

2011

Compliance Guide
for the Administration of
Low-Income Housing Tax
Credit properties

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I. PREFACE

This manual is provided as a reference guide for administration of the federal Low-Income Housing Tax Credit (LIHTC) program. It is designed to answer questions regarding the procedures, rules and regulations that govern LIHTC projects and should be a useful resource for owners, developers, management companies, and on-site management personnel. *Please keep in mind that this manual is to be used as a supplement and not a substitute to existing laws and regulations.* It was produced for use as a procedural tool in the proper operation of Low-Income Housing Tax Credit properties and is not meant to be used or relied upon as the only source of information on LIHTC compliance procedures.

The LIHTC program is a complicated tax program based on federal and state statutes and regulations. Owners and management companies of LIHTC properties should be familiar with the following documents and information:

- Section 42 of the Internal Revenue Code of 1986 (as amended) and related regulations at Title 26 of Code of Federal Regulations Subchapter A Part I Section 1.42 et seq.
- IRS Form 8609 and Schedule A
- IRS Form 8823
- IRS 8823 Audit Technique Guide
- HUD Handbook 4350.3
- Fair Housing Amendments Act of 1988
- HR3221: The Housing and Economic Recovery Act of 2008

As with any regulated activity, compliance questions should be discussed with accounting and legal advisors.

Whenever available, address links will be provided to refer to the actual rules, forms and regulations.

II. CHAPTER 1 - INTRODUCTION

1. VERMONT HOUSING FINANCE AGENCY

Vermont Housing Finance Agency (VHFA) is a public instrumentality, which was created by the General Assembly in 1974 to increase the supply of affordable housing for low and moderate income Vermonters. VHFA obtains funds for low-interest mortgages by selling tax-exempt mortgage revenue bonds. Private lending institutions throughout the state originate loans that are then sold to VHFA. Since its inception, VHFA has provided financing assistance for over 27,200 households. In addition, over 8,600 rental units have been created using VHFA financing.

2. BACKGROUND

In 1986, Congress enacted the Low-Income Housing Tax Credit program (LIHTC) as part of the Tax Reform Act. The U.S. Treasury Department is responsible for interpreting the statutes governing the LIHTC program. The LIHTC program is authorized and governed by Section 42 of the Internal Revenue Code of 1986 (the Code). ([Exhibit 1](#)) Under the provisions of the Code, each state is required to designate a "housing credit agency" to allocate the federal tax credits.

For Vermont, the Department of Economic, Housing and Community Development ("DEHCD") has been designated the state housing credit agency. DEHCD works in partnership with VHFA and the Joint Committee on Tax Credits to administer the LIHTC program. Vermont's Joint Committee on Tax Credits advises DEHCD on tax credit issues. DEHCD has contracted with VHFA to be the sole authority to issue tax credits to specific projects in accordance with the State's Qualified Allocation Plan (QAP) ([Exhibit 17](#)), which is updated annually and approved by the Governor. DEHCD has promulgated rules entitled "Federal Tax Credits for Low-Income Housing; State Allocation System, Joint Committee on Tax Credits."

The LIHTC program reduces the federal tax liability of project owners in exchange for the acquisition, rehabilitation, or construction of low-income rental housing units. The dollar amount of tax credits allocated is based on the cost of the project and the number of qualified low-income units that meet federal rent and income targeting requirements as well as the project's compatibility with the state's Qualified Allocation Plan. As Vermont's sole issuing authority, VHFA is charged by federal statute with allocating only the amount of tax credits necessary to ensure the economic feasibility and viability for each project throughout the compliance period.

The Omnibus Budget Reconciliation Act of 1990 amended the Code to require that tax credit allocating agencies provide a procedure for monitoring housing developments for compliance with the low-income occupancy requirements of the LIHTC under Section 42(m)(1)(B) of the Code, and for notifying the Internal Revenue Service of any noncompliance. To offset the costs of compliance monitoring, VHFA will annually charge a reasonable fee to the owner.

Final compliance monitoring regulations ([Exhibit 2](#), At Website: Select Search/Browse CFR Titles, Scroll Down, Select Title 26, Select Browse Parts 1.1-1.60, Select Part 1, Select 1.42-5), were published with an effective date of January 1, 2001. These regulations amend the 1990 compliance requirements (Section 42(m)(1)(B) of the Code).

The Housing and Economic Recovery Act of 2008 (HR 3221) enacted July 30, 2008 contains provisions that affect the Housing Tax Credit program and the Tax Exempt Bond program. The changes are reflected in the manual. For your convenience a copy of HR 3221 has been placed on the VHFA website ([HR 3221](#)).

3. PLACED IN SERVICE DATE

Once the placed in service date is established, the owner can start leasing up the property and begin meeting the set-aside requirements. Below are a few guidelines for establishing the placed in service date for your development:

a) New Construction Developments

- The placed in service date is the date on which the Certificate of Occupancy is received.

b) Acquisition/Rehabilitation Developments

- The acquisition placed in service date is generally the date of purchase.
- Rehabilitation placed in service date is achieved once the owner spends at least \$6,000 per unit in depreciable costs or 20% of the acquisition costs, whichever is greater.
- You must make sure that the placed in service date is within 24 months of receiving the tax credit allocation.
- Projects claiming acquisition and rehab credits must be placed in service within the same calendar year.
- Acquisition/Rehab properties are sometimes tricky. The regulations are vague as to whether you must initially certify every household twice - once at the acquisition placed in service date and once at the rehab placed in service date. The conservative approach would be to do two certifications, at acquisition and at rehab. VHFA currently requires that you initially certify each household once at the acquisition placed in service date and will monitor based on this procedure.

4. CREDIT PERIOD

Owners can claim tax credits annually for a period of ten consecutive years. This period (the “credit period”) starts either the year the building is placed in service or the following year. The owner makes this determination on IRS Form 8609 ([Exhibit 14](#)).

5. COMPLIANCE PERIOD AND EXTENDED USE PERIOD

Developments receiving LIHTC allocations after January 1, 1990, must comply with eligibility requirements for a minimum period of 15 tax years beginning with the first tax year of the building's credit period (the compliance period) and during the period of the extended low-income housing commitment (the extended use period). The extended use period is an additional 15 years (at a minimum), pursuant to an agreement between the owner and VHFA (known as the Housing Credit Housing Subsidy Covenant) that is recorded in the land records of the municipality where the development is located. The Code provides for earlier termination of the extended use period under certain circumstances - consult the Code and your professional advisors for further information.

