specified by the end of the calendar year in which the building is placed in service.

See sections 42(h)(1)(E) and 42(h)(1)(F) and Regulations section 1.42-6 for more details.

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

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

Tax-exempt bonds. No housing credit allocation is required for any portion of the eligible basis of a qualified low-income building that is financed with tax-exempt bonds taken into account for purposes of the volume cap under section 146. An allocation is not needed when 50% or more of the aggregate basis of the building and the land on which the building is located (defined below) is financed with certain tax-exempt bonds. However, the owner still must get a Form 8609 from the appropriate housing credit agency (with the applicable items completed, including an assigned BIN).

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

Filing Requirement

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

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

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

Internal Revenue Service
P.O. Box 331
Attn: LIHC Unit, DP 607 South
Philadelphia Campus
Bensalem, PA 19020

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

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

Building Owner's Recordkeeping

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

- A copy of the original Form 8609 received from the housing agency and all related Forms 8609-A (or predecessor Schedules A (Form 8609)), Forms 8586, and any Forms 8611, Recapture of Low-Income Housing Credit.
- If the maximum applicable credit percentage allocated to the building on line 2 reflects an election under section 42(b)(1)[(A)](ii), (or former section 42(b)(2)(A)(ii), for buildings placed in service before July 31, 2008), a copy of the election statement.

- If the binding agreement specifying the housing credit dollar amount is contained in a separate document, a copy of the binding agreement.
- If the housing credit dollar amount allocated on line 1b reflects an allocation made under section 42(h)(1)(E) or section 42(h)(1)(F), a copy of the allocation document.

Specific Instructions

Part I—Allocation of Credit

Completed by Housing Credit Agency Only

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

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

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

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

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

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

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

Buildings placed in service before July 31, 2008. Enter the maximum applicable credit percentage allowable to the building for the month the building was placed in service or, if applicable, for the month determined under former section 42(b)(2)(A)(ii). This percentage may be less than the applicable percentage published by the IRS.

If an election was made under former section 42(b)(2)(A)(ii) to use the applicable percentage for a month other than the month in which a building is placed in service, the requirements of Regulations section 1.42-8 must be met. The agency must keep a copy of the binding agreement. The applicable percentage is published monthly in the Internal Revenue Bulletin. For new buildings that are not federally subsidized under section 42(i)(2)(A), use the applicable percentage for the 70% present value credit. For new buildings that are federally subsidized, or existing buildings, use the applicable percentage for the 30% present value credit. See the instructions for line 6 for the definition of "federally subsidized," and the time period for which the definition applies. A taxpayer may elect under section 42(i)(2)(B) to reduce eligible basis by the principal amount of any outstanding below-market federal loan or the proceeds of any tax-exempt obligation in order to obtain the higher credit percentage.

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

Buildings placed in service after July 30, 2008. Enter the maximum applicable credit percentage allowable to the building for the month the building was placed in service or, if applicable, for the month determined under section 42(b)(1)[(A)](ii). This percentage may be less than the applicable percentage published by the IRS.

A minimum applicable credit percentage of 9% is in effect for new non-federally subsidized buildings placed in service after July 30, 2008, but before December 31, 2013. The 9% minimum also applies to new non-federally subsidized buildings even if the taxpayer made an irrevocable election (under former section 42(b)(2)(A)(ii)) on or before July 30, 2008. If this circumstance applies, do not enter less than 9% on line 2, unless the housing credit agency determines that a lesser amount is necessary to assure project feasibility. See section 42(m), Regulations section 1.42-8(a)(4), and Notice 2008-106, 2008-49 I.R.B. 1239.

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

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

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

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

Generally, a unit is not treated as a low-income unit unless it is suitable for occupancy, used other than on a transient basis, and occupied by qualifying tenants. Section 42(i)(3) provides for certain exceptions (e.g., units that provide for transitional housing for the homeless may qualify as low-income units). See sections 42(i)(3) and 42(c)(1)(E) for more information.

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

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

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

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

Buildings placed in service after July 30, 2008. For these buildings, the definition of a "difficult development area" has been expanded to include any building designated by the state credit agency in

order to be financially feasible as part of a qualified low-income housing project.

TIP *See section 42(d)(5)(B) (former section 42(d)(5)(C) for buildings placed in service before July 31, 2008) for definitions of a qualified census tract and a difficult development area, and for other details.*

Gulf Opportunity (GO) Zone, Rita GO Zone, and Wilma GO Zone. The housing credit agency may increase the eligible basis of buildings in these specific zones if the buildings were placed in service during the period beginning on January 1, 2006, and ending on December 31, 2010. For more information, see section 1400N(c)(3).

Note. Before increasing eligible basis, the eligible basis must be reduced by any federal subsidy which the taxpayer elects to exclude from eligible basis and any federal grant received.

