Date: Minneapolis/Sa Housing Finar					
Develo Crown 105 Fit	apolis Community opment Agency Roller Mill, Second Floor fth Avenue South apolis, MN 55401	Briggs & Morgan, Professional Association 2200 National Bank Building St. Paul, Minnesota 55101			
	or				
Redev 13th F 25 We	Paul Housing and elopment Authority loor, City Hall Annex st Fourth Street ul, Minnesota 55101	Briggs & Morgan, Professional Association 2200 First National Bank Building St. Paul, Minnesota 55101			
(Name	(Name of Developer) (Name and address of Project) (Building addresses, if more than one)				
Ladies and Ge	ntlemen:				
"Developer") in Board (the "Bo 462A.222 and We have revie "Application"), Documents"), deemed releval examination, it 1.	ard") for an allocation of low income Section 42 of the Internal Revenue wed and am familiar with the Devel and the [Partnership Agreement/Ardated We have furthern and necessary as the basis for no is our opinion that: That Developer is a	, a			
State					
	, and has full legal power ar ary to complete the Project describe	nd authority under its Organizational Documents to do all ed in the Application.			

re	espect	to the allocation of low income credit to the Developer.
attached hereto (if specifications, cre-	f neces edit allo	ng that the facts set forth in the Application [and in the Certificate of the Developer ssary)] with respect to costs of construction, schedule of completion, plans and cation amount, occupancy by low-income tenants, rents, and other matters are, in on existing laws, regulations, rulings and decisions as of the date of this opinion,
(8	a)	The Project will consist of Buildings;
-	Each] [ˈ code;	Γhe] Building is a (new) (existing) building within the meaning of Section 42(d) of the
		cable) The rehabilitation expenditures for the Building will be treated as a separate, ding within the meaning of Section 42(e) of the Code;]
(t	•	The (Project/Building) will be a qualified low-income housing project as defined in Section 42(g) of the Code;
(0		The (Project/Building) will be eligible for the (70% / 30%) present value credit described in Section 42(b) of the Code;
(d		The building (will be) (has been) placed in service as such term is used in Section 42(g)(3) of the Code [in of 20];
(6	e)	The applicable fraction as defined in Section 42(c) of the Code will be%;
(f		As of the close of the first year of the credit period the eligible basis of the building as defined in Section 42(d) will be \$;
(9	• /	As of the close of the first year of the credit period the qualified basis of the building as defined in Section 42(c) will be \$;
(h	h)	The beginning of the credit period as defined in Section 42(f) will be
[(` '	The Developer is a qualified non-profit organization as defined in Section42(h)(5)(c) (if applicable).]
נט		(If applicable.) The Project is located in United States Census Tract Numberin the Minneapolis-Saint Paul Metropolitan Area, which has been designated by the Secretary of Housing and Urban Development as a qualified census tract within the meaning of Section 42(d)(4) of the Code. Pursuant to Section 42(d)(4)(C)(II) of the Code, the [rehabilitation] [construction] expenditures taken into account under Section 42(e) of the Code will be 130 percent of such expenditures (as determined

without regard to such Section 42(d)(4)(C)(II)).]

I am not aware that the Application contains any untrue statement of a material fact with

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	apolis/Saint Paul ng Finance Board		
c/o	Minneapolis Community Development Agency Crown Roller Mill, Second Floor 105 Fifth Avenue South Minneapolis, MN 55401	Briggs & Morgan, Professional Association 2200 National Bank Building St. Paul, Minnesota 55101	
	or		
c/o	Saint Paul Housing and Redevelopment Authority 13th Floor, City Hall Annex 25 West Fourth Street St. Paul, Minnesota 55101	Briggs & Morgan, Professional Association 2200 First National Bank Building St. Paul, Minnesota 55101	
RE:	(Name of Developer) (Name and address of Project) (Building addresses, if more than one)		
	Ladies and Gentlemen:		
the Deve of low in Internal familiar [Partner	Revenue Code of 1986, as amended (the with the Developer's application for Low Inches Agreement/Articles and Bylaws], of the We have further examined such documents.	(the "Developer") in connection with aul Housing Finance Board (the "Board") for an allocation of the Statutes, Chapter 462A.222 and Section 42 of the "Code"). In that regard, We have reviewed and are come Credit dated (the "Application"), and the e Developer (the "Organizational Documents"), dated uments and papers as I have deemed relevant and below. Based upon our examination, it is our opinion	
	Developer has basis in land and o	ne land on which the Project will be located, i.e., the ther acquired real property or depreciable property as set Code, Treasury Regulations 1.42-6(h)(2)(i) and IRS Notice	

I am not aware that the Application contains any untrue statement of a material fact with respect to the allocation of low income credit to the Developer.

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	3.	attached hereto (if necessary)] with respect to costs of construction, schedule of completion, plans and specifications, credit allocation amount, occupancy by low-income tenants, rents and other matters are, in fact, realized, and based on existing laws, regulations, rulings and decisions as of the date of this opinion,		
	(a)	The Project will consist of Buildings;		
	[Each]	[The] Building is a (new) (existing) building within the meaning of Section 42(d) of the Code;		
		If applicable) The rehabilitation expenditures for the Building will be treated as a separate, new uilding within the meaning of Section 42(e) of the Code;]		
	(b)	The (Project/Building) will be a qualified low-income housing project as defined in Section 42(g) of the Code;		
	(c)	The (Project/Building) will be eligible for the (70% / 30%) present value credit described in Section 42(b) of the Code;		
	(d)	The building (will be) (has been) placed in service as such term is used in Section $42(g)(3)$ of the Code [in of 20 _];		
	(e)	The applicable fraction as defined in Section 42(c) of the Code will be%;		
	(f)	As of the close of the first year of the credit period the eligible basis of the building as defined in Section 42(d) will be \$;		
	(g)	As of the close of the first year of the credit period the qualified basis of the building as defined in Section 42(c) will be \$;		
	(h)	The beginning of the credit period as defined in Section 42(f) will be		
	[(i)	The reasonably expected basis of the Project at the end of the second calendar year succeeding the year 1991 will be \$;]		
	((j)	For purposes of Section 42(h)(1)(E), the basis in the Project as of the date hereof is at least \$, which constitutes at least% of the total reasonably expected basis in the Project. The Project therefore meets the requirements for a carryover allocation.]		
	[(k)	The Developer is a qualified non-profit organization as defined in Section $42(h)(5)(c)$ (if applicable).]		
	[(I)	(If applicable.) The Project is located in United States Census Tract Number in the Minneapolis-Saint Paul Metropolitan Area, which has been designated by the Secretary of Housing and Urban Development as a qualified census tract within the meaning of Section 42(d)(4) of the Code. Pursuant to Section 42(d)(4)(C)(II) of the Code, the [rehabilitation] [construction] expenditures taken into account under Section 42(e) of the Code will be 130 percent of such expenditures (as determined without regard to such Section 42(d)(4)(C)(II)).]		
Very truly yours,				

Notice 88-80 1988-30 I.R.B. 28

NOTICE 88-80

LOW-INCOME HOUSING TAX CREDIT - DETERMINATION OF INCOME FOR PURPOSES OF SECTION 42(g)(1)

July 25, 1988

The purpose of this Notice is to inform taxpayers that regulations to be issued under section 42(g)(1) of the Internal Revenue Code of 1986 (the 'Code') (relating to the determination of a qualified low-income housing project) will provide that the income of individuals and area median gross income (adjusted for family size) are to be made in a manner consistent with the determination of annual income and the estimates for median family income under section 8 of the United States Housing Act of 1937 (H.U.D. section 8).

For purposes of H.U.D. section 8. annual income is defined under 24 CFR 813.106 (1987). HUD section 8 median family income estimates (i.e., area median gross income estimates) are based on decennial Census data updated with bureau of the Census P-60 income data and Department of Commerce County Business Patterns employment and earnings data. The determination of annual income and median family income estimates are based on definitions of income that include some items of income that are not included in a taxpayer's gross income for purposes of computing Federal Income Tax liability. Thus, the income of individuals and area median gross income (adjusted for family size) for purposes of section 42(g)(1) of the Code will NOT be made by reference to items of income used in determining gross income for purposes of computing Federal Income Tax liability.

This document serves as an 'administrative pronouncement' as that term is described in section 1.661-3(b)(2) of the Income Tax Regulations and may be relied upon to the same extent as a revenue ruling or revenue procedure.

The principal author of this Notice is Christopher J. Wilson of the Legislation and Regulations Division. For further information regarding this Notice contact Mr. Wilson on (202) 566-4336 (not a toll-free call).

[Code of Federal Regulations] [Title 26, Volume 1] [Revised as of April 1, 2001] From the U.S. Government Printing Office via GPO Access [CITE: 26CFR1.42-6]

TITLE 26--INTERNAL REVENUE CHAPTER I--INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

PART 1--INCOME TAXES--Table of Contents

Sec. 1.42-6 Buildings qualifying for carryover allocations.

- (a) Carryover allocations. A carryover allocation is an allocation that meets the requirements of section 42(h)(1) (E) or (F). If the requirements of section 42(h)(1) (E) or (F) that are required to be satisfied by the close of the calendar year are not satisfied, the allocation is treated as if it had not been made. For example, if the taxpayer's basis in the project as of the close of the calendar year of allocation is not more than 10 percent of the taxpayer's reasonably expected basis in the project as of the close of the second calendar year following the year of allocation, the carryover allocation is not valid and is treated as if it had not been made.
 - (b) Carryover-allocation basis—
- (1) In general. Subject to the limitations of paragraph (b)(2) of this section, a taxpayer's basis in a project for purposes of section 42(h)(1) (E)(ii) or (F) (carryover allocation basis) is the taxpayer's adjusted basis in land or depreciable property that is reasonably expected to be part of the project, whether or not these amounts are includible in eligible basis under section 42(d). Thus, for example, if the project is to include property that is not residential rental property, such as commercial space, the basis attributable to the commercial space, although not includible in eligible basis, is includible in carryover-allocation basis. The adjusted basis of land and depreciable property is determined under sections 1012 and 1016, and generally includes the direct and indirect costs of acquiring, constructing, and rehabilitating the property. Costs otherwise includible in carryover-allocation basis are not excluded by reason of having been incurred prior to the calendar year in which the carryover allocation is made.
- (2) Limitations--For purposes of determining carryover-allocation basis under paragraph (b)(1) of this section, the following limitations apply.
- (i) Taxpayer must have basis in land or depreciable property related to the project. A taxpayer has carryover-allocation basis to the extent that it has basis in land or depreciable property and the land or depreciable property is reasonably expected to be part of the project for which the carryover allocation is made. This basis includes all items that are properly capitalizable with respect to the land or depreciable property. For example, a nonrefundable downpayment for, or an amount paid to acquire an option to purchase, land or depreciable property may be included in carryover-allocation basis if properly capitalizable into the basis of land or depreciable property that is reasonably expected to be part of a project.
- (ii) High cost areas. Any increase in eligible basis that may result under section 42(d)(5)(C) from a building's location in a qualified census tract or difficult development area is not taken into account in determining carryover allocation basis or reasonably expected basis.
- (iii) Amounts not treated as paid or incurred. An amount is not includible in carryover-allocation basis unless it is treated as paid or incurred under the method of accounting used by the taxpayer. For example, a cash method taxpayer cannot include construction costs in carryover-allocation basis unless the costs have been paid, and an accrual method taxpayer cannot include construction costs in carryover-allocation basis unless they have been properly accrued. See paragraph (b)(2)(iv) of this section for a special rule for fees.
- (iv) Fees. A fee is includible in carryover-allocation basis only to the extent the requirements of paragraph (b)(2)(iii) of this section are met and-
 - (A) The fee is reasonable:
 - (B) The taxpayer is legally obligated to pay the fee;
- (C) The fee is capitalizable as part of the taxpayer's basis in land or depreciable property that is reasonably expected to be part of the project;
 - (D) The fee is not paid (or to be paid) by the taxpayer to itself; and

- (E) If the fee is paid (or to be paid) by the taxpayer to a related person, and the taxpayer uses the cash method of accounting, the taxpayer could properly accrue the fee under the accrual method of accounting (considering, for example, the rules of section 461(h)). A person is a related person if the person bears a relationship to the taxpayer specified in sections 267 (b) or 707(b)(1), or if the person and the taxpayer are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52).
- (3) Reasonably expected basis. Rules similar to the rules of paragraphs (a) and (b) of this section apply in determining the taxpayer's reasonably expected basis in a project (land and depreciable basis) as of the close of the second calendar year following the calendar year of the allocation.
 - (4) Examples. The following examples illustrate the rules of paragraphs (a) and (b) of this section.

Example 1.

- (i) Facts. C, an accrual-method taxpayer, receives a carryover allocation from Agency, the state housing credit agency, in September of 1993. As of that date, C has not begun construction of the low-income housing building C plans to build. However, C has owned the land on which C plans to build the building since 1985. C's basis in the land is \$100,000. C reasonably expects that by the end of 1995, C's basis in the project of which the building is to be a part will be \$2,000,000. C also expects that because the project is located in a qualified census tract, C will be able to increase its basis in the project to \$2,600,000. Before the close of 1993, C incurs \$150,000 of costs for architects' fees and site preparation. C properly accrues these costs under its method of accounting and capitalizes the costs.
- (ii) Determination of carryover-allocation basis. C's \$100,000 basis in the land is includible in carryover-allocation basis even though C has owned the land since 1985. The \$150,000 of costs C has incurred for architects' fees and site preparation are also includible in carryover allocation basis. The expected increase in basis due to the project's location in a qualified census tract is not taken into account in determining C's carryover-allocation basis. Accordingly, C's carryover allocation basis in the project of which the building is a part is \$250,000.
- (iii) Determination of whether building is qualified. C's reasonably expected basis in the project at the close of the second calendar year following the calendar year of allocation is \$2,000,000. The expected increase in eligible basis due to the project's location in a qualified census tract is not taken into account in determining this amount. Because C's carryover-allocation basis is more than 10 percent of C's reasonably expected basis in the project of which the building is a part, the building for which C received the carryover allocation is a qualified building for purposes of section 42(h)(1)(E)(ii) and paragraph (a) of this section.