The main focus of compliance monitoring during the extended use period is to ensure that the properties remain affordable and that they are physically maintained appropriately. Post year 15 guidelines and forms are currently being finalized and are posted on the VHFA website ([Housing Credit Year 15 Policy](#)).

Developments receiving allocations during 1987, 1988 and 1989 have only a 15-year compliance period, except in special circumstances, where they received additional tax credit allocations after 1989.

III. CHAPTER 2 - RESPONSIBILITIES

1. VHFA LIHTC PROGRAM ADMINISTRATOR

VHFA issues tax credits for the construction, rehabilitation, and/or acquisition and substantial rehabilitation of low-income rental housing within the State of Vermont. VHFA's Development Department reviews applications for each proposed development for LIHTC eligibility and economic feasibility prior to the issuance of a tax credit allocation. Based upon the analysis, VHFA recommends to the Joint Committee on Tax Credits the amount of tax credits to be allocated to each project and the terms and conditions for the issuance of the tax credit allocation, all in accordance with the State's Qualified Allocation Plan ([Exhibit 17](#)).

2. VERMONT HOUSING FINANCE AGENCY

Once a tax credit allocation is awarded to a development, the development is acquired and/or rehabilitated or constructed. VHFA issues an IRS Form 8609 ([Exhibit 14](#)) upon completion and based on a cost certification prepared by the owner's accountant. VHFA will then:

- Provide a Compliance Manual (available in hardcopy format or at [LIHTC Manual](#)) to the owner and/or manager;
- Designate a VHFA contact person to provide answers to compliance questions;
- Distribute annual Income Limit and Rent Limit Charts ([Exhibit 19](#));
- Review the LIHTC Status Report ([Exhibit 18](#)), Owner's Certificate of Continuing Program Compliance ([Exhibit 25](#)), Fair Housing Questionnaire ([Exhibit 25-1](#)) and the LIHTC Questionnaire ([Exhibit 25-2](#)) on an annual basis;
- Review tenant data that is uploaded to VHFA's Web Compliance Management System (WCMS);
- Examine resident eligibility and Tenant Income Certifications ([Exhibit 26](#));
- Perform management reviews of tenant files and on-site physical inspection of the development every 1-3 years;
- Provide owner with a written annual report that summarizes VHFA's compliance monitoring activities; and
- Notify the Internal Revenue Service of non-compliance during the initial 15-year compliance period and after that, enforce compliance of the Housing Credit Housing Subsidy Covenant (the extended low-income housing commitment).

3. VHFA LIHTC MONITORING PROCEDURES

Owners of all LIHTC properties must comply with monitoring procedures, as well as complete and submit required reports in a timely manner.

VHFA will be responsible for reviewing status reports, owner's certifications, tenant certifications, backup documentation as well as performing physical inspections. VHFA Status

Reports ([Exhibit 18](#)), Owner's Certificate of Continuing Program Compliance ([Exhibit 25](#)), Fair Housing Questionnaire ([Exhibit 25-1](#)) and the LIHTC Questionnaire ([Exhibit 25-2](#)) must be filed annually with an effective date of 12/31 by the last day of the following February. These reports are reviewed prior to scheduling a site visit and review of files.

The owner must also provide VHFA with a copy of the IRS Form 8609 and Schedule A as well as IRS Form 3800 (Formerly IRS Form 8586) that is submitted to the IRS the first year the credits are claimed. ([Exhibit 14](#)) ([Exhibit 15](#)) ([Exhibit 16-1](#)) ([Exhibit 16-2](#)) These reports are reviewed prior to the scheduled site visit and review of files.

VHFA will provide maximum income limit and maximum rent charts ([Exhibit 19](#)) as a convenience to owners. These limits are set forth by HUD and issued annually ([Exhibit 33](#)). It is the owner's responsibility to calculate rents based on the limits published by HUD and to verify the accuracy of the VHFA-produced income limit and rent charts.

The federal regulations require VHFA to perform physical inspections and tenant file reviews on all buildings in a LIHTC development. These inspections and reviews must be performed on at least 20% of a development's tax credit units. The initial physical inspection and file review must take place by the end of the second calendar year following the year the last building in the development is placed in service. After the initial inspection and file review, physical inspections and file reviews are completed every three years at a minimum. VHFA reserves the right to monitor more often, if necessary. VHFA will notify owners in writing of the results.

The Housing and Economic Recovery Act of 2008 (HERA) requires that VHFA annually collect and submit tax credit data to HUD. The final rule implemented a revision of the Tenant Income Certification (TIC) and requires that specific detailed information on the TIC be electronically transmitted to HUD. HUD is particularly interested in the following information: race, ethnicity, age, family composition, income, rental assistance status, disability status, and monthly rental payments. VHFA has purchased software to address this requirement. This software is referred to as the Web Compliance Management System (WCMS) and it enables property owners/managers to upload tenant data. WCMS also allows VHFA to run automatic tax credit compliance checks. Owners and managers may gain access to this system via the VHFA website at <http://www.vhfa.org/rental/managers>. Owners and managers with tax credit software will be able to upload property and tenant data directly into the VHFA software system. Those without software who currently maintain the tax credit information manually will need to input each tenant income certification into WCMS manually. Once this system is fully up and running, owners and managers will no longer be required to submit the annual VHFA LIHTC Status Report.

VHFA will contact each property owner to schedule the on-site inspection and file review. The following information will be reviewed or prepared by VHFA staff:

- Qualified basis for all buildings in each LIHTC property for the first year the credit is claimed.
- Initial compliance requirements for the minimum set-aside election for all LIHTC properties. The minimum set-aside represents the minimum number of tax credit units that must be rent-

restricted and income-restricted. The minimum set-aside is applied to the development as a whole. This requirement is considered a project rule. Once an election has been made, it cannot be changed. The minimum set-aside must be met by the end of the first year of the credit period.

- Tenant certifications, leases and backup documentation for all LIHTC units; review of income eligibility of all LIHTC unit occupants by comparison of gross income to appropriate 20/50 or 40/60 income limits; and calculation and review of rent restrictions.
- Re-rental activity for the given year for each LIHTC unit, along with review of subsequent changes in income, household composition, student status, transfers within the project, impact of the “140 percent rule” and “vacant unit” credit regulations.
- Inspection of common areas and LIHTC units. ([Exhibit 22](#)) ([Exhibit 23](#))
- VHFA LIHTC Status Report for each property and comparison with data to actual tenant files and records. ([Exhibit 18](#))
- Web Compliance Management System and run compliance tests.
- Owner’s Certificate of Continuing Program Compliance form. ([Exhibit 25](#))
- Physical inspection results.
- Preparation of final report detailing file review findings and any physical defects discovered and issuing such report to owners.
- Preparations of non-compliance reports and follow up with owners.
- Corrective action, if necessary, based on findings.