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

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

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

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

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

Lines 6a and 6d for buildings placed in service before July 31, 2008. Generally, a building is treated as federally subsidized if at any time during the tax year or any prior tax year there is outstanding any tax-exempt bond financing or any below-market federal loan, the proceeds of which are used (directly or indirectly) for the building or its operation. If a building is federally subsidized, then box 6a or 6d must be checked regardless of whether the taxpayer has informed the housing credit agency that the taxpayer intends to make the election under section 42(i)(2)(B) to reduce eligible basis by the principal amount of any outstanding below-market federal loan or the proceeds of any tax-exempt obligation.

Lines 6a and 6d for buildings placed in service after July 30, 2008. A building is treated as federally subsidized if at any time during the tax year or prior tax year there is outstanding any tax-exempt bond financing, the proceeds of which are used (directly or indirectly) for the building or its operation. If a building is federally subsidized, then box 6a or 6d must be checked regardless of whether the taxpayer has informed the housing credit agency that the taxpayer intends to make the election under section 42(i)(2)(B) to reduce eligible basis by the proceeds of any tax exempt obligation.

Line 6f for buildings placed in service before July 31, 2008. Under section 42(i)(2)(E), buildings receiving assistance under the HOME Investment Partnerships Act (as in effect on August 10, 1993) or the Native American Housing Assistance and Self-Determination Act of 1996 (as in effect on October 1, 1997) are not treated as federally subsidized if 40% or more of the residential units in the building are occupied by individuals whose income is 50% or less of the area median gross income (or national nonmetropolitan median gross income, when applicable). Buildings located in New York City receiving this assistance are not treated as federally subsidized if 25% or more of the residential units in the building are occupied by individuals whose income is 50% or less of the area median gross income.

Part II—First-Year Certification

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

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

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

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

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

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

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

Buildings placed in service before July 31, 2008. You must reduce the eligible basis by the amount of any federal grant received. Also reduce the eligible basis by the entire basis allocable to non-low-income units that are above average quality standard of the low-income units in the building. You may, however, include a portion of the basis of these non-low-income units if the cost of any of these units does not exceed by more than 15% the average cost of all low-income units in the building, and you elect to exclude this excess cost from the eligible basis by checking the "Yes" box for line 9b. See section 42(d)(3).

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

Buildings placed in service after July 30, 2008. The eligible basis shall not include any costs paid by the proceeds of a federal grant. Also, reduce the eligible basis by the entire basis allocable to non-low-income units that are above average quality standard of the low-income units in the building. You may, however, include a portion of the basis of these non-low-income units if the cost of any of these units does not exceed by more than 15% the average cost of all low-income units in the building, and you elect to exclude this excess cost from the eligible basis by checking the "Yes" box for line 9b. See section 42(d)(3).

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

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

Form **8823**
(Rev. June 2011)
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.*

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)

General Instructions

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

What's New

The address used to file this form has changed. See *Where To File* below for the new address.

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, 13b, and 13d. If there is more than one owner (other than as a member of a pass-through entity), attach a schedule listing the owners, their addresses, and their taxpayer identification numbers. Indicate whether each owner's taxpayer identification number is an employer identification number (EIN) or a social security number (SSN).

Both the EIN and the SSN have nine digits. An EIN has two digits, a hyphen, and seven digits. An SSN has three digits, a hyphen, two digits, a hyphen, and four digits, and is issued only to individuals.

Item 7d. "Reviewed by agency" includes physical inspection of the property, tenant file inspection, or review of documentation submitted by the owner.

Item 8. Enter the date that the building ceased to comply with the low-income housing credit provisions. If there are multiple noncompliance issues, enter the date for the earliest discovered issue. **Do not** complete item 8 for a building disposition. Instead, skip items 9 through 12, and complete item 13.

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

Item 10. Do not check this box unless the sole reason for filing the form is to indicate that previously reported noncompliance problems have been corrected.

Item 11c. Housing credit agencies must use either **(a)** the local health, safety, and building codes (or other habitability standards) or **(b)** the Uniform Physical Conditions Standards (UPCS) (24 C.F.R. section 5.703) to inspect the project, but not in combination. The UPCS does not supersede or preempt local codes. Thus, if a housing credit agency using the UPCS becomes aware of any violation of local codes, the agency must report the violation. Attach a statement describing either **(a)** the deficiency and its severity under the UPCS, i.e., minor (level 1), major (level 2), and severe (level 3) or **(b)** the health, safety, or building violation under the local codes. The Department of Housing and Urban Development's Real Estate Assessment Center has developed a comprehensive description of the types and severities of deficiencies entitled "Dictionary of Deficiency Definitions" found at *www.hud.gov*. Under Regulations section 1.42-5(e)(3), report all deficiencies to the IRS whether or not the noncompliance or failure to certify is corrected at the time of inspection. In using the UPCS inspection standards, report all deficiencies in the five major inspectable areas (defined below) of the project: (1) Site; (2) Building exterior; (3) Building systems; (4) Dwelling units; and (5) Common areas.