Example 2.

- (i) Facts. D, an accrual-method taxpayer, receives a carryover allocation from Agency, the state housing credit agency, on September 11, 1993. As of that date, D has not begun construction of the low-income housing building D plans to build and D does not have basis in the land on which D plans to build the building. In 1993, D incurs some costs related to the planned building, including architects' fees. However, at the close of 1993, these costs do not exceed 10 percent of D's reasonably expected basis in the project.
- (ii) Determination of whether building is qualified. Because D's carryover allocation basis is not more than 10% of D's reasonably expected basis in the project of which the building is a part, the building for which D received a carryover allocation is not a qualified building for the purposes of section 42(h)(1)(E)(ii) and paragraph (a) of this section. The carryover allocation to D is not valid, and is treated as if it had not been made.
 - (c) Verification of basis by Agency—
- (1) Verification requirement. An Agency that makes a carryover allocation to a taxpayer must verify that, as of the close of the calendar year of allocation, the taxpayer has incurred more than 10 percent of the reasonably expected basis in the project (land and depreciable basis).
- (2) Manner of verification. An Agency may verify that a taxpayer incurred more than 10 percent of its reasonably expected basis in a project by obtaining a certification from the taxpayer, in writing and under penalty of perjury, that the taxpayer has incurred by the close of the calendar year of the allocation more than 10 percent of the reasonably expected basis in the project. The certification must be accompanied by supporting documentation that the Agency must review. Supporting documentation may include, for

example, copies of checks or other records of payments. Alternatively, an Agency may verify that the taxpayer has incurred adequate basis by requiring that the taxpayer obtain from an attorney or certified public accountant a written certification to the Agency, that the attorney or accountant has examined all eligible costs incurred with respect to the project and that, based upon this examination, it is the attorney's or accountant belief that the taxpayer has incurred more than 10 percent of its reasonably expected basis in the project by the close of the calendar year of the allocation.

- (3) Time of verification. An Agency may require that the basis certification be submitted to or received by the Agency prior to the close of the calendar year of allocation or within a reasonable time after the close of the calendar year of allocation. The Agency will need to verify basis in order to accurately complete the Form 8610, 'Annual Low-Income Housing Credit Agencies Report,' for the calendar year. If certification is not timely made, or supporting documentation is lacking, inadequate, or does not actually support the certification, the Agency should notify the taxpayer and try to get adequate documentation. If the Agency cannot verify before the Form 8610 is filed that the taxpayer has satisfied the basis requirement for a carryover allocation, the allocation is treated as if it had not been made and the carryover allocation document should not be filed with the Form 8610.
 - (d) Requirements for making carryover allocations—
- (1) In general. Generally, an allocation is made when an Agency issues the Form 8609, 'Low-Income Housing Credit Allocation Certification,' for a building. See Sec. 1.42-1T(d)(8)(ii). An Agency does not issue the Form 8609 for a building until the building is placed in service. However, in cases where allocations of credit are made pursuant to section 42(h)(1)(E) (relating to carryover allocations for buildings) or section 42 (h) (1) (F) (relating to carryover allocations for multiple-building projects), Form 8609 is not used as the allocating document because the buildings are not yet in service. When an allocation is made pursuant to section 42(h)(1) (E) or (F), the allocating document is the document meeting the requirements of paragraph (d)(2) of this section. In addition, when an allocation is made pursuant to section 42(h)(1)(F), the requirements of paragraph (d)(3) of this section must be met for the allocation to be valid. An allocation pursuant to section 42(h)(1) (E) or (F) reduces the state housing credit ceiling for the year in which the allocation is made, whether or not the Form 8609 is also issued in that year.
- (2) Requirements for allocation. An allocation pursuant to section 42(h)(1) (E) or (F) is made when an allocation document containing the following information is completed, signed, and dated by an authorized official of the Agency—
- (i) The address of each building in the project, or if none exists, a specific description of the location of each building;
 - (ii) The name, address, and taxpayer identification number of the receiving the allocation;
 - (iii) The name and address of the Agency;
 - (iv) The taxpayer identification number of the Agency
 - (v) The date of the allocation;
 - (vi) The housing credit dollar amount allocated to the building or project, as applicable;
- (vii) The taxpayer's reasonably expected basis in the project (land and depreciable basis) as of the close of the second calendar year following the calendar year in which the allocation is made;
- (viii) The taxpayer's basis in the project (land and depreciable basis) as of the close of the calendar year in which the allocation is made and the percentage that basis bears to the reasonably expected basis in the project (land and depreciable basis) as of the close of the second following calendar year;
 - (ix) The date that each building in the project is expected to be placed in service; and
- (x) The Building Identification Number (B.I.N.) to be assigned to each building in the project. The B.I.N. must reflect the year an allocation is first made to the building, regardless of the year that the building is placed in service. This B.I.N. must be used for all allocations of credit for the building. For example, rehabilitation expenditures treated as a separate new building under section 42 (e) should not have a separate B.I.N. if the building to which the rehabilitation expenditures are made has a B.I.N. In this case, the B.I.N. used for the rehabilitation expenditures shall be the B.I.N. previously assigned to the building, although the rehabilitation expenditures must have a separate Form 8609 for the allocation. Similarly, a newly constructed building that receives an allocation of credit in different calendar years must have a separate Form 8609 for each allocation. The B.I.N. assigned to the building for the first allocation must be used for the subsequent allocation.

- (3) Special rules for project-based allocations—
- (i) In general. An allocation pursuant to section 42(h)(1)(F) (a project-based allocation) must meet the requirements of this section as well as the requirements of section 42(h)(1)(F), including the minimum basis requirement of section 42 (h) (1) (E) (ii).
- (ii) Requirement of section 42(h)(1)(F)(i)(III). An allocation satisfies the requirement of section 42(h)(1)(F)(i)(III) if the Form 8609 that is issued for each building that is placed in service in the project states the portion of the project-based allocation that is applied to that building.
 - (4) Recordkeeping requirements—
- (i) Taxpayer. When an allocation is made pursuant to section 42(h)(1) (E) or (F), the taxpayer must retain a copy of the allocation document and file and additional copy with the Form 8609 that is issued to the taxpayer for a building after the building is placed in service. The taxpayer need only file a copy of the allocation document with the Form 8609 for the building for the first year the credit is claimed. However, the Form 8609 must be filed for the first taxable year in which the credit is claimed and for each taxable year thereafter throughout the compliance period, whether or not a credit is claimed for the taxable year. (ii) Agency. The Agency must retain the original carryover allocation document made under paragraph (d)(2) of this section and file Schedule A (Form 8610), "Carryover Allocation of the Low-Income Housing Credit," with the Agency's Form 8610 for the year the allocation is made. The Agency must also retain a copy of the Form 8609 that is issued to the taxpayer and file the original with the Agency's Form 8610 that reflects the year the form is issued.
- (5) Separate procedure for election of appropriate percentage month. If a taxpayer receives an allocation under section 42(h)(1) (E) or (F) and wishes to elect under section 42(b)(2)(A)(ii) to use the appropriate percentage for a month other than the month in which a building is placed in service, the requirements specified in Sec. 1.42-8 must be met for the election to be effective.
 - (e) Special rules. The following rules apply for purposes of this section.
- (1) Treatment of partnerships and other flow-through entities. With respect to taxpayers that own projects through partnerships or other flow-through entities (e.g., S corporations, estates, or trusts), carryover-allocation basis is determined at the entity level using the rules provided by this section. In addition, the entity is responsible for providing to the Agency the certification and documentation required under the basis verification requirement in paragraph (c) of this section.
- (2) Transferees. If land or depreciable property that is expected to be part of a project is transferred after a carryover allocation has been made for a building that is reasonably expected to be part of the project, but before the close of the calendar year of the allocation, the transferee's carryover-allocation basis is determined under the principles of this section and section 42(d)(7). See also Rev. Rul. 9138, 1991-2 C.B. 3 (see Sec. 601.601(d)(2)(ii)(b) of this chapter). In addition, the transferee is treated as the taxpayer for purposes of the basis verification requirement of this section, and therefore, is responsible for providing to the Agency the required certifications and documentation.

[T.D. 8520, 59 FR 10069, Mar. 3, 1994, as amended by T.D. 8859, 65 FR 2328, Jan. 14, 2000; 65 FR 16317, Mar. 28, 2000]

[Code of Federal Regulations] [Title 26, Volume 1] [Revised as of April 1, 2001] From the U.S. Government Printing Office via GPO Access [CITE: 26CFR1.42-10]

TITLE 26--INTERNAL REVENUE CHAPTER I--INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

Sec. 1.42-10 Utility Allowances

- (a) Inclusion of utility allowances in gross rent. If the cost of any utilities (other than telephone) for a residential rental unit are paid directly by the tenant(s), the gross rent for that unit includes the applicable utility allowance determined under this section. This section only applies for purposes of determining gross rent under section 42(g)(2)(B)(ii) as to rent-restricted units.
- (b) Applicable utility allowances--(1) FmHA-assisted buildings. If a building receives assistance from the Farmers Home Administration (FmHA-assisted building), the applicable utility allowance for all rent-restricted units in the building is the utility allowance determined under the method prescribed by the Farmers Home Administration (FmHA) for the building. For example, if a building receives assistance under FmHA's section 515 program (whether or not the building or its tenants also receive other state or federal assistance), the applicable utility allowance for all rent-restricted units in the building is determined using Exhibit A-6 of 7 CFR part 1944, subpart E (or a successor method of determining utility allowances).
- (2) Buildings with FmHA assisted tenants. If any tenant in a building receives FmHA rental assistance payments (FmHA tenant assistance), the applicable utility allowance for all rent-restricted units in the building (including any units occupied by tenants receiving HUD rental assistance payments) is the applicable FmHA utility allowance.
- (3) HUD-regulated buildings. If neither a building nor any tenant in the building receives FmHA housing assistance, and the rents and utility allowances of the building are reviewed by HUD on an annual basis (HUD-regulated building), the applicable utility allowance for all rent-restricted units in the building is the applicable HUD utility allowance.
- (4) Other buildings. If a building is neither an FmHA-assisted nor a HUD-regulated building, and no tenant in the building receives FmHA tenant assistance, the applicable utility allowance for rent-restricted units in the building is determined under the following methods.
- (i) Tenants receiving HUD rental assistance. The applicable utility allowance for any rent-restricted units occupied by tenants receiving HUD rental assistance payments (HUD tenant assistance) is the applicable Public Housing Authority (PHA) utility allowance established for the Section 8 Existing Housing Program.
- (ii) Other tenants--(A) General rule. If none of the rules of paragraphs (b)(1), (2), (3), and (4)(i) of this section apply to any rent-restricted units in a building, the appropriate utility allowance for the units is the applicable PHA utility allowance. However, if a local utility company estimate is obtained for any unit in the building in accordance with paragraph (b)(4)(ii)(B) of this section, that estimate becomes the appropriate utility allowance for all rent-restricted units of similar size and construction in the building. This local utility company estimate procedure is not available for and does not apply to units to which the rules of paragraphs (b) (1), (2), (3), or (4)(i) of this section apply.
- (B) Utility company estimate. Any interested party (including a low-income tenant, a building owner, or an Agency) may obtain a local utility company estimate for a unit. The estimate is obtained when the interested party receives, in writing, information from a local utility company providing the estimated cost of that utility for a unit of similar size and construction for the geographic area in which the building containing the unit is located. The local utility company estimate may be obtained by an interested party at any time during the building's extended use period (see section 42(h)(6)(D)) or, if the building does not have an extended use period, during the building's compliance period (see section 42(i)(1)). Unless the parties agree otherwise, costs incurred in obtaining the estimate are borne by the initiating party. The interested party that obtains the local utility company estimate (the initiating party) must retain the original of the utility company estimate and must furnish a copy of the local utility company estimate to the owner

of the building (where the initiating party is not the owner), and the Agency that allocated credit to the building (where the initiating party is not the Agency). The owner of the building must make available copies of the utility company estimate to the tenants in the building.

(c) Changes in applicable utility allowance. If at any time during the building's extended use period (or, if the building does not have an extended use period, the building's compliance period), the applicable utility allowance for a unit changes, the new utility allowance must be used to compute gross rents of rent-restricted units due 90 days after the change. For example, if rent must be lowered because a local utility company estimate is obtained that shows a higher utility cost than the otherwise applicable PHA utility allowance, the lower rent must be in effect for rent due more than 90 days after the date of the local utility company estimate.

[T.D. 8520, 59 FR 10073, Mar. 3, 1994]

Section 42 with December 2000 Amendments

- (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.--For purposes of this section--
- (1) **Building placed in service during 1987.**—In the case of any qualified low-income building placed in service by the taxpayer during 1987, the term "applicable percentage" means—
 - (A) 9 percent for new buildings which are not federally subsidized for the taxable year, or
 - (B) 4 percent for--
 - (i) new buildings which are federally subsidized for the taxable year, and
 - (ii) existing buildings.
- (2) Buildings placed in service after 1987.--
- (A) In general.--In the case of any qualified low-income building placed in service by the taxpayer after 1987, the term applicable percentage means the appropriate percentage 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 building described in paragraph (1)(A), and
 - (ii) 30 percent of the qualified basis of a building described in paragraph (1)(B).
 - (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

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

Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937 (other than assistance under the McKinney-Vento Homeless Assistance Act (as in effect on the date of the enactment of this sentence)).

- (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 later of-
 - (I) the date the building was last placed in service, or
 - (II) the date of the most recent nonqualified substantial improvement of the building,
- (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) Nonqualified substantial improvement.--For purposes of subparagraph (B)(ii)--
- (I) In general.--The term "nonqualified substantial improvement" means any substantial improvement if section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) was elected with respect to such improvement or section 168 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applied to such improvement.
- (II) Date of substantial improvement.--The date of a substantial improvement is the last day of the 24-month period referred to in subclause (III).
- (III) Substantial improvement.--The term "substantial improvement" means the improvements added to capital account with respect to the building during any 24-month period, but only if the sum of the amounts added to such account during such period equals or exceeds 25 percent of the adjusted basis of the building (determined without regard to paragraphs (2) and (3) of section 1016(a)) as of the 1st day of such period.
- (ii) 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.