A compliance review will be scheduled with each owner, at which time the owner must have the following records and forms available:

- Copy of the original Housing Application ([Exhibit 24](#));
- Lease and lease addendums, listing all household members. Note: Leases must have an initial term of at least six months (exceptions are made for SRO developments);
- Initial Tenant Income Certification, including third party verifications;
- Annual Tenant Income Recertifications. Should any questions arise during the compliance review as to whether a household was initially eligible, a review of actual move-in data will be requested even if the move-in occurred before the year under review;
- Copies of IRS Form 8609 and Schedule A ([Exhibit 14](#)) ([Exhibit 15](#)) for each building beginning with the first year credits were claimed;
- Rent cards for each LIHTC unit including backup documentation for utility allowances;
- Records of any units that had changes in family composition, income increases that exceed 140 percent of maximum allowable income limit, vacancy and re-rental data, and transfers within the project. Much of this data will be shown on the VHFA LIHTC Status Report ([Exhibit 18](#)) with tracking done at the site compliance visit.
- Documentation of full-time student status ([Exhibit 29](#)).

If files are incomplete or reports are not submitted, a warning letter will be issued by VHFA to the owner. Failure to respond within the period specified (not more than 90 days), known as the correction period, will result in non-compliance. When non-compliance is identified, or if VHFA becomes aware of a disposition of a building, IRS Form 8823 ([Exhibit 16](#)) is submitted to the IRS within 45 days of the end of the correction period.

The IRS has developed a reference guide to help state agencies determine whether findings found during an onsite file review or physical inspection are legitimate non-compliance issues. This guide is referred to as the IRS 8823 Audit Technique Guide ([Audit Guide](#)). Although it is not a legal authority, it is very helpful tool when trying to interpret the Section 42 regulations.

LIHTC developments are often financed with multiple subsidies and owners are inundated with multiple compliance reviews. Whenever possible, VHFA will try to coordinate compliance reviews with other agencies.

A Memorandum of Understanding (MOU) was successfully negotiated and signed with Rural Development (RD), which will allow VHFA access to income, eligibility, certification and physical inspection reports for RD projects with tax credits. VHFA also joins RD on physical inspections and shares the results of our onsite reviews.

4. OWNER

Each owner has chosen to utilize the LIHTC program to take advantage of the tax benefits provided. In exchange for these tax benefits, certain requirements must be met to benefit very low-income residents. A description of these requirements follows:

a) LIHTC Requirements

Owners have provided comprehensive development information with evidence of overall economic feasibility. Prior to issuance of a tax credit allocation, the owner and the owner's accountant must certify the total development costs. The owner must also certify that all requirements of the LIHTC program have been met. Any violation of the LIHTC Program requirements could result in the loss or recapture of the tax credits previously issued to the owner and any future claims for tax credits.

b) Proper Administration

Once the development has been placed in service, the owner is responsible for ensuring that it is properly administered, so that it is suitable for occupancy at all times, taking into account local health, safety, and building codes. It is the owner's responsibility to make certain that the on-site management team complies with all applicable rules, regulations, and policies governing the development.

LIHTC developments are very management intensive and require a thorough understanding of the Section 42 regulations. The owner and/or management agent is required to attend compliance training and document that they have received training prior to lease-up. At a minimum, the training should cover key compliance terms, qualified basis rules, determination of rents, tenant eligibility, file documentation, next available unit procedures, unit vacancy rules, agency reporting requirements, record retention requirements, and site visits.

c) Ongoing Administration and Notification

Throughout all phases of development, rent-up and operation, it is the responsibility of the owner to keep VHFA informed of the following: the scheduled placed in service date, the completion of the development, and the date they plan to initially claim credits. They also need to updated VHFA on any material changes, such as ownership or management, made at any time during the compliance period.

d) Non-compliance

VHFA must be notified immediately of any suspected non-compliance. This is the owner's responsibility.

5. MANAGEMENT COMPANY AND ON-SITE PERSONNEL

In conjunction with the owner, the management agent and any on-site personnel are the owner's agent for implementing the LIHTC Program requirements correctly. Anyone who is authorized to lease apartment units to residents should be thoroughly familiar with all federal laws, rules, or regulations governing certification and leasing procedures, including, but not limited to, the Fair Housing Amendments Act of 1988 ([Exhibit 34](#)), which prohibit discrimination. It is also important that the management company provides information, as needed, to VHFA and submits all required reports and documentation in a timely manner.

IV. CHAPTER 3 – COMPLIANCE MONITORING

This section of the manual outlines monitoring procedures for developments receiving tax credits. Ongoing compliance is necessary to retain housing tax credits. Therefore, monitoring each project is an ongoing activity that extends throughout the compliance period (or extended-use period).

VHFA reserves the right to change its compliance monitoring method as it deems necessary to ensure compliance with the LIHTC program throughout the project's compliance period and extended use period.

1. RECORD KEEPING AND RECORD RETENTION REQUIREMENTS

a) Record Keeping

Developments containing tax credit eligible units are required to keep records for each qualified low-income building in the project for each year of the compliance period including maintaining a VHFA Compliance Monitoring Status Report ([Exhibit 18](#)), which documents the following information:

- Total number of residential rental units in the building and total number of LIHTC units in the building (including the total square footage of the residential units and the LIHTC units);
- Building Identification Number;
- Placed in service date;
- Tenant's Name, unit number, and number of bedrooms, including square footage of each residential rental unit;
- Number of occupants in each low-income unit;
- Move-in and move-out dates for all residential units;
- Rent charged for each residential rental unit, including tenant portion of rent, rental subsidy and utility allowance;
- Date of initial and annual tenant income certification for each low-income unit;
- Documentation supporting each low-income tenant's income certification:
 - Copy of the tenant's federal income tax return, IRS Form W-2, or verifications of income from third parties;
 - Tenant income is calculated in a manner consistent with the determination of gross annual income under Section 8 of the U.S. Housing Act of 1937 (Section 8) ([Exhibit 35](#) , At Website: Select Library, Select All Handbooks and Notices, Search, Insert document number 4350.3, Submit), which is not the same as the determination of gross income for federal income tax liability;
 - For tenants receiving housing assistance payments under Section 8 (tenant-based subsidy), the documentation requirement is satisfied if the public housing authority provides copy of the HUD 50058 form or a written statement to the owner declaring that the tenant's income does not exceed the applicable income limit. A written certification from the housing authority should include gross income, tenant portion of

rent, utility allowance, and effective date and must be signed. In addition, please fill out a Tenant Income Certification ([Exhibit 26](#)) with the information provided by the public housing authority. The TIC should be signed by both the owner and the resident;