1. Site. The site components, such as fencing and retaining walls, grounds, lighting, mailboxes, signs (such as those identifying the project or areas of the project), parking lots/driveways, play areas and equipment, refuse disposal equipment, roads, storm drainage, and walkways, must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walkways or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulation of garbage and debris, vermin or rodent infestation, or fire hazards.

2. Building exterior. Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

3. Building systems. Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

4. Dwelling units. Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid (if applicable), ceilings, doors, electrical systems, floors, hot water heater, HVAC

(where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair. Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water (single room occupancy units need not contain water facilities). If the dwelling unit includes its own bathroom, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste. The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

5. Common areas. The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement, garage/carport, restrooms, closets, utility rooms, mechanical rooms, community rooms, day care rooms, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.

Health and Safety Hazards. All areas and components of the housing must be free of health and safety hazards. These include, but are not limited to: air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have hand rails that are not damaged, loose, missing portions, or otherwise unusable. The housing must have no evidence of infestation by rats, mice, or other vermin. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold as well as odor (e.g., propane, natural, sewer, or methane gas). The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 C.F.R. part 35).

Project owners must promptly correct exigent and fire safety hazards. Before leaving the project, the inspector should provide the project owner with a list of all observed exigent and fire safety hazards. Exigent health and safety hazards include: air quality problems such as propane, natural gas, or methane gas detected; electrical hazards such as exposed wires or open panels and water leaks on or near electrical equipment; emergency equipment, fire exits, and fire escapes that are blocked or not usable; and carbon monoxide hazards such as gas or hot water heaters with missing or misaligned chimneys. Fire safety hazards include missing or inoperative smoke detectors (including missing batteries), expired fire extinguishers, and window security bars preventing egress from a unit.

Item 11d. Report the failure to provide annual certifications or the provision of certifications that are known to be incomplete or inaccurate as required by Regulations section 1.42-5(c). As examples, report a failure by the owner to include a statement summarizing violations (or copies of the violation reports) of local health, safety, or building codes; report an owner who provided inaccurate or incomplete statements concerning corrections of these violations.

Item 11e. For buildings placed in service before July 31, 2008, report any federal grant made with respect to any building or the operation thereof during any tax year in the compliance period. For buildings placed in service after July 30, 2008, report any federal grant used to finance any 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 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 write to the Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send Form 8823 to this address. Instead, see *Where To File* on page 2.

Form **8586**

Department of the Treasury
Internal Revenue Service (99)

Low-Income Housing Credit

▶ Attach to your tax return.

OMB No. 1545-0984

2009

Attachment Sequence No. **36a**

Name(s) shown on return | Identifying number

Part I Buildings Placed in Service Before 2008

1	Number of Forms 8609-A attached for buildings placed in service before 2008 ▶		
2	Has there been a decrease in the qualified basis of any buildings accounted for on line 1 since the close of the preceding tax year? ☐ Yes ☐ No If "Yes," enter the building identification numbers (BINs) of the buildings that had a decreased basis. If you need more space, attach a schedule. (i) _____ (ii) _____ (iii) _____ (iv) _____		
3	Current year credit from attached Form(s) 8609-A for buildings placed in service before 2008 (see instructions)	3	
4	Low-income housing credit for buildings placed in service before 2008 from partnerships, S corporations, estates, and trusts	4	
5	Add lines 3 and 4. Estates and trusts, go to line 6; partnerships and S corporations, report this amount on Schedule K; all others, report this amount on Form 3800, line 1d	5	
6	Amount allocated to beneficiaries of the estate or trust (see instructions)	6	
7	Estates and trusts. Subtract line 6 from line 5. Report this amount on Form 3800, line 1d	7	

Part II Buildings Placed in Service After 2007

8	Number of Forms 8609-A attached for buildings placed in service after 2007 ▶		
9	Has there been a decrease in the qualified basis of any buildings accounted for on line 8 since the close of the preceding tax year? ☐ Yes ☐ No If "Yes," enter the building identification numbers (BINs) of the buildings that had a decreased basis. If you need more space, attach a schedule. (i) _____ (ii) _____ (iii) _____ (iv) _____		
10	Current year credit from attached Form(s) 8609-A for buildings placed in service after 2007 (see instructions)	10	
11	Low-income housing credit for buildings placed in service after 2007 from partnerships, S corporations, estates, and trusts	11	
12	Add lines 10 and 11. Partnerships and S corporations, report this amount on Schedule K; all others, continue to line 13	12	
13	Low-income housing credit included on line 12 from passive activities (see instructions)	13	
14	Subtract line 13 from line 12	14	
15	Low-income housing credit allowed for 2009 from a passive activity (see instructions)	15	
16	Carryforward of low-income housing credit to 2009 (see instructions)	16	
17	Carryback of low-income housing credit from 2010 (see instructions)	17	
18	Add lines 14 through 17. Estates and trusts, go to line 19; all others, report this amount on Form 3800, line 29d	18	
19	Amount allocated to beneficiaries of the estate or trust (see instructions)	19	
20	**Estates and trusts.** Subtract line 19 from line 18. Report this amount on Form 3800, line 29d	20	