(iii) Related person, etc.--

- (I) **Application of section 179.**--For purposes of subparagraph (B)(i), section 179(d) shall be applied by substituting "10 percent" for "50 percent" in section [FN1] 267(b) and 707(b) and in section 179(b)(7).
- (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). For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), "10 percent" shall be substituted for "50 percent".

(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.

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- (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 which is taken into account by reason of clause (i) shall not exceed 10 percent of the eligible basis of the qualified low-income housing project of which it is a part. 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) Eligible basis reduced by federal grants.--If, during any taxable year of the compliance period, a grant is made with respect to any building or the operation thereof and any portion of such grant is funded with Federal funds (whether or not includible in gross income), the eligible basis of such building for such taxable year and all succeeding taxable years shall be reduced by the portion of such grant which is so funded.
- (B) Eligible basis not to include expenditures where section 167(k) elected.--The eligible basis of any building shall not include any portion of its adjusted basis which is attributable to amounts with respect to which an election is made under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).
 - (C) Increase in credit for buildings in high cost areas.--
 - (i) In general.-- 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 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.
- (6) Credit allowable for certain federally-assisted buildings acquired during 10-year period described in paragraph (2)(B)(ii).--
- (A) In general.--On application by the taxpayer, the Secretary (after consultation with the appropriate Federal official) may waive paragraph (2)(B)(ii) with respect to any federally-assisted building if the Secretary determines that such waiver is necessary--
- (i) to avert an assignment of the mortgage secured by property in the project (of which such building is a part) to the Department of Housing and Urban Development or the Farmers Home Administration, or
- (ii) to avert a claim against a Federal mortgage insurance fund (or such Department or Administration) with respect to a mortgage which is so secured.

The preceding sentence shall not apply to any building described in paragraph (7)(B).

- **(B) Federally-assisted building.**--For purposes of subparagraph (A), the term "federally-assisted building" means any building which is substantially assisted, financed, or operated under--
 - (i) section 8 of the United States Housing Act of 1937,
 - (ii) section 221(d)(3) or 236 of the National Housing Act, or
 - (iii) section 515 of the Housing Act of 1949,

as such Acts are in effect on the date of the enactment of the Tax Reform Act of 1986.

- (C) Low-income buildings where mortgage may be prepaid.--A waiver may be granted under subparagraph (A) (without regard to any clause thereof) with respect to a federally-assisted building described in clause (ii) or (iii) of subparagraph (B) if--
- (i) the mortgage on such building is eligible for prepayment under subtitle B of the Emergency Low Income Housing Preservation Act of 1987 or under section 502(c) of the Housing Act of 1949 at any time within 1 year after the date of the application for such a waiver,
- (ii) the appropriate Federal official certifies to the Secretary that it is reasonable to expect that, if the waiver is not granted, such building will cease complying with its low-income occupancy requirements, and

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- (iii) the eligibility to prepay such mortgage without the approval of the appropriate Federal official is waived by all persons who are so eligible and such waiver is binding on all successors of such persons.
- (D) Buildings acquired from insured depository institutions in default.—A waiver may be granted under subparagraph (A) (without regard to any clause thereof) 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.
 - (E) Appropriate federal official.--For purposes of subparagraph (A), the term "appropriate Federal official" means--
- (i) the Secretary of Housing and Urban Development in the case of any building described in subparagraph (B) by reason of clause (i) or (ii) thereof, and
 - (ii) the Secretary of Agriculture in the case of any building described in subparagraph (B) by reason of clause (iii) thereof.
- (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, [FN2] 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 10 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 \$3,000 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.
- **(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 subsection (e)(3)(A)(ii)(II) were applied by substituting "\$2,000" for "\$3,000".
- (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 needs 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.
- (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 later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation is 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) \$1.25 multiplied by the State population,
 - (ii) 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 (iii), the unused State housing credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (i) through (iv) and (iii) 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 the unused State housing credit ceiling for such year (as defined in subparagraph (C)(ii)) over the excess (if any) of--
 - (I) the unused State housing credit ceiling for the year preceding such year, over
 - (II)aggregate housing credit dollar amount allocated for such year, over
 - (II) the sum of the amounts described in clauses (i) and (iii) of subparagraph (C).
- (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 ADMUSTMENT. 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.
- (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.
- (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 extending low-income housing commitment for such building. Such commitment may be amended to increase such fraction.
 - (D) Extended use period.--For purposes of this paragraph, the term "extended use period" means the period--
- (i) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and
 - (ii) ending on the later of--
 - (I) the date specified by such agency in such agreement, or
 - (II) the date which is 15 years after the close of the compliance period.

- (E) Exceptions if foreclosure or if no buyer willing to maintain low-income status.--
- (i) In general.--The extended use period for any building shall terminate--
- (I) on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period, or
- (II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building.

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

- (ii) Eviction, etc. of existing low-income tenants not permitted.—The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination—
- (I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or
 - (II) any increase in the gross rent with respect to such unit not otherwise permitted under this section.
- (F) Qualified contract.--For purposes of subparagraph (E), the term "qualified contract" means a bona fide contract to acquire (within a reasonable period after the contract is entered into) the nonlow-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the extended low-income housing commitment) of--
 - (i) the sum of--
 - (I) the outstanding indebtedness secured by, or with respect to, the building,
 - (II) the adjusted investor equity in the building, plus
 - (III) other capital contributions not reflected in the amounts described in subclause (I) or (II), reduced by
 - (ii) cash distributions from (or available for distribution from) the project.

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

(G) Adjusted investor equity.--

- (i) In general.--For purposes of subparagraph (E), the term "adjusted investor equity" means, with respect to any calendar year, the aggregate amount of cash taxpayers invested with respect to the project increased by the amount equal to--
 - (I) such amount, multiplied by
- (II) the cost-of-living adjustment for such calendar year, determined under section 1(f)(3) by substituting the base calendar year for "calendar year 1987".

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

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

account under clause (i).

- (iii) Base calendar year.--For purposes of this subparagraph, the term "base calendar year" means the calendar year with or within which the 1st taxable year of the credit period ends.
- **(H) Low-income portion.**--For purposes of this paragraph, the low-income portion of a building is the portion of such building equal to the applicable fraction specified in the extended low-income housing commitment for the building.
- (I) **Period for finding buyer.**--The period referred to in this subparagraph is the 1-year period beginning on the date (after the 14th year of the compliance period) the taxpayer submits a written request to the housing credit agency to find a person to acquire the taxpayer's interest in the low- income portion of the building.
- (J) Effect of noncompliance.—If, during a taxable year, there is a determination that an extended low-income housing agreement was not in effect as of the beginning of such year, such determination shall not apply to any period before such year and subparagraph (A) shall be applied without regard to such determination if the failure is corrected within 1 year from the date of the determination.
- **(K) Projects which consist of more than 1 building.**—The application of this paragraph to projects which consist of more than 1 building shall be made under regulations prescribed by the Secretary.
 - [(L) Redesignated (K)]
- (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, or any below market Federal loan, 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 balance of loan or proceeds of obligations.--A loan or 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)--
 - (i) in the case of a loan, the principal amount of such loan, and
 - (ii) in the case of a tax-exempt obligation, the proceeds of such obligation.
- (C) Special rule for subsidized construction financing.--Subparagraph (A) shall not apply to any tax-exempt obligation or below market Federal loan used to provide construction financing for any building if--
- (i) such obligation or loan (when issued or made) identified the building for which the proceeds of such obligation or loan would be used, and
 - (ii) such obligation is redeemed, and such loan is repaid, before such building is placed in service.
- **(D) Below market Federal loan.**—For purposes of this paragraph, the term "below market Federal loan" means any loan funded in whole or in part with Federal funds if the interest rate payable on such loan is less than the applicable Federal rate in effect under section 1274(d)(1) (as of the date on which the loan was made). Such term shall not include any loan which would be a below market Federal loan solely by reason of assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 (as in effect on the date of the enactment of this sentence).
 - (E) Buildings receiving home assistance.--
 - (i) In general. -- Buildings receiving home assistance or native American housing assistance. --
- (i) In general.--Assistance provided under the HOME Investment Partnerships Act (as in effect on the date of the enactment of this subparagraph) or the Native American Housing Assistance and Self-Determination Act of 1996 (25 USC 4101 et sequa) (as in effect on October 1, 1997) with respect to any building shall not be taken into account under subparagraph (D) if 40 percent or more of the residential units in the building are occupied by individuals whose income is 50 percent or less of area median gross income. Subsection (d)(5)(C) shall not apply to any building to which the preceding sentence applies.
- (ii) Special rule for certain high-cost housing areas.--In the case of a building located in a city described in section 142(d)(6), clause (i) shall be applied by substituting "25 percent" for "40 percent".

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- (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 (as determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes) and used other than on a transient basis.
- (ii) Suitability for occupancy.--For purposes of clause (i), the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes.
- (iii) Transitional housing for homeless.--For purposes of clause (i), a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building--
- (I) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302), as in effect on the date of the enactment of this clause) to independent living within 24 months, and
- (II) in which a governmental entity or qualified nonprofit organization (as defined in subsection (h)(5)) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.
- (iv) Single-room occupancy units.--For purposes of clause (i), a single- room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.
- (C) Special rule for buildings having 4 or fewer units.--In the case of any building which has 4 or fewer residential rental units, no unit in such building shall be treated as a low-income unit if the units in such building are owned by--
 - (i) any individual who occupies a residential unit in such building, or
 - (ii) any person who is related (as defined in subsection (d)(2)(D)(iii)) to such individual.
- **(D)** Certain students not to disqualify unit.--A unit shall not fail to be treated as a low-income unit merely because it is occupied--
 - (i) by an individual who is--
 - (I) a student and receiving assistance under title IV of the Social Security Act, or
- (II) 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 and children are not dependents (as defined in section 152) of another individual, or
 - (II) married and file a joint return.

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- (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 estateor 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) Redesignated (7)]
- (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--

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- (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,

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- (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 (or interest therein) where bond posted.--In the case of a disposition of a building or an interest therein, the taxpayer shall be discharged from liability for any additional tax under this subsection by reason of such disposition if--
- (A) the taxpayer furnishes to the Secretary a bond in an amount satisfactory [FN3] to the Secretary and for the period required by the Secretary, and
- **(B)** 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.
- (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.
- (I) 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

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(E) such other information as the Secretary may require.

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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, and
- (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, and
 - (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.
- (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

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noncompliance which such agency becomes aware of <u>and in monitoring for noncompliance with habitability standards</u> 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) participation of local tax-exempt organizations,
 - (vi) tenant populations with special housing needs, and
 - (vii) public housing waiting lists,
 - (vii) tenant populations of individuals with children, and
 - (viii) projects intended for eventual tenant ownership.
- (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--

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- (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.

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Date: June 2008

To: Local Housing and Redevelopment Authority (HRA) or Public Housing Authority (PHA)

From: Minnesota Housing Finance Agency

Multifamily Development

Re: HOUSING TAX CREDIT PROGRAM / MULTIFAMILY HOUSING RESOURCES

LOCAL HRA / PHA NOTICE AND AGREEMENT TO UTILIZE THE PUBLIC HOUSING AND

SECTION 8 WAITING LISTS

The Minnesota Housing Finance Agency (Minnesota Housing) is the primary administrating authority for the Housing Tax Credit Program (HTC) in the State of Minnesota. Minnesota Housing also offers numerous other funding resources for the production and stabilization of multifamily housing.

The Housing Tax Credit Program offers a ten-year reduction in income tax liability to owners and investors of eligible low-income rental housing developments involving new construction, rehabilitation or existing rental housing with rehabilitation. Owners must elect to serve households with incomes at or below 60 percent or 50 percent of Area Median Income, adjusted for family size. Section 42 of the Internal Revenue Code, which governs the HTC Program, requires Minnesota Housing to give preference to owners that agree to utilize the local HRA or PHA waiting list to identify eligible individuals and households to fill vacant units on an ongoing basis in developments assisted by the HTC Program.

As part of the Consolidated RFP, Minnesota Housing offers many programs, which require owners to provide housing that is affordable to a range of incomes from 30 percent to 80 percent of area median income and also encourages owners to utilize these waiting lists.

The owner or a representative of the ownership entity of the proposed development has completed and executed Part 3 of the Agreement to Utilize the Public Housing and Section 8 Waiting List (Agreement) to demonstrate their willingness to cooperate with the local HRA or PHA to utilize the waiting lists to place eligible households in vacant units. Upon award of funds and construction completion, the local HRA/PHA may refer eligible households to the proposed development.

The owner or representative of the ownership entity will receive additional funding priority for obtaining a fully executed binding commitment from the Local HRA or PHA to receive Project Based Rental Assistance or other Rental Assistance and obtaining approval to extend the term of the contract for at least 10 years (Part 2).

Minnesota Housing encourages the Local HRA or PHA to carefully review both Parts 1 and 2 of the Agreement before completing and executing Part 3. Please return the executed Agreement, and as applicable, the required Binding Commitments, and Letter of Intent to the owner for submission to Minnesota Housing. Please retain a copy of the completed Agreement to serve as a record of promised assistance if the proposed development is funded and developed in your community.

As part of the selection process, Minnesota Housing welcomes comments from the Local HRA or PHA regarding this proposal. Your comments regarding this proposal on Part 4 of the Agreement may be provided to the owner to forward to Minnesota Housing or mailed directly to Minnesota Housing. If you have previously commented on this proposal, it is not necessary to do so again unless you wish to add new or additional information.

Please address comments to: Minnesota Housing

Multifamily Housing Resource Application

400 Sibley Street, Suite 300 Saint Paul, MN 55101-1998

If you have any questions, please call Kasey Kier at 651-284-0078 (kasey.kier@state.mn.us) or Julie Ann Monson at 651-297-3123 (julie.ann.monson@state.mn.us). Thank you in advance for your time and consideration.