- Character and use of the nonresidential portion of the building included in the building's eligible basis. For example, 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 development;
- Low-income unit vacancies in the building and information showing when, and to whom, the next available units were rented;
- Eligible basis and qualified basis of the building at the end of the first year of the credit period; and
- Records of the move-in and move-out dates of market rate units to verify the Available Unit Rule ([Exhibit 6](#), At Website: Select Search/Browse CFR Titles, Scroll Down, Select Title 26, Select Browse Parts 1.1-1.60, Select Part 1, Select 1.42-15) is implemented properly.

b) Records Retention

Developments with tax credit eligible units are required to retain all records as described above for at least six (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 six (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.

2. CERTIFICATION AND REVIEW PROVISIONS

a) Certification Provision

Developments with tax credit eligible units must certify at least annually to the VHFA that they met the following requirements for the preceding 12-month period using the Owner's Certificate of Continuing Program Compliance form ([Exhibit 25](#)):

- The project meets the minimum set-aside requirement of 20-50 or 40-60;
- There has been no change in the applicable fraction for any building in the project. If it changes, list the applicable fraction to be reported to the IRS for each building in the project for the certification year;
- The owner has received an annual Tenant Income Certification ([Exhibit 26](#)) from each low-income resident and documentation to support that certification;
 - OR the owner has a 100% tax credit project and is eligible for a recertification waiver and is using self-certification forms ([Exhibit 26-1](#)) only after they have completed an initial Tenant Income Certification from each low-income resident with supporting documentation, and have also completed the recertification at the first anniversary;
- Each low-income unit in the project has been rent-restricted;

- All low-income units in the project are, and have been, for use by the general public and used on a non-transient basis (except for transitional housing for the homeless);
- No finding of discrimination under the Fair Housing Act ([Exhibit 34](#)) has occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), an adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgment from a federal court;
- Each building in the project is, and has been, 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 building code inspections has not issued a report of a violation for any building or low-income unit in the project. If a violation is reported, state the nature of violation and attach a copy of the violation report and any documentation of correction;
- There has been no change in the eligible basis of any building in the project since last certification submission. If a change has taken place, state the nature of change (e.g., a common area has become commercial space, a fee is now charged for a tenant facility or service formerly provided without charge, or the project owner has received federal subsidies with respect to the project which had not been disclosed to the allocating authority in writing);
- All tenant facilities included in the eligible basis of any building in the project, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings;
- If a low-income unit in the project has been vacant during the year, documentation that reasonable attempts were (or are being) made to rent the unit, or the next available unit of comparable size or smaller, to eligible tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income;
- If the income of tenants of a low-income unit in any building increased above the limit allowed, document that the next available unit of comparable or smaller size in that building was or will be rented to eligible tenants having a qualifying income;
- An extended low-income housing commitment (i.e. Housing Credit Housing Subsidy Covenant) was in effect, including the requirement that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a Section 8 voucher or certificate of eligibility. Owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment (The Housing Credit Housing Subsidy Covenant is not applicable to buildings with tax credits from years 1987-1989);
- During the preceding 12-month period no tenants in low-income units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under Section 42 of the Code;
- The owner received its credit allocation from the portion of the state ceiling set-aside for a project involving "qualified non-profit organizations" and the nonprofit entity materially participated in the operation of the development (found in the Housing Credit Housing Subsidy Covenant);

- There has been no change in the ownership or management of the project. If a change has taken place, detail the changes in ownership or management.

b) Review Provision

The Owner's Certificate of Continuing Program Compliance ([Exhibit 25](#)) must be submitted annually to VHFA along with the Fair Housing Questionnaire ([Exhibit 25-1](#)) and the LIHTC Questionnaire ([Exhibit 25-2](#)). This certificate must be completed in order to satisfy the certification provision requirements as listed above. VHFA must review the certification for compliance with the requirements of the Code and respond in writing.

3. MANAGEMENT POLICIES AND GUIDELINES

Owners should adopt policies and guidelines that apply to the management of developments containing tax credit eligible units. Following are some sample policies and guidelines:

a) Marketing and Advertising

Marketing is an essential means for establishing a successful rental development. The marketing or advertising strategy employed must satisfy the development's goal to provide housing for low- and moderate-income tenants. With this goal in mind, the strategies should target said population.

b) Number of Persons Per Unit

There is no required formula governing the number of persons allowed to occupy a unit based on size. It is important, though, to be consistent when accepting or rejecting applications. To avoid any inconsistencies, VHFA recommends the owner determine the number of people who will occupy each size unit, put that formula in writing, and include it as part of the management plan.

When calculating the number of bedrooms a family may need, it is helpful to count:

- All full-time members of the household;
- Children who are away at school, but live with the family during school recesses;
- Children who are subject to a joint custody agreement, but live in the unit at least 50 percent of the time;
- An unborn child (it is important to note that you count unborn children when determining household size and income limits);
- Foster children; and
- Live-in attendants.
 - Definition: "A person who lives with an elderly, disabled or handicapped individual and is essential to that individual's care and well-being, not obligated for the individual's support and would not be living in the unit except to provide the support services. While a relative may be considered to be a live-in attendant, they must meet the above requirements, especially the last." ([HUD Handbook 4350.3, Chapter 3, page](#)

[3-8:At Website: Select Library, Select All Handbooks and Notices, Search, Document 4350.3, Submit\)](#)

- Since a spouse would be living in the unit for reasons other than providing support services, a spouse does not qualify as a live-in attendant.

c) Resident Manager's Unit:

Facilities that are functionally related and subordinate to residential rental units are considered residential rental property. Examples of such facilities are swimming pools and similar recreational facilities, parking areas and other facilities reasonably required for the project. Units for resident managers or maintenance personnel would be considered facilities reasonably required for a project. ([Exhibit 7](#))

The adjusted basis of a unit occupied by a full-time resident manager is included in the eligible basis of a qualified low-income building, but the unit is excluded from the applicable fraction for purposes of determining the building's qualified basis.

d) Maintenance

It is the owner's responsibility to conduct an efficient maintenance program to ensure compliance with basic health, safety, and habitability standards that meet local and state codes. The condition and general appearance of the project will be taken into consideration by VHFA during an on-site inspection.

Each building and each unit in the project must be suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards). If the state or local government entity responsible for making building code inspections issues a report of a violation for any building or low-income unit in the project, the nature of the violation must be reported in writing to VHFA and a copy of the violation report must be attached. Also attach any documentation noting that the violation has been corrected to the inspector's satisfaction.

4. QUALIFICATION OF APPLICANTS

During the initial visit to the complex, applicants for low-income rent restricted units should be advised that the project has maximum income limits and the anticipated income of all persons expecting to occupy the unit must be verified and included on a Tenant Income Certification prior to occupancy.

a) The Application

A fully completed application ([Exhibit 24](#)) is critical to an accurate determination of eligibility. The information furnished on the application should be used as a tool to determine all sources of income including total assets and asset income. It is management's

responsibility to obtain sufficient information on all applicants to completely process the application at the time of application. The application should include:

- The name, age, relationship, and sex of each person who will occupy the unit (legal name should be given just as it will appear on the Lease and Tenant Income Certification);
- Full-time Student Status of each person, 18 years or older, in the household;
- All sources and amounts of current and anticipated gross annual income expected during the twelve month certification period;
- Assets currently owned and whether family members disposed of assets for less than fair market value during the previous two years; and
- Signature of the applicant(s) and the date the application was completed. It may be necessary to explain to the applicant(s) that all information provided is considered confidential and will be handled accordingly.

b) General Verification Requirements

To ensure compliance with LIHTC regulations, verification of all sources of income including asset income must be obtained. Management must have verifications prior to the execution of the Tenant Income Certification ([Exhibit 26](#)). Verifications must include information acceptable to the VHFA and be consistent with income determinations under Section 8. Chapter 5 of the Section 8 Handbook 4350.3 ([Exhibit 35](#) At Website: Select Library, Scroll Down, Select Handbooks & Notices, Click Housing, Search, Enter 4350.3 under Document Number, Submit) details income and asset determination.

General verification requirements are to:

- Verify all regular sources of income for each applicant;
- Obtain written verification of income directly from the source; and
- Retain all verification documentation for at least three years after an applicant is rejected or after a unit has been vacated.

c) Verification Requirements

All factors affecting income eligibility must be verified.

All verifications must be documented in the applicant/tenant's file and must be kept in a way that allows the monitoring agent to audit them.

Three methods of verification are acceptable. They are, in order of acceptability:

- Third-Party Verifications:
 - Written: Management must mail, email or fax directly to third-party (should not be hand-carried by the tenant); or
 - Oral: A written clarification must be filled out and signed by the manager and placed in the tenant file (direct contact with a reliable source).

- Review of documents, only when third party verification is not possible.
 - Tenant certification (notarized statement), when third-party verification or review of documents is not possible or is delayed beyond four weeks, but only after follow up attempts have been made.
- d) Effective Term of Verification
- Verifications are valid for 120 days from the date of receipt by the owner.
 - If verifications are more than 120 days old from the effective date of the tenant income certification, new written verifications must be obtained.
 - Time limits do not apply to information that does not need to be re-verified annually (age, handicap/disability status, etc.).
- e) Acceptable Forms of Verification

Owners are required to develop verification forms and procedures that comply with these requirements. Acceptable forms of verification for specific types of income situations are as follows:

(1) Employment Income

If the resident is employed, VHFA requires that an Employment Verification form be executed ([Exhibit 28](#)). Every effort must be made to secure third-party verification, but if you are unable to obtain a completed form, you must get:

- A statement from employer on company letterhead; or
- Current check stubs or earnings statements showing the employee's gross pay per period and frequency of pay; or
- Notarized statements or affidavits signed by the applicant/tenant along with the most recent income tax returns providing the amount of income (including income from tips and other gratuities).

(2) Self-Employment Income

- Accountant's or bookkeeper's statement of net income; or
- Audited or unaudited financial statement(s) of the business along with a notarized statement from the applicant giving the anticipated income for the twelve months immediately following certification; or
- The prior year's complete as-filed and signed federal income tax return.

(3) Social Security, Pension, SSI, Disability Income

- Benefit verification completed by the agency providing the benefits; or

- Award or benefit notification letters prepared and signed by the authorizing agency and sent to the resident. Please note: since checks or bank deposit slips show only net amounts remaining after deducting SSI or Medicare, they may be used only if award letters cannot be obtained.

(4) Unemployment Compensation

- Verification completed by the unemployment compensation agency; or
- Records from unemployment office stating payment dates and amounts.

(5) Welfare

For As-Paid Programs - The welfare agency's written schedule states the maximum amount a family may receive for shelter and utilities and, if applicable, any factors used to reduce the client's grant

(6) Alimony or Child Support Payments

- Copy of the court separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules; or
- A letter from the person paying the support; or
- Copy of the latest check and documentation of how often the check is received;
- Or, as a last resort, the applicant's notarized statement or affidavit of the amount being received.

(7) Recurring Contributions and Gifts

- Notarized statement or affidavit signed by the person providing assistance, giving the purpose, dates and value of the gifts; or
- A letter from a bank, attorney or a trustee providing required verification; or
- Only when the above is not possible will the applicant's notarized statement giving the same information suffice.

(8) Scholarships, Grants, and Veteran's Administration Benefits

- Benefactor's written confirmation of amount of assistance, and educational institution's written confirmation of expected cost of the student's tuition, fees, books and equipment for the next 12 months;
- Copies of latest benefit checks, if benefits are paid directly to the student; or
- Copies of the canceled checks or receipts for tuition, fees, books and equipment, if such income and expenses are not expected to change for the next 12 months.

(9) Unemployed Applicants

- The income of unemployed applicants with regular income from any source such as Social Security, pension, recurring gifts, etc., must be verified as covered previously.
- If an applicant is currently unemployed and claiming zero (0) income, the applicant must provide evidence of current anticipated income for the certification year by executing an Zero Income Form ([Exhibit 31](#)), and by providing a signed copy of the prior year's complete federal income tax return. The Zero Income Form is a required VHFA form.