MINNESOTA HOUSING FINANCE AGENCY HOUSING TAX CREDIT PROGRAM / MULTIFAMILY HOUSING RESOURCES LOCAL HRA / PHA NOTICE AND AGREEMENT TO UTILIZE PUBLIC HOUSING AND SECTION 8 WAITING LISTS

(PART 1 OF 4)

Development and Ownership Information						
Owner Name:						
Address: (Street) (City) (State & Zip Code)						
Contact Person & Phone number:/						
Development Name:						
Address:						
No of restricted units Income restriction% AMI Rent restriction% AMI						
Number of - 0 BR 1 BR 2 BR 3 BR 4 BR						
Housing type (apt, townhouse, etc.):						
Development will serve the following tenant population(s) (check all those that apply):						
Family						
HRA/PHA						
Name of Public Housing Authority (PHA) or Housing Redevelopment Authority (HRA):						
Name:						
Address:						
City:						
Contact Person & Phone Number:/						

(PART 2 OF 4)

Additional Government Participation / Rental Assistance (Optional)

When applying for Tax Credits or other Multifamily Housing Resources, priority is given for having a binding commitment from a Local Housing Authority to receive Project Based Rental Assistance or other rental assistance as described below.

To receive this priority, the applicant must comply with all program requirements for the assistance for which the priority was given, including maintaining rents within the appropriate payment standard for the project area in which the project is located for the full compliance and extended use period of the housing tax credits and/or other Minnesota Housing financing. The assisted units must be located in buildings on the project site.

Rent for assisted units must be at or below FMR's (or appropriate payment standard for the project area). Receiving the priority and agreeing to a minimum number of assisted units does not release an owner from their obligation under the Minnesota Human Rights Act and/or Section 42 not to refuse to lease to the 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.

Check Below As Applicable: (For underlying project based rental or other rental

assistance priority requirements, <u>please refer to the Tax</u> Credit Scoring Worksheet).
Project Based Rental Assistance is available for the proposal. For proposals claiming points for Project Based Rental Assistance, at the time of application, the applicant must submit a binding commitment signed by the Local Housing Authority or other similar entity. The binding commitment must establish that the Local Housing Authority or other similar entity has committed the project based assistance to the proposed development. As a condition of Carryover, Application for issuance of 8609s, or other Minnesota Housing financing, (whichever occur first) the applicant must submit a copy of the fully executed HUD Approval (or equivilent approval documentation if from other similar entity) for the project-based assistance to be included in the development.
Project Based Rental Assistance is available and will be extended for a minimum of 10 years.
Project Based Rental Assistance is available and will be extended for a minimum of 5 years.
For proposals claiming points for a minimum of 5-year or 10-year "extended term contract" of Project Based Rental Assistance, include language in the binding commitment of the HRA's or other similar entity's commitment to at least the minimum requiredextended term of the contract. As a condition of Carryover or 8609, whichever occurs first, the applicant must submit a fully executed copy of the HRA or other similar entity entity "extended term contract" for the project-based assistance to be included in the development.
Other Rental Assistance is available for the proposal. For Other Rental Assistance (non project-based) (e.g., Section 8, portable tenant based, formal recommendation for McKinney Vento funding, HUD operating subsidy or other similar rent assistance programs approved by Minnesota Housing), at application the applicant must submit a letter of intent to coopoeratively develop a housing plan/agreement which is signed by the applicant and Local Housing Authority or other applicable entity providing the rental assistance program along with this completed Agreement to Utilize the Public Housing and Section 8 Waiting Lists. Items to be addressed in the cooperatively developed housing plan/agreement include, but are not limited to: marketing, occupancy and placement policies, communication, process in accessing waiting lists, etc. As a condition of Carryover or 8609, whichever occurs first, the applicant must submit a fully executed copy of the cooperatively

developed housing plan/agreement.

(PART 3 OF 4)

Signatures (Required)

The owner or a representative of the ownership entity has executed this Agreement to demonstrate their willingness to work in cooperation with the local HRA or PHA to utilize the waiting lists to identify eligible households that may occupy vacant units. Upon completion, the local HRA/PHA may refer eligible households to the proposed development. Also, as noted above in the additional government participation/rental assistance section, the owner and PHA/HRA agree to enter into the agreements and execute the provisions as indicated.

(NOTE: NO PART OF THIS FORM (cover and parts 1 through 4) is considered a "fully executed binding commitment" or "letter of intent" for purposes of above priorities. As specifically called for in Part 2 of 4 above, SEPARATE, DETAILED AND PROJECT SPECIFIC fully executed binding commitments documents (or letters of intent only as provided for in "other Rental Assistance" section above) must be produced by the HRA/PHA or other applicable entity providing the rental assistance program and submitted to Minnesota Housing addressing the priorities, which have been selected).

Please check one box below:

The H	RA/PHA has been inform	med affordable housing	may be	built in their area; and:	
	The owner is not seek	ing additional priority p	oints des	scribed in Part 2, or	
	attached are the fully	executed binding comm	rity points as indicated in Part 2. As called for above, g commitments, binding agreements, letters of intent, able entity providing the rental assistance program.		
By: Ov Signa	vner Signature ture		By: PHA or	 HRA or Other Applicable Entity	
Ow	/ner Name (type or print)		Name	(type or print)	
 Tit	ile / Date		Title / [Date	

(PART 4 OF 4)

LOCAL PUBLIC HOUSING OR HOUSING AND REDEVELOPMENT AUTHORITY COMMENTS

Please provide any comments you may have on this proposal in the space provided below.

Submit this form at your option. If you submit the form, you may do so at the same time as submission of the "agreement to utilize" or in a separate correspondence to Minnesota Housing.

Development Name:			
Street Address:			
City / State / Zip	//		
Name of Authority:			
Name of Chief Executive Offi	cer <u>——</u>		
Title:			
Address:			
Street	City	State	Zip Code
Telephone Number:	_		
Comments:			
Dated:	Ву:		
	Title:		

ZONING LETTER

To be completed on the Municipality's letterhead in this exact form unless previously approved by a MHFA attorney.

DATE						
Minnesota Housing Finance Agency Suite 300 I00 Sibley Street St. Paul, MN 55101-1998						
RE: Development Address MHFA Development Number:						
Ladies and Gentlemen:						
The undersigned hereby certifies with respect to the property legally described in Exhibit "A" attached hereto ("premises") as follows:						
The zoning code affecting the Premises is						
2. The Premises and its present and intended use as an apartment complex with related facilities complies with the applicable zoning codes. city ordinances and building, environmental and energy codes, ordinances and regulations: YES NO						
Comments:						
3. There are no variances, conditional use permits or special use permits required for the construction of the improvements on the Premises or its uses. If there are, specify the same and relevant terms or otherwise check here: NONE						
Comments:						
4. The Premises comply with the subdivision ordinances affecting it and can be conveyed without the filing of a plat or replat of the Premises: YES NO						
Comments:						

Page 2 Zoning Letter 5. All appropriate and required city permits, licenses and approvals have been provided for the intended use of the Premises: YES NO Comments: _____ 6. What are the parking requirements and does the Premises comply: NO YES Comments: 7. What are the set-back requirements and does the Premises comply: YES NO Comments: 7. Is the Premises located in a flood zone: YES NO Comments: If additional space is required for any of the above, please use the reverse side. If there are any additional facts regarding the Premises and its proposed use which would be material consideration, please include that information below: Signature of Authorized person: Typed/printed name of signatory: _____ Date: _____ Title of Signatory: City or Other Governmental Agency:

PREVIOUS PARTICIPATION

List all projects in which the developer(s) or general partner(s) have requested an allocation of Housing Tax Credits. Please include all relevant dates in the columns below.

Name of Project/Location	Date of Application	Status of Project	Management Company (at application)	Current Management Co.	Syndicator
	•	·		-	

DEVELOPMENT TEAM INFORMATION (PARTNERSHIP INFORMATION)

Please list and provide all information with respect to the general partners, limited partners, and all members of the development team that have requested an allocation of Housing Tax Credits.

Name of Individual	Involvement in Development Team (i.e.: General Partner, Contractor, Nonprofit, etc.)	Social Security Number Federal ID Number
	General Partner	
	General Partner	
	Contractor	
	Consultant	
	Processing Agent	
	Tax Credit Attorney	
	Certified Public Accountant	
	Architect	
	Syndicator	
	Management Company	



HOUSING TAX CREDIT PROGRAM NOTICE OF INTENT TO TRANSFER OWNERSHIP OR CHANGE OWNER NAME OR STATUS

(To be completed prior to transfer of title, change in partnership name, corporate name or status)

	e: Project HTC #:							
Legal name o	of project owner or ownership entity to whom credits	were allocated:						
Legal name o	of current project owner or ownership entity (if differe	nt than above):						
	5 L LT 15 "							
	er Federal Tax ID #:							
Contact perso	on name and phone #:							
	Type of Chang	e:						
	Change in Owner Name/Status	Date of Purchase Agreement						
	Transfer of Ownership E	expiration date of Contract for deed						
	Transfer of Partnership Interest	Anticipated/Actual closing date						
	New or Updated Owner I	nformation						
Name:	_	Tax ID #:						
Address	_							
Contact perso	on name & phone number:							
	List all partners	:						
B1	Percentage of	Tara ID are COM						
Name	Ownership	Tax ID or SSN						
								
								
								
								
New or Updated Management Information								
Name of Man	agement Co.:							
Tax ID #:	Tax ID #:							
Address of Ma	Address of Management Co.:							
Contact person name & phone number:								

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Attached is the following documentation (Attach all that apply.):

For	transfer of ownership and for change in	partnership name/status				
	Copy of the amended or new partnership	agreement; or				
	Copy of the Articles of Incorporation and I	By-Laws; or				
	Copy of the Organizational Documents; an	nd				
	Copy of the Certificate of Good Standing from the date of this notice, if applicable;	g from the Minnesota Secretary of State no older than 90 days and				
	Attorney opinion letter in form and substa	ance similar to the attached form.				
Add	litional submissions for transfer of owner	ship				
	Copy of the purchase agreement					
П	Copy of the recorded contract for deed ownership of the buildings to the purchaser	or warranty deed transferring the benefits and burdens of , or title policy indicating ownership				
	Copy of the closing statement showing the	sources and uses of funding				
	Copy of the low income housing credit disponently of perjury that no credits have been	osition bond, or a written statement signed by the owner under a claimed for the buildings to be transferred				
Add	litional submissions for transfers prior to	placed in service date				
	Revised Minnesota Multifamily Rental Housing Common Application (HTC-1) with changes highlighted, dated and initialed					
	An executed Minnesota Housing - Housing Tax Credit Program Transfer Agreement (Exhibit W) [Required for any project that does not yet have IRS Form(s) 8609 issued.]					
	A written statement signed by the owner ur in service within the meaning of Section 42	nder penalty of perjury that the buildings have not been placed (d)(2)(B).				
For	transfers within 5 years of placed in serv	vice date*				
*Proj	ects awarded credits in 1997 and earlier have a 2-year rec	quirement.				
	A \$2,500 transfer fee.					
Minnes		neral partners. Reservations are not transferable. Any change in partner status nesota Housing notification.				
Transfe	Transferring Owner: New Owner:					
———Pri	nt Name of Transferring Ownership Entity	Print Name of New Ownership Entity				
Ву:		By:				
Its:		Its:				
	Print Name of Signatory	 Print Name of Signatory				
Date:		Date:				

Guidelines for Determining Whether Organizations Providing Housing are Described in Section 501(c)(3) or the Code

Announcement 95-37

This announcement issues, in proposed form, a revenue procedure relating to the standards used by the Internal Revenue Service in determining whether certain charities providing housing are eligible for tax-exempt status under section 501(c)(3) of the Internal Revenue Code. The proposed revenue procedure includes a safe harbor for charities that serve the housing needs of the poor and distressed. The Service originally set forth a safe harbor on this issue in Notice 93-1, 1993-1 C.B 290. This proposed revenue procedure takes into account the comments received by the Service on Notice 93-1.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

The Service invites comments on the proposed revenue procedure. Public comments should be submitted in writing on or before August 14, 1995. Comments should be sent to the following address:

Internal Revenue Service 1111 Constitution Avenue, N.W. Washington, D.C. 20224 Attn: Lynn Kawecki CP:E:EO:T:5 Room 6539

The Service will consider holding a public hearing if it receives a written request for a hearing from any person who submits timely written comments. If a public hearing is scheduled, notice of the time, date, and place of hearing will be published in the Internal Revenue Bulletin.

DRAFTING INFORMATION

The principal authors of this announcement are Lyn Kawecki and Marvin Friedlander. For further information regarding this announcement, contact Mr. Kawecki at (202) 6227728 or Mr. Friedlander at (202) 622-8715 (not toll-free numbers).

Proposed Revenue Procedure

SECTION 1. PURPOSE

.01 This revenue procedure sets forth a safe harbor under which organizations that provide low-income housing will be considered charitable as described in section 501(c)(3) of the Code because they relieve the poor and distressed as described in section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations. This revenue procedure also describes the facts and circumstances test that will apply to determine whether organizations that fall outside the safe harbor relieve the poor and distressed such that they will be considered charitable organizations described in section 501(c)(3) of the Code. It also clarifies that housing organizations may rely on other charitable purposes to qualify for recognition of exemption from federal income tax as organizations described in section 501(c)(3) of the Code. These other charitable purposes are described in section 1.501(c)(3)-1(d)(2) of the regulations.

This revenue procedure supersedes the application referral described in Notice 93-1, 1993-1 C.B. 290.