(10) Family Assets Now Held

For non-liquid assets, collect enough information to determine the current cash value, which is the net amount the family would receive if the asset were converted to cash. Acceptable documentation includes the following:

- Verification forms, letters or documents from a financial institution, broker, etc.
- Passbooks, checking account statements, certificates of deposit, bonds, or financial statements completed by a financial institution or broker.
- Quotes from a stockbroker or realty agency as to the net amount the family would receive if they liquidated securities or real estate.
- Real estate tax statements if tax authority uses approximate fair market value.
- Copies of closing documents showing the selling price, the distribution of the sales proceeds and the net amount to the borrower.
- Appraisals of personal property held as an investment.
- Applicant's notarized statements or signed affidavits describing assets or verifying cash held at the applicant's home or in safe deposit boxes.
- Assets disposed of for less than Fair Market Value during the two years preceding the effective date of certification or recertification.
 - For all certifications and recertifications, verify family's certification as to whether any member has disposed of assets for less than fair market value during the two years preceding the effective date of the certification or recertification.
 - If the family certifies that they did dispose of assets for less than fair market value, a certification that shows: (1) all assets disposed of for less than Fair Market Value; (2) the date the assets were disposed of; (3) the amount the family received; and (4) the assets' fair market value at the time of disposition.

(11) Savings Account Interest Income and Dividends

- Account statements, passbooks, certificates of deposit, etc., if they show enough information and are signed by the financial institution.
- Broker's quarterly statements showing value of stocks or bonds and the earnings credited to the applicant.
- If an owner accepts an IRS Form 1099 from the financial institution, the owner must adjust the information to project earnings expected for the next 12 months.

(12) Interest Income from Sale of Real Property

- A letter from an accountant, attorney, real estate broker, the buyer or a financial institution stating interest due for the next 12 months. A copy of the check paid by the buyer to the applicant is not sufficient since appropriate breakdowns of interest and principal are not included.
- Amortization schedule showing interest for the 12 months following the effective date of the certification or recertification.

(13) Rental Income from Property Owned by the Applicant

Owners must adjust these amounts for changes expected during the next 12-month period.

- IRS Form 1040 with Schedule E (Rental Income).
- Copies of latest rent checks, leases, or utility bills.

5. ANNUAL INCOME

Annual Income is the gross amount of income anticipated to be received by all adult members of the household during the 12 months following the date of certification or recertification. Current circumstances should be used to project income, unless verification forms or other verifiable documentation indicate that an imminent change will occur.

Please refer to Chapter 5 of the HUD Handbook 4350.3 ([Exhibit 35](#) At Website: Scroll Down to 4350.3) for further guidance, clarification and detailed descriptions of what is included and excluded in annual income.

Please note that the Section 8 allowances and adjustments to income (i.e. elderly deductions, child deductions, medical expenses and childcare expenses) are not applicable to LIHTC projects. The LIHTC program uses gross income (not adjusted income) to qualify potential households.

a) Computing Annual Income

- Use current circumstances to anticipate income, unless verification forms indicate an imminent change.
- All income is to be converted to an annual figure.
- Annualize full-time employment income as follows:
 - Multiply hourly wages by the number of hours worked per year (2080 hours for full-time employment with no overtime).
 - Multiply weekly wages by 52.
 - Multiply bi-weekly wages by 26.
 - Multiply semi-monthly wages by 24.

- Multiply monthly wages by 12.
- To annualize anything other than full-time income, multiply the wages by the actual number of hours or weeks the person is expected to work. If a family indicates that income might not be received for the full 12 months, you must still annualize the income and advise the family to report any subsequent change.

6. ASSETS

Owners must obtain information regarding the tenant's assets and the income derived from these assets at the time of initial certification and again at recertification.

The IRS issued a Revenue Ruling ([Exhibit 10](#)) stating that the owner may satisfy the documentation requirement for income from assets for a low-income tenant whose Net Family assets do not exceed \$5,000 by annually obtaining a signed, sworn statement. A signed and dated "Under \$5,000 Asset Certification" form ([Exhibit 30](#)) must be in the tenant's file to satisfy this requirement. Please note that this only applies to LIHTC developments. Section 8 and Rural Development properties still require you to verify all assets.

If the tenant certifies that total assets are more than \$5,000 in value, then you must verify these assets.

Please refer to Chapter 5 of the HUD Handbook 4350.3 ([Exhibit 35](#) At Website: Scroll Down to 4350.3) for further guidance, clarification and detailed descriptions of assets to be included and excluded, as well as valuing assets and determining imputed income from assets.

7. INCOME CERTIFICATION GUIDELINES

a) Tenant Income Certifications

If the applicant meets the eligibility requirements, an initial Tenant Income Certification ([Exhibit 26](#)) must be completed, signed and dated. The form is a legal document which, when fully executed, qualifies the applicant to live in the LIHTC set-aside units in the development. A standardized form is required for the LIHTC program. The Tenant Income Certification should be complete and include:

- Effective date and move-in date;
- Property name, address, county, building identification number, unit number and number of bedrooms;
- The name, age, relationship, Social Security number, sex and full-time student status of each person who will occupy the unit;
- Gross annual income and income from assets;
- Tenant-paid rent, utility allowance, gross rent, subsidy amount, and other non-optional charges;
- Maximum LIHTC income limits and rent limits;
- Date and signatures of all adult members of household;
- Owner and/or owner representative signature and date.

b) Additional Income Certification Guidelines

- Management should instruct the prospective low-income resident to sign and date the Certification.
- No one may live in a unit in the development unless (s)he is included on the lease.
- In the event a roommate or family member vacates the unit, the unit will remain as a qualified set-aside as originally certified. The resident file should be documented when any household member vacates the unit.
- Early in their initial visit to the project, applicants for low-income rent restricted units should be advised that there are maximum income limits and eligibility requirements that apply to these units. Management should explain to the applicants that the anticipated income of all persons expected to occupy the unit must be verified and included on a Tenant Income Certification and Income Verification prior to occupancy.
- Upon each anniversary of the resident's move-in date, each resident's anticipated income must be re-verified and an Income Certificate must be completed. This needs to be done to determine that the unit is still occupied by an eligible household.
- New legislation signed on 7/30/2008 waives the annual recertification requirement for 100% low income tax credit properties. Other funding sources such as Section 8, HOME, and RD still require annual income certifications, however, as with all requirements, the most stringent will apply. VHFA requires an initial tenant income certification and then a recertification at the tenant's first year anniversary. This ensures the tenant was initially eligible, and allows VHFA to review any changes in the household composition. Thereafter the annual recertification would be waived, when permitted by other funding sources. Please note although the verification process is waived, an annual tenant self certification ([Exhibit 27](#)), which includes tenant income, student status and household composition must be done. This information needs to be collected in order to apply the available unit rule. Since the available unit rule is statutory, it doesn't go away when applying the waiver.

(1) Adding an Household Member

- In the event the resident in a tax credit unit later wishes to have an additional person move into the unit, the following steps must be taken:
 1. The prospective resident must complete an application as required of the initial resident;
 2. Since Interim Recertifications are not processed in LIHTC developments, you should screen the potential applicant to make sure they have good references and would make a good tenant. You must add the new household member to the lease, but you are not required to verify income and assets until the annual recertification is due. Although it is highly recommended that you have a tenant do a self-certification of income.

(2) Maximum Income Limits

The U.S. Department of Housing and Urban Development (HUD) annually publishes the median income limits at 50% of median income ([Exhibit 33](#)), otherwise known as ‘Very Low-Income’. You will receive updated limits annually from VHFA upon receipt of HUD published limits. Please note that the owner is responsible for calculating income and rents; be sure to check VHFA’s charts for accuracy. You are allowed 45 days from the HUD issue date to implement the new income limits.

HUD also publishes the 30% area median income limits and the 80% income limits ([Exhibit 33](#)). There may be a need for these limits in some of the mixed-use developments.

You can simply use the chart of maximum income and rent limits provided by VHFA or to understand the methodology used to arrive at these limits, please see the examples below.

EXAMPLE:

- To determine the maximum income level at 60 percent of median income, multiply the current HUD published maximum income limit at 50% by 1.2.
 1. In 2002, a 4-person household in Addison County has a maximum income limit of \$23,000 at 50% of median income
 - $\$23,000 \times 1.2 = \$27,600$ (maximum income limit at 60% of median)

(3) Rents Based on Bedroom Size

Projects with tax credit allocations or tax-exempt bond financing from 1990 on, and pre-1990 (1987-1989) developments that made the one-time election ([Exhibit 8](#) – see below) to switch in February of 1994 use rents based on bedroom size ([Exhibit 19](#)).

Pre-1990 developments that made the one-time election must use rents based on bedroom size for all move-ins after 2/7/94. Rents must be calculated by the number of people occupying the household (“household size”) for all move-ins prior to 2/7/94.

EXAMPLE:

- To determine the maximum rent level at 50 & 60 percent of median income:
 1. Multiply the number of bedrooms by 1.5 to determine the size of household (see table below);

BEDROOM SIZE	SIZE OF HOUSEHOLD
0	1
1	1.5
2	3
3	4.5
4	6

2. Go to the income chart and find the appropriate family size and then multiply by 30 percent and divide by 12 months.

- Below is the maximum rent calculation for both a one and two bedroom unit in Addison County using 2002 income limits at both 50 and 60% of median income.
 1. 1 Bedroom (50%):
 - Table above shows that 1BR = 1.5 persons or
1 person income limit + 2 person income limit ÷ 2 = Average
\$16,100 + \$18,400 ÷ 2 = \$17,250
 - \$17,250 x 30% ÷ 12 = \$431 (maximum rent at 50% of median)
 2. 1 Bedroom (60%):
 - Table above shows that 1BR = 1.5 persons or
1 person income limit + 2 person income limit ÷ 2 = Average
\$19,320 + \$22,080 ÷ 2 = \$20,700
 - \$20,700 x 30% ÷ 12 = \$517 (maximum rent at 60% of median)
 3. 2 Bedroom (50%):
 - Table above shows that 2BR = 3 persons
\$20,700
 - \$20,700 x 30% ÷ 12 = \$517 (maximum rent at 50% of median)
 4. 2 Bedroom (60%):
 - Table above shows that 2BR = 3 persons
\$24,840
 - \$24,840 x 30% ÷ 12 = \$621 (maximum rent at 60% of median)

(4) Rents Based On Household Size

Projects with tax credit allocations or with tax-exempt bond financing from 1987, 1988, or 1989 who did not switch in early 1994 to the rents based on bedroom size method must use the number of people in the household method to calculate rents.

(5) Maximum Rents

As stated above, in order to be a rent-restricted unit, gross rent must not exceed 30% of the applicable income limit. The tenant's portion of rent plus utility allowances must be less than or equal to the maximum tax credit rent (gross rent) to ensure compliance with the tax credit program. Gross rent does not include: Section 8 assistance payments, RD rental assistance, overage paid to RD by the owner, tenant services paid by the owner or optional tenant services paid by the tenant.

Maximum tax credit rents change as new income limits are published. To ensure that rents will not be reduced due to a decrease in income limits, the IRS published a Revenue Procedure ([Exhibit 9](#)) to set a rent floor. The rent floor procedure provides that rents will never be less than the first year of the credit period.

(6) Section 8 Assistance

Some Section 8 developments have current rents that are higher than the maximum tax credit rent. The IRS regulations have taken this into consideration ([Exhibit 12](#), Scroll

down to 42(g)(2)(E)). The tenant's portion of rent in a Section 8 unit, where federal rental assistance is reduced as tenant's income increases, may increase above the maximum tax credit rent. The rule states that as long as the household is receiving at least one dollar of subsidy and the federal government's burden is being reduced then rent can be charged above the tax credit maximum.

(7) Rural Development Rental Subsidy

In Rural Development properties, "overage" results when 30% of the household income produces a rent that exceeds the RD Basic Rent.

If a household's rent increases due to an increase in income, the household cannot be charged more than the maximum LIHTC rent in order to comply with tax credit regulations.

The one exception ([Exhibit 13](#), Scroll down to 42(g)(2)(B)(iv)) to the rule applies to projects that received tax credit allocations in 1991 or later. In such instances, rents exceeding the maximum LIHTC rent can be charged, but only to the extent that the "overage" is paid to RD.

For projects receiving allocations in 1987-1990, this does not apply since the provision is not retroactive. A household cannot be charged more than the maximum LIHTC rent. In this event, the owner is required to pay RD the overage amount.

(8) Tenant Services

Any charge for tenant services or facilities that is required as a condition of occupancy must be included in gross rent. ([Exhibit 5](#), At Website: Select Search/Browse CFR Titles, Scroll Down, Select Title 26, Select Browse Parts 1.1-1.60, Select Part 1, Select 1.42-11)

Optional services are not required as a condition of occupancy and therefore would be excluded from gross rent.

(9) Utility Allowances

If utilities are paid directly by the tenant, then you must include a utility allowance in gross rent. Please note that telephone, cable TV and internet costs are not included in the utility allowance. Also, **utility allowances are not available if tenant payments for utilities are made by or through the owner.** This includes sub-metering, where the owner pays the utility company and bills the tenant for the usage.