.02 This revenue procedure does not alter the standards that have long been applied to determine whether low-income housing organizations qualify for tax-exempt status under section 501(c)(3) of the Code. Rather, it is intended to expedite the consideration of applications for tax-exempt status filed by such organizations by providing a safe harbor and by accumulating relevant information on the existing standards for exemption in a single document

SEC. 2. BACKGROUND OF SAFE HARBOR

- .01 Rev. Rul. 67-138, 1967-1 C.B. 129, Rev. Rul. 70-585, 1970-2 C.B. 115, and Rev. Rul. 76-408, 1976-2 C.B. 145, hold that the provision of housing for low-income persons accomplishes charitable purposes by relieving the poor and distressed. The Service has long held that poor and distressed beneficiaries must be needy in the sense that they cannot afford the necessities of life. Rev. Ruls. 67-138, 70-585, and 76-408 refer to the needs of housing recipients and to their inability to secure adequate housing under all the facts and circumstances to determine whether they are poor and distressed.
- .02 The existence of a national housing policy to maintain a commitment to provide decent, safe, and sanitary housing for every American family is reflected in several federal housing acts. See, for example, section 2 of the United States Housing Act of 1937, 42 U.S.C. § 1437; section 2 of the Housing Act of 1949, 42 U.S.C. § 1701t; and sections 101, 102, and 202 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. §\$12701, 12702, and 12721. Not all beneficiaries of these housing acts, however, are necessarily poor and distressed within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations.

GUIDELINES FOR DETERMINING SECTION 501(c)(3) STATUS

- .03 In order to support national housing policy, the safe harbor contained in this revenue procedure identifies those low-income housing organizations that will, with certainty, be considered to relieve the poor and distressed. The safe harbor permits a limited number of units occupied by residents with incomes above the low-income limits in order to assist in the social and economic integration of the poorer residents and, thereby, further the organization's charitable purposes. To avoid giving undue assistance to those who can otherwise afford safe, decent, and sanitary housing, the safe harbor requires occupancy by significant levels of both very low-income and low-income families.
- .04 Low-income housing organizations that fall outside the safe harbor may still be considered organizations that offer relief to the poor and distressed based on all the surrounding facts and circumstances. Some of the facts and circumstances that will be taken into consideration in determining whether a low-income housing organization *will* be so considered are set forth in section 4.
- .05 Low-income housing organizations may also qualify for tax-exempt status because they serve a charitable purpose described in section 501(c)(3) of the Code other than relief of the poor and distressed are discussed in section 5.
- .06 To be recognized as exempt from income tax under section 501(c)(3), a low-income housing organization must not only serve a charitable purpose but also meet the other requirements of that section, including the prohibitions against inurement and private benefit. Specific concerns with respect to these prohibitions are set forth in section 6.

SEC. 3. SAFE HARBOR FOR RELIEVING THE POOR AND DISTRESSED

- .01 An organization will be considered charitable as described in section 501(c)(3) if it satisfies the following requirements:
 - (1) The organization establishes for each project that (a) at least 75 percent of the units are occupied by residents that qualify as low-income; and (b) either at least 20 percent of the units are occupied by residents that also meet the very low-income limit for the area or 40 percent of the units are occupied by residents that also do not exceed 120 percent of the area's very low-income limit. Up to 25 percent of the units may be provided at market rates to persons who have incomes in excess of the low-income limit.
 - (2) The project is actually occupied by poor and distressed residents. With new construction, a reasonable start-up period is allowed before an organization must meet this requirement. For acquisition transactions, the transition period to satisfy this requirement will be assumed to be reasonable if the transition is completed within one year. If a project operates under a government program that allows a longer transition period, then this longer period will be used to determine reasonableness.
 - (3) The housing is affordable to the charitable beneficiaries. This requirement will ordinarily be satisfied by the adoption of a rental policy that follows government imposed rental restrictions or a rental policy that otherwise provides for the relief of the poor and distressed.
 - (4) If the project consists of multiple buildings, they must share the same grounds.
- .02 In applying this safe harbor, the Service will follow the provisions listed below:
 - (1) Low-income families and very low-income families will be identified in accordance with the income limits computed and published by the Department of Housing and Urban Development ("HUD") in *Income Limits for Low and Very Low-Income Families Under tie Housing Act of* 1937. The term "very low-income" is defined by the relevant housing statute as 50 percent of an area's median income. The term "low-income" is defined by the same statute as 80 percent of an area's median income. However, these income limits may be adjusted by HUD to reflect economic differences, such as high housing costs, in each area. If HUD's program terminates, the Service will use income limits computed under such program as is in effect immediately before such termination. Copies of all or part of HUD's publication may be obtained by calling HUD at (800) 245-2691 (HUD charges a small fee to cover costs of reproduction).
 - (2) The retention of the right to evict tenants for failure to pay rent or other misconduct will not, in and of itself. cause the organization to fail to meet the safe harbor.
 - (3) An organization originally meeting the safe harbor will continue to satisfy the requirements of the safe harbor if a resident's income increases, provided that the resident's income does not exceed 140 percent of the applicable income limit under the safe harbor. If the resident's income exceeds 140 percent of the qualifying limit, the organization *will* not fail to meet the safe harbor if it rents the next comparable non-qualifying unit to someone under the qualifying income limits.
 - (4) To be considered charitable, an organization that provides assistance to the aged or physically handicapped who are not poor must satisfy the requirements set forth in Rev. Rul. 72-124, 1972-1 C.B. 145, Rev. Rul. 79-18, 1979-1 C.B. 194. and Rev. Rul. 79-19, 1979-1 C.B. 195. If an organization meets the safe harbor, then it does not need to meet the requirements of these rulings even if all of its residents are elderly or handicapped residents. However, an organization may not tax a combination of elderly or handicapped persons and low-income persons to establish the 75-percent occupancy requirement of the safe harbor. An organization with a mix of elderly or handicapped residents and low-income residents may still qualify for fax-exempt status under the facts and circumstances test set forth in section 4.

SEC. 4. FACTS AND CIRCUMSTANCES TEST FOR RELIEVING THE POOR AND DISTRESSED

- .01 If the safe harbor contained in section 3 is not satisfied, an organization may demonstrate that it relieves the poor and distressed by reference to all the surrounding facts and circumstances. Facts and circumstances that demonstrate relief of the poor may include, but are not limited to, the following:
 - (1) A substantially greater percentage of residents than required by the safe harbor with incomes up to 120 percent of the area's very low-income limit.
 - (2) Limited degree of deviation from the safe harbor percentages.
 - (3) Limitation of rents to ensure that they are affordable to low-income and very low-income residents.
 - (4) Participation in a government housing program designed to provide affordable housing.

GUIDELINES FOR DETERMINING SECTION 501(c)(3) STATUS

- (5) Operation through a community-based board of directors, particularly if the selection process demonstrates that community groups have input into the organization's operations.
- (6) The provision of additional social services affordable to the poor residents.
- (7) Relationship with an existing 501(c)(3) organization active in low-income housing for at least five years if the existing organization demonstrates control.
- (8) Acceptance of residents who, when considered individually, have unusual burdens such as extremely high medical costs which cause them to be in a condition similar to persons within the qualifying income limits in spite of their higher incomes.
- (9) Participation in a homeownership program designed to provide homeownership opportunities for families that cannot otherwise afford to purchase safe and decent housing.
- (10) Existence of affordability covenants or restrictions running with the property.

.02 Application of the facts and circumstances test is illustrated by the following examples:

- (1) Organization *N* operates pursuant to a government statute to preserve low and moderate income housing projects. Seventy percent of its residents have incomes that do not exceed the area's low-income limit. Fifty percent of its residents have incomes that are below the area's very low-income limit. *N* restricts rents to residents below the qualifying income limits to no more than 30 percent of the residents' incomes. *N* is close to meeting the safe harbor. *N* has a substantially greater percentage of very low-income residents than required by the safe harbor; it participates in a federal housing program; and it restricts its rents. Although *N* does not meet the safe harbor, the facts and circumstances demonstrate that *N* relieves the poor and distressed.
- (2) Organization O will finance a housing project using tax-exempt bonds pursuant to section 145(d) of the Code. O will meet the 20-50 test under section 142(d)(1)(A). Another 45 percent of the residents will have incomes at or below 80 percent of the area's median income. The final 35 percent of the residents will have incomes above 80 percent of the median income. O will restrict rents to residents below the qualifying income limits to no more than 30 percent of the residents' incomes. O will provide social services to project residents and to other low-income residents in the neighborhood. Also, O will purchase its project through a government program designed to retain low-income housing stock. O does not meet the safe harbor. However, the facts and circumstances demonstrate that O relieves the poor and distressed.
- (3) Organization *R* provides homeownership opportunities to purchasers determined to be low-income under a federal housing program. Beneficiaries under the program cannot afford to purchase housing without assistance and they cannot qualify for conventional financing. *R's* residents will have the following composition: 40 percent will not exceed 140 percent of the very low-income limit for the area, 25 percent will not exceed the low-income limit, and 35 percent will exceed the low-income limit but will not exceed 115 percent of the area's median income. R does not satisfy the safe harbor. However, the fact: and circumstances demonstrate that *R* relieves the poor and distressed.
- (4) Organization U will purchase existing residential rental housing financed with tax-exempt bonds under section 145(d) of the Code. U will meet the 40-60 test of section 142(d)(1)(B). It will provide the balance of its units to residents with incomes at or above median income levels. U has a community-based board of director. U does not satisfy the safe harbor. Moreover, the facts and circumstances do not demonstrate that U relieves the poor and distressed.
- (5) Organization V operates housing in. a section of the city where income levels are well below the other parts of the city. One hundred percent of Y's residents have incomes under the very low-income limit for the area, yet they pay rents that are above 50 percent of their incomes. V has not otherwise demonstrated that the units are affordable to its residents. Although the residents are all considered poor and distressed under the safe harbor, V does not relieve the poverty of the residents.
- (6) Organization W provides homeownership opportunities to purchasers with incomes up to 115 percent of the area's median income. W does not meet the income level: required under the safe harbor. W's board of directors is representative of community interests, and W provides classes and counseling services for is residents. The facts and circumstances do not demonstrate that W relieves the poor and distressed.

SEC. 5. EXEMPT PURPOSES OTHER THAN RELIEVING THE POOR AND DISTRESSED

- .01 Relief of the poor and distressed, whether demonstrated by satisfaction of the safe harbor described in section 3 of this Revenue Procedure or by reference to the facts and circumstances test described in section 4, does not constitute the only exempt purpose that a housing organization may have. Such organizations may qualify for exemption without having to satisfy the standards for relief of the poor and distressed by providing housing in a way that accomplishes any of the purposes sec forth in section 501(c)(3) of the Code or section 1.501(c)(3)-1(d)(2) of the regulations. Those purposes include, but are not limited to, the following:
 - (1) Combating community deterioration is an exempt purpose. as illustrated by Rev. Rul. 68-17, 1968-1 C.B. 247, Rev. Rul. 68-655, 1968-2 C.B. 213, Rev. Rul. 70-585, 1970-2 C.B. 115 (Situation 3), and Rev. Rul. 76-147, 1976-1 C.B. 151. An organization that combats community deterioration must (1) operate in an area with actual or potential deterioration, and (2) directly prevent or relieve that deterioration. Constructing or rehabilitating housing has the potential to combat community deterioration.
 - (2) Lessening the burdens of government is an exempt purpose, as illustrated by Rev. Rub. 85-1 and 85-2, 1985-1 C.B. 178. An organization lessens the burdens of government if (a) there is an objective manifestation by the governmental unit that it considers the activities of the organization to be the government's burdens, and (b) the organization actually lessens the government's burdens.
 - (3) Elimination of discrimination and prejudice is an exempt purpose, as illustrated by Rev. Rul. 68-655, 1968-2 C.B. 213, and Rev. Rul. 70-585, 1970-2 C.B. 115 (Situation 2). These rulings describe organizations that further charitable purposes by assisting persons in specific racial groups to acquire housing for the purpose of stabilizing neighborhoods or reducing racial imbalances.
 - (4) Lessening neighborhood tensions is an exempt purpose, as illustrated by Rev. Rul. 68-655, 1968-2 C.B. 213, and Rev. Rul. 70-585, 1970-2 C.B. 115 (Situation 2). It is generally identified as an additional charitable purpose by organizations that fight poverty and community deterioration associated with overcrowding in lower income areas in which ethnic or racial tensions are high.

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(5) Relief of the distress of the elderly or physically handicapped is an exempt purpose, as illustrated by Rev. Rul. 72-124, 1972-1 C.B. 145, Rev. Rul. 79-18, 1979-1 C.B. 194, and Rev. Rul. 79-19, 1979-1 C.B. 195. M organization may further a charitable purpose by meeting the special needs of the elderly or physically handicapped.

SEC. 6. OTHER CONSIDERATIONS

If an organization furthers a charitable purpose such as relieving the poor and distressed, it nevertheless may fail to qualify for exemption because private interests of individuals with a financial stake in the project are furthered. For example, the role of a private developer or management company in the organization's activities must be carefully scrutinized to ensure the absence of inurement or impermissible private benefit resulting from real property sales, development fees, or management contracts.

SEC. 7. EFFECT ON OTHER DOCUMENTS

Notice 93-1 is superseded.

WAIS Document Retrieval[Code of Federal Regulations]
[Title 26, Volume 1]
[Revised as of April 1, 2001]
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TITLE 26--INTERNAL REVENUE

CHAPTER I--INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

PART 1--INCOME TAXES--Table of Contents

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

- (a) Compliance monitoring requirement—(1) In general. Under section 42(m)(1)(B)(iii), an allocation plan is not qualified unless it contains a procedure that the State or local housing credit agency (``Agency'') (or an agent of, or other private contractor hired by, the Agency) will follow in monitoring for noncompliance with the provisions of section 42 and in notifying the Internal Revenue Service of any noncompliance of which the Agency becomes aware. These regulations only address compliance monitoring procedures required of Agencies. The regulations do not address forms and other records that may be required by the Service on examination or audit. For example, if a building is sold or otherwise transferred by the owner, the transferee should obtain from the transferor information related to the first year of the credit period so that the transferee can substantiate credits claimed.
- (2) Requirements for a monitoring procedure--(i) In general. A procedure for monitoring for noncompliance under section 42(m)(1)(B)(iii) must include--
- (A) The recordkeeping and record retention provisions of paragraph (b) of this section;
- (B) The certification and review provisions of paragraph (c) of this section;
 - (C) The inspection provision of paragraph (d) of this section; and
- (D) The notification-of-noncompliance provisions of paragraph (e) of this section.
- (ii) Order and form. A monitoring procedure will meet the requirements of section 42 (m)(1)(B)(iii) if it contains the substance of these provisions. The particular order and form of the provisions in the allocation plan is not material. A monitoring procedure may contain additional provisions or requirements.
- (b) Recordkeeping and record retention provisions—(1) Recordkeeping provision. Under the recordkeeping provision, the owner of a low-income housing project must be required to keep records for each qualified low-income building in the project that show for each year in the compliance period—
- (i) The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- (ii) The percentage of residential rental units in the building that are low-income units;
- (iii) The rent charged on each residential rental unit in the building (including any utility allowances);
 - (iv) The number of occupants in each low-income unit, but only if

rent is determined by the number of occupants in each unit under section 42(g)(2) (as in effect before the amendments made by the Omnibus Budget Reconciliation Act of 1989);

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- (v) The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
- (vi) The annual income certification of each low-income tenant per unit. For an exception to this requirement, see section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building);
- (vii) Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation). For an exception to this requirement, see section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building). Tenant income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937 (`Section 8''), not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of this paragraph (b)(1)(vii) is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under section 42 (g);
- (viii) The eligible basis and qualified basis of the building at the end of the first year of the credit period; and
- (ix) The character and use of the nonresidential portion of the building included in the building's eligible basis under section 42 (d) (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).
- (2) Record retention provision. Under the record retention provision, the owner of a low-income housing project must be required to retain the records described in paragraph (b)(1) of this section for at least 6 years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.
- (3) Inspection record retention provision. Under the inspection record retention provision, the owner of a low-income housing project must be required to retain the original local health, safety, or building code violation reports or notices that were issued by the State or local government unit (as described in paragraph (c) (1) (vi) of this section) for the Agency's inspection under paragraph (d) of this section. Retention of the original violation reports or notices is not required once the Agency reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.
- (c) Certification and review provisions—(1) Certification. Under the certification provision, the owner of a low-income housing project must be required to certify at least annually to the Agency that, for the preceding 12-month period—
 - (i) The project met the requirements of:
- (A) The 20-50 test under section 42 (g)(1)(A), the 40-60 test under section 42 (g)(1)(B), or the 25-60 test under sections 42 (g)(4) and 142

- (d)(6) for New York City, whichever minimum set-aside test was applicable to the project; and
- (B) If applicable to the project, the 15-40 test under sections 42(g)(4) and 142(d)(4)(B) for ``deep rent skewed'' projects;
- (ii) There was no change in the applicable fraction (as defined in section 42(c)(1)(B)) of any building in the project, or that there was a change, and a description of the change;
- (iii) The owner has received an annual income certification from each low-income tenant, and documentation to support that certification; or, in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority described in paragraph (b) (1) (vii) of this section. For an exception to this requirement, see section 42(g)(8)(B) (which provides a special

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rule for a 100 percent low-income building);

- (iv) Each low-income unit in the project was rent-restricted under section 42(g)(2);
- (v) All units in the project were for use by the general public (as defined in Sec. 1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court;
- (vi) The buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the annual certification submitted to the Agency under paragraph (c) (1) of this section. In addition, the owner must state whether the violation has been corrected;
- (vii) There was no change in the eligible basis (as defined in section 42(d)) of any building in the project, or if there was a change, the nature of the change (e.g., a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);
- (viii) All tenant facilities included in the eligible basis under section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;
- (ix) If a low-income unit in the project became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;
- (x) If the income of tenants of a low-income unit in the building increased above the limit allowed in section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the building was or will be rented to tenants having a qualifying income;
 - (xi) An extended low-income housing commitment as described in

section 42(h)(6) was in effect (for buildings subject to section 7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989, 103 Stat. 2106, 2308-2311), including the requirement under section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f (for buildings subject to section 13142(b)(4) of the Omnibus Budget Reconciliation Act of 1993, 107 Stat. 312, 438-439); and

- (xii) All low-income units in the project were used on a nontransient basis (except for transitional housing for the homeless provided under section 42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under section 42(i)(3)(B)(iv)).
 - (2) Review. The review provision must--
- (i) Require that the Agency review the certifications submitted under paragraph (c) (1) of this section for compliance with the requirements of section 42;
 - (ii) Require that with respect to each low-income housing project--
- (A) The Agency must conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service and, for at least 20 percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units; and

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- (B) At least once every 3 years, the Agency must conduct on-site inspections of all buildings in the project and, for at least 20 percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units; and
- (iii) Require that the Agency randomly select which low-income units and tenant records are to be inspected and reviewed by the Agency. The review of tenant records may be undertaken wherever the owner maintains or stores the records (either on-site or off-site). The units and tenant records to be inspected and reviewed must be chosen in a manner that will not give owners of low-income housing projects advance notice that a unit and tenant records for a particular year will or will not be inspected and reviewed. However, an Agency may give an owner reasonable notice that an inspection of the building and low-income units or tenant record review will occur so that the owner may notify tenants of the inspection or assemble tenant records for review (for example, 30 days notice of inspection or review).
- (3) Frequency and form of certification. A monitoring procedure must require that the certifications and reviews of paragraph (c)(1) and (2) of this section be made at least annually covering each year of the 15-year compliance period under section 42(i)(1). The certifications must be made under penalty of perjury. A monitoring procedure may require certifications and reviews more frequently than on a 12-month basis, provided that all months within each 12-month period are subject to certification.
- (4) Exception for certain buildings--(i) In general. The review requirements under paragraph (c)(2)(ii) of this section may provide that owners are not required to submit, and the Agency is not required to review, the tenant income certifications, supporting documentation, and rent records for buildings financed by the Rural Housing Service (RHS),

formerly known as Farmers Home Administration, under the section 515 program, or buildings of which 50 percent or more of the aggregate basis (taking into account the building and the land) is financed with the proceeds of obligations the interest on which is exempt from tax under section 103 (tax-exempt bonds). In order for a monitoring procedure to except these buildings, the Agency must meet the requirements of paragraph (c) (4) (ii) of this section.

- (ii) Agreement and review. The Agency must enter into an agreement with the RHS or tax-exempt bond issuer. Under the agreement, the RHS or tax-exempt bond issuer must agree to provide information concerning the income and rent of the tenants in the building to the Agency. The Agency may assume the accuracy of the information provided by RHS or the taxexempt bond issuer without verification. The Agency must review the information and determine that the income limitation and rent restriction of section 42 (g)(1) and (2) are met. However, if the information provided by the RHS or tax-exempt bond issuer is not sufficient for the Agency to make this determination, the Agency must request the necessary additional income or rent information from the owner of the buildings. For example, because RHS determines tenant eligibility based on its definition of ``adjusted annual income,'' rather than ``annual income'' as defined under Section 8, the Agency may have to calculate the tenant's income for section 42 purposes and may need to request additional income information from the owner.
- (iii) Example. The exception permitted under paragraph (c) (4) (i) and (ii) of this section is illustrated by the following example.

Example. An Agency selects for review buildings financed by the RHS. The Agency has entered into an agreement described in paragraph (c)(4)(ii) of this section with the RHS with respect to those buildings. In reviewing the RHS-financed buildings, the Agency obtains the tenant income and rent information from the RHS for 20 percent of the low-income units in each of those buildings. The Agency calculates the tenant income and rent to determine whether the tenants meet the income and rent limitation of section 42 (g)(1) and (2). In order to make this determination, the Agency may need to request additional income or rent information from the owners of the RHS buildings if the information provided by the RHS is not sufficient.

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- (5) Agency reports of compliance monitoring activities. The Agency must report its compliance monitoring activities annually on Form 8610, ``Annual Low-Income Housing Credit Agencies Report.''
- (d) Inspection provision—(1) In general. Under the inspection provision, the Agency must have the right to perform an on-site inspection of any low-income housing project at least through the end of the compliance period of the buildings in the project. The inspection provision of this paragraph (d) is a separate requirement from any tenant file review under paragraph (c)(2)(ii) of this section.
- (2) Inspection standard. For the on-site inspections of buildings and low-income units required by paragraph (c)(2)(ii) of this section, the Agency must review any local health, safety, or building code violations reports or notices retained by the owner under paragraph (b)(3) of this section and must determine--
 - (i) Whether the buildings and units are suitable for occupancy,

taking into account local health, safety, and building codes (or other habitability standards); or

- (ii) Whether the buildings and units satisfy, as determined by the Agency, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703). The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A low-income housing project under section 42 must continue to satisfy these codes and, if the Agency becomes aware of any violation of these codes, the Agency must report the violation to the Service. However, provided the Agency determines by inspection that the HUD standards are met, the Agency is not required under this paragraph (d)(2)(ii) to determine by inspection whether the project meets local health, safety, and building codes.
- (3) Exception from inspection provision. An Agency is not required to inspect a building under this paragraph (d) if the building is financed by the RHS under the section 515 program, the RHS inspects the building (under 7 CFR part 1930), and the RHS and Agency enter into a memorandum of understanding, or other similar arrangement, under which the RHS agrees to notify the Agency of the inspection results.
- (4) Delegation. An Agency may delegate inspection under this paragraph (d) to an Authorized Delegate retained under paragraph (f) of this section. Such Authorized Delegate, which may include HUD or a HUD-approved inspector, must notify the Agency of the inspection results.
- (e) Notification-of-noncompliance provision--(1) In general. Under the notification-of-noncompliance provisions, the Agency must be required to give the notice described in paragraph (e)(2) of this section to the owner of a low-income housing project and the notice described in paragraph (e)(3) of this section to the Service.
- (2) Notice to owner. The Agency must be required to provide prompt written notice to the owner of a low-income housing project if the Agency does not receive the certification described in paragraph (c) (1) of this section, or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in paragraph (c) (2) (ii) of this section, or discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of section 42.
- (3) Notice to Internal Revenue Service--(i) In general. The Agency must be required to file Form 8823, ``Low-Income Housing Credit Agencies Report of Noncompliance,'' with the Service no later than 45 days after the end of the correction period (as described in paragraph (e) (4) of this section, including extensions permitted under that paragraph) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The Agency must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis under paragraph (c) (1) (ii) and (vii) of this section, respectively, that results in a decrease in the qualified basis of the project under section 42 (c) (1) (A) is noncompliance that must be reported to the Service under this paragraph

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(e)(3). If an Agency reports on Form 8823 that a building is entirely out of compliance and will not be in compliance at any time in the future, the Agency need not file Form 8823 in subsequent years to report that building's noncompliance. If the noncompliance or failure to

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

- (ii) Agency retention of records. An Agency must retain records of noncompliance or failure to certify for 6 years beyond the Agency's filing of the respective Form 8823. In all other cases, the Agency must retain the certifications and records described in paragraph (c) of this section for 3 years from the end of the calendar year the Agency receives the certifications and records.
- (4) Correction period. The correction period shall be that period specified in the monitoring procedure during which an owner must supply any missing certifications and bring the project into compliance with the provisions of section 42. The correction period is not to exceed 90 days from the date of the notice to the owner described in paragraph (e)(2) of this section. An Agency may extend the correction period for up to 6 months, but only if the Agency determines there is good cause for granting the extension.
- (f) Delegation of Authority--(1) Agencies permitted to delegate compliance monitoring functions--(i) In general. An Agency may retain an agent or other private contractor (``Authorized Delegate'') to perform compliance monitoring. The Authorized Delegate must be unrelated to the owner of any building that the Authorized Delegate monitors. The Authorized Delegate may be delegated all of the functions of the Agency, except for the responsibility of notifying the Service under paragraphs (c) (5) and (e) (3) of this section. For example, the Authorized Delegate may be delegated the responsibility of reviewing tenant certifications and documentation under paragraph (c) (1) and (2) of this section, the right to inspect buildings and records as described in paragraph (d) of this section, and the responsibility of notifying building owners of lack of certification or noncompliance under paragraph (e) (2) of this section. The Authorized Delegate must notify the Agency of any noncompliance or failure to certify.
- (ii) Limitations. An Agency that delegates compliance monitoring to an Authorized Delegate under paragraph (f)(1)(i) of this section must use reasonable diligence to ensure that the Authorized Delegate properly performs the delegated monitoring functions. Delegation by an Agency of compliance monitoring functions to an Authorized Delegate does not relieve the Agency of its obligation to notify the Service of any noncompliance of which the Agency becomes aware.
- (2) Agencies permitted to delegate compliance monitoring functions to another Agency. An Agency may delegate all or some of its compliance monitoring responsibilities for a building to another Agency within the State. This delegation may include the responsibility of notifying the Service under paragraph (e)(3) of this section.
- (g) Liability. Compliance with the requirements of section 42 is the responsibility of the owner of the building for which the credit is allowable. The Agency's obligation to monitor for compliance with the requirements of section 42 does not make the Agency liable for an owner's noncompliance.
- (h) Effective date. Allocation plans must comply with these regulations by June 30, 1993. The requirement of section 42 (m) (1) (B) (iii) that allocation plans contain a procedure for monitoring for noncompliance becomes effective on January 1, 1992, and applies to buildings for which a low-income housing credit is, or has been, allowable at any time. Thus, allocation plans must comply with section 42 (m) (1) (B) (iii) prior to June 30, 1993, the effective date of these regulations. An allocation plan that complies with these regulations,

with the notice of proposed rulemaking published in the Federal Register on December 27, 1991, or with a reasonable interpretation of section 42(m)(1)(B)(iii) will satisfy the requirements of section 42(m)(1)(B)(iii) for periods before June 30, 1993. Section 42(m)(1)(B)(iii) and

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these regulations do not require monitoring for whether a building or project is in compliance with the requirements of section 42 prior to January 1, 1992. However, if an Agency becomes aware of noncompliance that occurred prior to January 1, 1992, the Agency is required to notify the Service of that noncompliance. In addition, the requirements in paragraphs (b)(3) and (c)(1)(v), (vi), and (xi) of this section (involving recordkeeping and annual owner certifications) and paragraphs (c)(2)(ii)(B), (c)(2)(iii), and (d) of this section (involving tenant file reviews and physical inspections of existing projects, and the physical inspection standard) are applicable January 1, 2001. The requirement in paragraph (c)(2)(ii)(A) of this section (involving tenant file reviews and physical inspections of new projects) is applicable for buildings placed in service on or after January 1, 2001. The requirements in paragraph (c)(5) of this section (involving Agency reporting of compliance monitoring activities to the Service) and paragraph (e)(3)(i) of this section (involving Agency reporting of corrected noncompliance or failure to certify within 3 years after the end of the correction period) are applicable January 14, 2000.

[T.D. 8430, 57 FR 40121, Sept. 2, 1992; 57 FR 57280, Dec. 3, 1992; 58 FR 7748, Feb. 9, 1993; T.D. 8563, 59 FR 50163, Oct. 3, 1994; T.D. 8859, 65 FR 2326, Jan. 14, 2000; 65 FR 16317, Mar. 28, 2000]

MHFA HOUSING TAX CREDIT PROGRAM BUILDING MAP

=									
Development Name/City:							Manager/Model/Office Unit((s) by Unit Number & SF:	#/ <u>SF</u>
MHFA HTC PROJECT ID:							Other common area square for	ootage:	
Building Identification Number (BIN): MN							Total Square Footage of Buil	lding Common Areas:	
Building A							1		Building of
Bullullig A	luuress.								building oi
	1				1				Ī
Unit#	Unit	Туре	Square l List amou appropria	ınt under	Unit Status Check appropriate box		% of AMGI* *Area Median Gross Income	Rent Level	Targeted Unit Type i.e. mental illness, developmental disability,
	# of BR	# of BA	HTC	Market	HTC	Market	i.e. 50%, 60%, etc.	i.e. 50%, 60%, etc.	drug/chem dependent, brain injured, homeless, etc.
			#1	#2	#3	#4			
Total Colu	ımns		SF	SF					
		Part #1						Part #2	
A Total	SF for Buildir	nα					Targeted Ap	plicable Fraction Determin	nation:
A. Iotai	or for building	(Add	columns #1-2)		E. Floor Spa	ace Fraction:	Total SF of HTC Units (Line B)=		
					Total SF for Buildin	ng (Line A)	<u></u>		
B. Total	SF for HTC U		at in Column t	<i>{</i> 1)	E Unit Eroo	tion: Total:	# of UTC Units (Line D) =		
(Amount in Column #1) F. Unit Fraction: <u>Total # of</u>					r. Omi riac	11011. <u>101al 1</u>	Total # of Units (Line C)	C)	%
C. Total # of Units							`		
(Add columns #3-4) Building's Targeted App					Building's T	argeted App	licable Fraction:	Lower of	E or F
D. Total # of HTC Units									
	(Amount in columns #3)								



MINNESOTA HOUSING FINANCE AGENCY MULTIFAMILY UNDERWRITING

HOUSING TAX CREDIT PROGRAM

Final Cost Certification (HTC Form - 9)

MINNESOTA HOUSING FINANCE AGENCY ("MINNESOTA HOUSING") HOUSING TAX CREDIT PROGRAM FINAL COST CERTIFICATION

The Partners
ABC Limited Partnership
City, State

INDEPENDENT AUDITOR'S REPORT

We have audited the accompanying Schedule of Project Costs (Final Cost Certification / Minnesota Housing Form HTC-9) from inception through CUT-OFF DATE of ABC Limited Partnership pertaining to the development of ABC Project. The Schedule of Project Costs is the responsibility of the Partnership's management. Our responsibility is to express an opinion on this schedule based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the Schedule of Project Costs is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the Schedule of Project Costs. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall schedule presentation. We believe our audit provides a reasonable basis for our opinion.

The aforementioned Schedule of Project Costs has been prepared on the basis of accounting and reporting practices prescribed by Minnesota Housing in it's Housing Tax Credit Program Final Cost Certification / Form HTC-9 instructions. These practices differ in some respects from generally accepted accounting principles. Accordingly, the accompanying Schedule of Project Costs is not intended to be in conformity with generally accepted accounting principles.

In our opinion, the Schedule of Project Costs referred to above presents fairly, in all material respects, the actual project cost of ABC Limited Partnership through CUT-OFF DATE, in conformity with the accounting and reporting practices prescribed in Minnesota Housing's Housing Tax Credit Program Final Cost Certification / Form HTC-9 instructions.

We have no financial interest in ABC Limited Partnership other than in the practice of our profession.

This report is intended solely for filing with Minnesota Housing and is not intended for any other purpose.

City, State Date

Minnesota Housing Finance Agency Housing Tax Credit Program Final Cost Certification Instructions for Completion of Minnesota Housing's Form HTC-9 Schedule of Project Costs (Cost Certification)

- 1. IRS Requirements. Internal Revenue Code Section 42 (m) (2) (A) requires Housing Credit Agencies to evaluate the sources and uses of funds for a project at the time the project is placed in service. IRS Regulations Section 1.42-17 (a) (5) requires a taxpayer to submit a **Schedule of Project Costs (the Schedule)** to the Housing Credit Agency for this evaluation.
- 2. Total Project Costs and Eligible Basis. The Schedule must detail the project's total costs as well as those costs that qualify for inclusion in eligible basis under Code Section 42(d) of the Internal Revenue Code.
- 3. **CPA Report.** The Schedule must be accompanied by a Certified Public Accountant's audit report. The audit must be conducted in accordance with generally accepted auditing standards. The auditor's report must be unqualified.
- **Method of Accounting.** The Schedule is to be prepared on the method of accounting used by the taxpayer for federal income tax purposes.
- 5. **Cut-Off Timing and Eligibility of Costs.** In general, the Schedule should be prepared as soon as possible after the project has been placed in service and new construction and/or rehabilitation has been completed. The cut-off date selected by the taxpayer should represent the date when construction is complete and the costs includable in eligible basis have been incurred.
 - a. Total Project Costs. In general, only costs that have been paid in cash or have been incurred (ie the work has been completed and billed) should be included in the Total Project Costs column. When escrows are established for items of incomplete work, the full amount of the contract may be included. Costs to be paid in cash within 45 days of the cut-off date (such as cost certification fees or tax credit fees) may be included. Reserves, such as the Development Cost Escrow (DCE), and permanent loan closing costs which will be funded out of a final loan closing, or Operating Reserves which will be funded out of future capital contributions may be included if the source of funding is available by a firm commitment.
 - **b. Eligible Basis.** Eligible basis is determined as of the close of the first taxable year of the credit period. Accordingly, costs that qualify as eligible basis must be incurred (in accordance with the taxpayer's method of accounting for federal income tax purposes) by the close of the year.
- 6. Due Date. The Schedule along with the CPA report must be submitted to Minnesota Housing prior to the issuance of the final tax credit allocation and the IRS Form 8609. The Final Cost Certification along with the complete Application for 8609 must be submitted to Minnesota Housing no later than:
 - a. 15 days after the last day of the first credit period, or
 - b. January 15th of the year following project completion, whichever occurs first

MINNESOTA HOUSING FINANCE AGENCY HOUSING TAX CREDIT – HTC FINAL COST CERTIFICATION

PROJECT NAME AND ADDRESS						
Project Name	State	Minnesota Housing HTC #				
Address	County					
City	Zip Code					

SCHEDULE OF PROJECT COSTS (CUT-OFF DATE)

	Total Project Costs	Existing Building Eligible Basis	Rehabilitation/ New Construction Eligible Basis
ACQUISITION			
Land	\$		
Existing Structures	\$		
Demolition	\$		
Special Assessments	\$		
Other:	\$		
SUBTOTAL ACQUISITION	\$		
NEW CONSTRUCTION			
Residential	\$		
Garages	\$		
Accessory Structures	\$		
On Site Work	\$		
Off Site Work	\$		
Other:	\$		
Other:	\$		
Net Construction	\$		
General Requirements	\$		
Builder's General Overhead	\$		
Builder's Profit	\$		
Gross Construction (Contract	\$		
Construction Contingency	\$		
SUBTOTAL NEW CONSTRUCTION	\$		

			Rehabilitation/
	Total Project Costs	Existing Building Eligible Basis	New Construction Eligible Basis
REHABILITATION		J	3
Site work	\$		
Exterior	\$		
Garages	\$		
Accessory Structures	\$		
Interior	\$		
Mechanical Systems	\$		
Electrical Systems	\$		
Other:	\$		
Net Rehabilitation	\$		
General Requirements	\$		
Builder's General Overhead	\$		
Builder's Profit	\$		
Other:	\$		
Gross Rehabilitation (Contract Amount)	\$		
Construction Contingency	\$		
SUBTOTAL REHABILITATION	\$		
ENVIRONMENTAL			
Environmental	\$		
Abatement Contract	\$		
Abatement Contingency	\$		
SUBTOTAL ENVIRONMENTAL	\$		
PROFESSIONAL FEES (Soft Cost)			
Architect's Fee -Design	\$		
Architect's Fee- Supervision	\$		
Marketing	\$		
Surveys and Soil Borings	\$		
Payment and Performance Bond Premium	\$		
Building Permit(s)	\$		
Sewer – Water Access Charge	\$		
Appraisal Fee	\$		
Energy Audit	\$		
Environmental Assessment	\$		
Cost Certification / Audit	\$		
Market Study	\$		
Tax Credit Fees	\$		
Compliance Fees	\$		
Furnishings and Equipment	\$		
Legal Fees	\$		
Other:	\$		
Other:	\$		
SUBTOTAL PROFESSIONAL FEES	\$		

	Total Project Costs	Existing Building Eligible Basis	Rehabilitation/ New Construction Eligible Basis
DEVELOPER'S FEE (Soft Cost)			
Developer's Fee	\$		
Processing Agent	\$		
Other Consultant Fees	\$		
Other:	\$		
SUBTOTAL DEVELOPER'S FEE	\$		
TAX CREDIT SYNDICATION FEES (Soft Cost)			
Organization Fees	\$		
Bridge Loan	\$		
Tax Opinion	\$		
Other:	\$		
SUBTOTAL SYNDICATION FEES	\$		
FINANCING COSTS (Soft Cost)			
Hazard & Liability Insurance	\$		
Construction Interest	\$		
Taxes during Construction	\$		
Minnesota Housing First Mortgage Inspection Fee	\$		
Other Inspection Fee	\$		
Minnesota Housing Origination Fee	\$		
Other Origination Fee	\$		
Mortgage Insurance Premium	\$		
Revenue Bond Premium	\$		
Title and Recording	\$		
Minnesota Housing's Development Cost Escrow	\$		
Other:	\$		
SUBTOTAL FINANCING COSTS	\$		
TOTAL PROJECT COSTS	\$		

I CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS ACCURATE AND AUTHORIZE MINNESOTA HOUSING TO UTILIZE THIS INFORMATION TO CALCULATE THE HOUSING TAX CREDIT.

IN WITNESS WHEREC	F, the undersigned has caused this document to be duly executed in its name on
thisday of,	
	Print or Type Name of Ownership Entity
	By:
	Its: Print or Type Title of Managing General Partner
	Print or Type Name of Signatory
STATE OF MINNESOTA) COUNTY OF)	
COUNTY OF	
The foregoing instrument was	acknowledged before me this day of,,
by Print Name of Owner's Signat	ory
	Notary Public

MINNESOTA HOUSING FINANCE AGENCY HOUSING TAX CREDIT PROGRAM 8609 CERTIFICATION BY OWNER/APPLICATION

The information in this application will be used to complete the IRS Form 8609, which will be filed with the IRS. All information must be consistent with your HTC application, the Attorney's Opinion, and the Final CPA Cost Certification. A Minnesota Housing Finance Agency (Minnesota Housing) approved Form 8609 must be signed by an authorized Minnesota Housing representative. Issuance of the Minnesota Housing-approved IRS Form 8609 is to be done only by Minnesota Housing or, as applicable, an authorized Suballocator. An approved Form 8609 shall not be created by any other entity. The owner/agent shall not file a Form 8609 with the Internal Revenue Service in advance of the owner/agent's receipt of Minnesota Housing signed version of the approved 8609. In addition, the owner/agent shall not electronically file a Form 8609 with the Internal Revenue Service that does not accurately reflect the information contained on Minnesota Housing-signed version of the approved Form 8609. When Minnesota Housing becomes aware that a development's owner/agent has filed a self-prepared 8609 with the Internal Revenue Service, Minnesota Housing reserves the right to ban all parties involved from future participation in the Minnesota's HTC Program for a period of ten (10) years.

As the owner of the referenced development, I hereby make application for an 8609 allocation and certify the following:

1.	Proje	ect information				
	Minne	esota Housing HTC # (s)				
	Name	e of Development				
	Addre	ess (Do Not Use P.O. Box)				
	City		County	Zip		
2.	Deter	Determination of Final Tax Credit Allocation:				
A. B.	A.	Total Qualified basis for all buildings, which are part of the project (from Attachment A): \$				
	B.	Annual Tax Credit allocat Indicate year, source and		ion/Carryover Agreement:		
				\$		
				\$		
		Total:		\$		
	•	Maximum Tax Credit Allo Determination of Tax Credit Form/ linnesota Housing Multifamily Ren	Item N.)	\$ Application Form, Section IX. H. 2)		

The undersigned understands that the determination with respect to the application of Section 42 of the Internal Revenue Code and the regulations and rules promulgated are the responsibility of the undersigned and its counsel, which this final determination, with respect to Section 42 can only be made by the IRS, and the undersigned.

I hereby state that all the applicable design standards and design features, including all requirements or special conditions of Selection, have been incorporated into the construction of the building(s) in the project.

I hereby state that the building is in compliance with all Minnesota Housing Housing Tax Credit (HTC) program requirements and conditions of Selection and any additional or special conditions as described in the Minnesota Housing Reservation, Carryover Agreement, HTC Procedural Manual revised, and Section 42 of the Internal Revenue Code of 1986 revised, and that the above and the information provided during the 8609 application process are true and correct, to the best of my knowledge and belief.

I hereby certify that the full extent of all federal, state and local subsidies that apply (or expect to apply) have been disclosed to Minnesota Housing.

Ownership Entity (partnership):	
Ownership Address:	
City, State, Zip:	
General Partner:	
Authorized Signatory for General Partner:	
Ownership Entity Federal Tax ID #:	
Phone Number:	FAX Number:
Non-Profit Corporation General Partner	(if applicable):
Authorized Signatory Nonprofit Corporation:	
General Partner:	
Phone Number:	FAX Number:
Acknowledged, agreed and accepted:	OWNER
	(Name of Entity) (Legal Description of Entity and State of Authorization)
	By:(Signature)
	(Typed or Printed Name) Its: Dated:
STATE OF) COUNTY OF) SS.	
COUNTY OF	
Subscribed and sworn to before me, of on behalf of said	a notary public, this day of,, by,
	Notary Public

EXHIBIT U - CERTIFICATION BY OWNER/APPLICANT FOR ISSUANCE OF IRS 8609

Exhibit A - Side 1

Determination of Targeted Applicable Fraction and Qualified Basis by Building.* Attach a Building Map (HTC Form 28) for each building to support the calculations shown here.

	ge of				
Form 8609	Complete this for Building 1	Complete this for Building 2	Complete this for Building 3	Complete this for Building 4	Total
Box A					
Project Name					
Address of Building					
(Street, City & Zip)					
Box C					
- Owner's Name and Address		Same as at left	same as at left	same as at left	
- Owner's tax ID number					
Box E					
Building I.D. Number (BIN)					
Assigned by Minnesota Housing on					
Carryover Agreement					
Line 1a					
Date of Allocation from Carryover					
Agreement					
Line 1b					
Approved Tax Credit Amount	d.	d.	ď.	¢.	¢.
per building. Total may not exceed	\$	\$	\$	\$	\$
Carryover Allocation					
Line 2					
Applicable Credit Percentage for each					
building					
Line 3a	\$	¢.	\$	\$	\$
Maximum Qualified Basis per building	Þ	\$			Þ
Line 3b	check box: yes no				
High-Cost Area adjustment	If yes, enter:	If yes, enter:	If yes, enter:	If yes, enter:	
Line 4					
Percent tax-exempt financed (if none, enter					
"-0-")					
Line 5					
Placed-in-Service date					
Line 6					
check those that apply:					
a. Newly constructed and federally	□a	□a	□a	□a	
subsidized			<u> </u>	_	
b. Newly constructed and not federally	□ b	□b	□b	□b	
subsidized				_	
c. Existing building	□c □d	<u></u> ∟ c		□ C	
d. Sec. 42(e) rehabilitation expenditures	<u></u> d	□d	□d	d	
federally subsidized					
e. Sec. 42(e) rehabilitation expenditures	□e	□e	□e	□e	
not federally subsidized					
f. Not federally subsidized by reason of	□f	□f	□f	□f	
40-50 rule under sec. 42(i)(2)(E)					
g. Allocation subject to non-profit set- aside under sec. 42(h)(5)	□g	□g	□g	□g	

Exhibit A-Side 2 Determination of Targeted Applicable Fraction and Qualified Basis by Building* Attach a Building Map (HTC Form 28) for each building to support the calculations shown here.

	Complete this for Building 1	Complete thi	s for Building 2	Complete this for Building 3	Complete this for Building 4	
Determination of Targeted Applicable Fraction						
Floor Space Fraction (Part 2, E, from Building Map)	Show number of low income square feet divided by total residential square feet =	by total square feet divided by total		Show number of low income square feet divided by total residential square feet =	Show number of low income square feet divided by total residential square feet =	
Unit Fraction (Part 2, F, from Building Map)	Show number of low income units in the building divided by total number of units. Do not include common space unit, if any =	by units in the building divided by total number of units. Do not include common space		Show number of low income units in the building divided by total number of units. Do not include common space unit, if any	Show number of low income units in the building divided by total number of units. Do not include common space unit, if any	
TARGETED APPLICABLE FRACTION: Lesser of Floor Space Fraction or Unit Fraction						
	Dete	ermination of Q	ualified Basis			
Eligible Basis by building	\$	\$		\$	\$	
MAX. QUALIFIED BASIS: Multiply Eligible Basis by Targeted Applicable Fraction	\$	\$		\$	\$	
Show this number on line 3a of Form 8609.						
	Determinat	ion of Economic	Integration/Minin	num Set-Aside Fraction		
PROJECT FRACTION: Show number of low income units in the project divided by total number of units in the project. Do not include common space unit, if any Project fraction must be consistent with the selected Economic Integration percentage and must meet or exceed the selected Minimum Set-Aside Threshold. Show number of low income units in the project divided by total number of units in the project. Do not include common space unit, if any =						
*Please note that the actual Applicable Fraction may be different at the end of the first year of the credit period depending on the number and size of eligible units at that time. The actual credit amount may lower than the amount shown here.					al credit amount may b	
I certify that to the best of my knowledge and be	elief the above information on Page	1 and Page 2 is t	rue and correct.			
uthorized Signature: Date:						

MINNESOTA HOUSING FINANCE AGENCY HOUSING TAX CREDIT PROGRAM

INSTRUCTIONS FOR STATEMENT OF ELECTION OF GROSS RENT FLOOR (bond-financed building)

IRS Revenue Procedure 94-57 allows the Owner/Taxpayer to fix the date of the gross rent floor to be the Credit Allocation (Carryover) date or the Placed in Service date. In past years, some county median incomes have decreased from the years between these dates, thereby reducing the maximum allowable rent.

For a bond-financed building, the Internal Revenue Service will treat the gross rent floor in section 42(g)(2)(A) as taking effect on the date an Agency initially issues a determination letter to the building. However, the Service will treat the gross rent floor as taking effect on a building's placed in service date if the building owner designates that date as the date on which the gross rent floor will take effect for the building. An owner must make this designation to use the placed in service date and inform the Agency that issued the determination letter to the building no later than the date on which the building is placed in service.

This form is to be used by owners of qualified low-income housing tax credit projects (bond-financed building) to inform the Minnesota Housing Finance Agency (Minnesota Housing) when the gross rent floor in section 42(g)(2)(A) of the Internal Revenue Code takes effect.

The election of one of the two timing options must be made and the completed election form received by Minnesota Housing prior to the date the project is placed in service. If no election is made or if election form(s) are not received by Minnesota Housing prior to the date the project is placed in service, then the gross rent floor date will automatically be fixed by Minnesota Housing to be the date Minnesota Housing initially issued its determination letter.

MINNESOTA HOUSING FINANCE AGENCY

HOUSING TAX CREDIT PROGRAM

STATEMENT OF ELECTION OF GROSS RENT FLOOR (bond-financed building)

as that term is defined in Section 42	Minnesota Housing), as the housing credit agency for the State of Minnesota 2 of the Internal Revenue Code (the Code), has issued its Preliminary
	for HTC #, named (the Project) as referenced in the minary Determination Letter dated (the Determination Letter). The ermination Letter is (the Owner/Taxpayer).
for the Building, which is part of the refe	elects, pursuant to IRS Revenue Procedure 94-57, to fix the gross rent floor erenced Project, at the allowable rents on the Elected Date identified below t this Election is binding upon the Owner/Taxpayer, and all successors in
The Owner/Taxpayer elects the gross ren	t floor for the Building described as:
BIN (Building Identification Number)	Address
<u> </u>	
<u></u>	
	
(Attach separate sheet if more space is re	equired.)
To be fixed as taking effect on the Ele	ected Date of: (Check only one option)
The date Minnesota Housing initial	ly issued the Determination Letter
The Placed in Service date	
Acknowledged, agreed, and accepted this	day of,
OWNER/TAXPA	YER:
	Ву:
	By: Signature
	Type/Print Name and Title
STATE OF MINNESOTA)	
COUNTY OF)	
On this day of, 20, _ (s)he executed the above document for the	, being first duly sworn and to me personally known, acknowledged that he purposes recited therein.
	Notary Public, State of Minnesota
	My Commission Expires:

Maintenance and Operating Expense Review and Underwriting Certification

(Section A to be completed by Owner/ Section B is to be signed by Lender)

Section A	
Development Name	
Development Address	
Annual Gross Income All Sources	\$
Less Vacancy Rate of 7%*:	\$
Less Maintenance & Operating Expenses:	
M&O Expenses per unit/year	\$
Total M&O Expenses for all units/yr.	\$
Less Real Estate Tax	\$
Less Replacement & Decorating Reserves (\$20/Rm & \$30/Rm Minimum)	\$
Subtotal NOI	\$
Debt Service Coverage Ratio 1.20 (1.25 for Rehab	o projects)*
NOI Available for Debt Service	\$
Mortgage Amount Rate	Term
*Minnesota Housing will look for these Benchmarks to **Reference Page 2 of this Certification, which has be	
Section B	
We certify the above named development was this exhibit.	underwritten utilizing the information provided in
Lending Institution	
Signature	
(Print or Type Name)	
Title	
Date	

Maintenance and Operating Expense Review And Underwriting Certification

			(to be	e completed by C	wner)		
=	Development Nam	ne			Minnesota Housing D	Development Numbe	
-	Full Development	Address					
			ARTMENT DIST	RIBUTION			
ı	<u>(</u>		of the Minnesota H		plication	1	
	Unit Type	Number of Dwelling Units (DU'S)	% of Total DU'S	Rental Rooms Per Unit	Total Rooms (# of Units X Rooms/Units)		
	0 BR			2.5			
	1 BR			3.5			
	2 BR			4.5			
	3 BR			6.0			
	4 BR			7.0			
	5 BR			8.5			
	Bed			2.0			
	TOTAL				(A)		
	TOTAL MANAGER	MENT AND OPER	ATING EXPENSE	(Section IV.B.5 of th	e Minnesota Housing Co	ı ommon Application) Ho -	using Tax Credit
	Sub	Total - Annual Re	esidential Operat	ing and Expense	\$ (B)		
	T-4-1 On	F	Divide de la lecci	Tatal Danie			
	Total Operati	ing Expenses	Divided by	Total Rooms		•	
	(E	3)	/	(A) =	\$ Total Operating Ex	kpenses Per Room	,
					Per Year.		_
/ho \	will pay the majo	or heat utility?					
		OWNER			TENANT		
ased evelop ainte	pment and evaluate t	the expenses per roo	m per year as part of	f its underwriting pro	cess. Minnesota Housing	g will reserve the right	ing staff will review the to make adjustments to ics of the development's
letro	o Area Develop	ments					
	-				2007	2008	
	<u>Type</u>	-		-	Actual Data	Benchm	
	Townhouse				970	1,009	'
	Walk-up				1,165	1,212	,
	Elevator				1,190	1,238	}
reat	ter Minnesota [Developments			2007	0007	
	Typo				2006	2007	
	<u>Type</u> Townhouse				Actual Data 725	Benchm 754	<u>ai k</u>
	Walk-up				845	879	

The above chart reflects actual 2006 maintenance and operating numbers for developments in the Minnesota Housing portfolio. The chart also reflects projected benchmark operating and maintenance numbers trended for 2007. These benchmarks maintenance and operating numbers may be adjusted at the sole discretion of Minnesota Housing.

Elevator

1,000

1,040

	apolis/Saint Paul ng Finance Board	
c/o	Minneapolis Community Development Agency Crown Roller Mill, Second Floor 105 Fifth Avenue South Minneapolis, MN 55401	Briggs & Morgan, Professional Association 2200 National Bank Building St. Paul, Minnesota 55101
	or	
c/o	Saint Paul Housing and Redevelopment Authority 13th Floor, City Hall Annex 25 West Fourth Street St. Paul, Minnesota 55101	Briggs & Morgan, Professional Association 2200 First National Bank Building St. Paul, Minnesota 55101
RE:	(Name of Developer) (Name and address of Project) (Building addresses, if more than one)	
Ladies a	nd Gentlemen:	
the Deve of low in Internal I familiar v Agreeme the Decl We have	eloper's application to Minneapolis/Saint Pacome housing credits pursuant to Minneson Revenue Code of 1986, as amended (the "with the Developer's application for Low Incent/Articles and Bylaws] of the Developer (taration of Extended Land Use and Restriction	(the "Developer") in connection with aul Housing Finance Board (the "Board") for an allocation ta Statutes, Chapter 462A.222 and Section 42 of the Code"). In that regard, We have reviewed and are come Credit dated (the "Application"), the [Partnership the "Organizational Documents") dated and ive Covenants (the "Declaration"), dated pers as I have deemed relevant and necessary as the on our examination, it is our opinion that:

The Developer has ownership of the land on which the Project will be located, i.e., the

I am not aware that the Application contains any untrue statement of a material fact with

respect to the allocation of low income credit to the Developer.

Developer has basis in land and other acquired real property or depreciable property as set forth in Section 42(h)(1)(E) of the Code, Treasury Regulations 1.42-6(h)(2)(i) and IRS Notice

1.

2.

89-1.

	3.	attached hereto (if necessary)] with respect to costs of construction, schedule of completion, plans and specifications, credit allocation amount, occupancy by low-income tenants, rents and other matters are, in fact, realized, and based on existing laws, regulations, rulings and decisions as of the date of this opinion,
	(a)	The Project will consist of Buildings;
	[Each]	[The] Building is a (new) (existing) building within the meaning of Section 42(d) of the Code;
		licable) The rehabilitation expenditures for the Building will be treated as a separate, new g within the meaning of Section 42(e) of the Code;]
	(b)	The (Project/Building) will be a qualified low-income housing project as defined in Section 42(g) of the Code;
	(c)	The building has been placed in service as such term is used in Section 42(g)(3) of the Code [in of 20];
	(d)	The applicable fraction as defined in Section 42(c) of the Code will be%;
	(e)	As of the close of the first year of the credit period the eligible basis of the building as defined in Section 42(d) will be \$;
	(f)	As of the close of the first year of the credit period the qualified basis of the building as defined in Section 42(c) will be \$;
	(g)	The beginning of the credit period as defined in Section 42(f) will be
	(h)	The Declaration has been duly and validly executed and delivered by the Developer and constitutes a valid and binding agreement of the Developer.
Very tru	ıly yours	5,