There is often a lot of confusion about which procedures are acceptable when determining the proper utility allowances for any housing credit property. According to IRS regulations, which were recently updated and published in the Federal Register on July

29, 2008 ([Exhibit 4](#), At Website: In the Quick Search Box, Type in “Section 42 Utility Allowance Regulations Update”), the following are the utility allowance guidelines:

- For Rural Development (RD) units, you must use the RD utility allowance schedule.
- For Section 8 project-based units, you must use the HUD utility allowance schedule.
- For Section 8 certificate or vouchers units, you must use the local public housing authority utility allowance schedule.
- For all other units there are five options, the owner must:
 - use the local PHA utility allowance schedule; or
 - obtain a utility company estimate; or(Please note the following 3 options are new as of 7/29/08)
 - obtain a housing credit agency utility cost estimate provided the agency agrees to provide the estimate (this option may be obtained anytime during the extended use period); or
 - calculate the utility estimate using HUD’s Utility Schedule Model ([Exhibit 4-1](#)), at Website: Click on HUD Utility Model); or
 - hire an unrelated qualified professional (approved by the credit agency) to calculate utility estimate using an energy consumption model.

For options 2-5 above, please note that the owners are required to provide copies of the proposed new utility allowances to the tenants 90 days before the date the new utility allowances will become effective. Also, owners must provide a copy of the proposed utility allowances to the housing credit agency.

The final rule (7/29/08) makes allowances for new buildings. The reviews, updates and initial implementation of utility allowances aren’t required until the earlier of:

1. the date the building is 90% occupied for 90 days; or
2. the end of the first year of the tax credit period.

Property owners are required to pay for all costs associated with obtaining estimates in options 2-5.

These utility allowances are applied throughout the buildings’ 15-year compliance period and must be reviewed and updated at least annually.

(10) Available Unit Rule

- If a household’s income increases above 140% of the income limit, the unit continues to be treated as a low-income unit as long as the rent remains restricted ([Exhibit 6](#), At Website: Select Search/Browse CFR Titles, Scroll Down, Select Title 26, Select Browse Parts 1.1-1.60, Select Part 1, Select 1.42-15). This general rule only applies if the household’s income initially met the income requirements and the unit continues to be rent-restricted. All available comparable units in the building, not only the next available comparable unit, must be rented to qualified residents to retain the low-income status of the over-income units.

- Comparable unit means a residential unit in a low-income building that is comparably sized or smaller than the over-income unit. To determine comparable size, a comparable unit must be measured (bedroom size or square footage) by the same method used to determine qualified basis for the credit year in which the comparable unit became available.
- When a current low-income tax credit household moves to a different unit within the same building, the units exchange status. In other words, a transfer within the same building is no longer treated as a new household.
- When a current low-income tax credit household moves to a unit in a different building, the household is considered a new household and you must treat them as a new move-in.
- When a unit has a reservation that is binding under local law it is no longer considered available for rent.
- The available unit rule applies separately to each building in the project.
- When any available comparable unit is rented to a nonqualified resident, all over-income units for which the available unit was a comparable unit (within the same building) lose their status as low-income units.
- With the enactment of the Housing and Economic Recovery Act of 2008 (HR 3221), both the tax exempt bond program and the low income housing tax credit program apply the available unit rule on a building by building basis.

(11) Treatment of Vacant Units

When a unit becomes vacant, the unit maintains the status of the former household. Therefore, if the former household was tax credit eligible, the vacant unit continues to be counted as a tax credit unit ([Exhibit 11](#), At Website: Select Search/Browse CFR Titles, Scroll Down, Select Title 26, Select Browse Parts 1.1-1.60, Select Part 1, Select 1.42-5(c)(ix)). IRS regulation 26 CFR 1.42-5(c)(ix) states:

“If a low-income unit in the project became vacant during the year, that reasonable attempts were or are being made to rent the 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.”

- As previously stated: Comparable unit means a residential unit in a low-income building that is comparably sized or smaller than the vacant unit. To determine comparable size, a comparable unit must be measured (bedroom size or square footage) by the same method used to determine qualified basis for the credit year in which the comparable unit became available.
- Make sure that reasonable attempts are being made to market the vacant tax credit unit. The tax credit unit or a comparable unit in the project must be rented to a qualified resident before any market units are rented.
- If you have a binding legal agreement or a signed lease on any unit (yet the resident has not yet moved in), this unit is no longer considered available or vacant.

- The vacant unit rule is applied on a project wide basis. That means that when a tax credit unit becomes vacant, all comparable units in the project must be rented to tax credit eligible residents before you rent the market units.

(12) Full-time Students

A full-time student is defined as any individual who has been, or will be, a full-time student at an educational institution, other than correspondence school, with regular facilities and students for a minimum of five months of the year in which the application is submitted. Both the Student Verification form ([Exhibit 29](#)) and the Student Status Verification form ([Exhibit 32](#)) are helpful tools in determining full-time student status.

- Units occupied entirely by full-time students are generally ineligible to qualify for tax credits. Exceptions for full-time students are made in a few cases as follows:
 - all household members are full-time students, and such students are married and file a joint tax return;
 - the household consists of single parents and their children, and such parents and children are not dependents of another individual;
 - at least one member of the household receives assistance under Title IV of the Social Security Act (i.e., AFDC assistance);
 - at least one member of the household is enrolled in a job training program receiving assistance under the Job Training Partnership Act or similar federal, state, or local laws;
 - full-time student formerly in foster care.
- For purposes of qualifying student households, the following should be considered :
 - A single person household is ineligible if (s)he is a full-time student at the time of initial occupancy or will be at any time during the certification period (unless the individual meets one of the student exemptions);
 - a household of students is eligible if it includes at least one part-time student or meets one of the student exceptions;
 - a household containing full-time students and at least one child (who is not a full-time student) is an eligible household;
 - Temporary Assistance for Needy Families is an acceptable Title IV program exception.

With the enactment of the Housing and Economic Recovery Act of 2008 (HR 3221), both the tax exempt bond program and the low income housing tax credit program are now consistent with how they apply the student rule.

In addition, agencies should encourage LIHTC property managers to utilize a lease provision in all LIHTC Credit properties requiring tenants to notify management of any change in student status.

c) Recertifications

A new Tenant Income Certification ([Exhibit 26](#)) must be done annually; this means that you must recertify each resident within 12 months of the effective date of the last Tenant Income Certification. Failure to recertify within the 12 month period is a reportable noncompliance finding.

Interim certifications are not a requirement of the LIHTC program.

8. CONCLUSION

This manual was written to explain and to standardize the administration of the Low-income Housing Tax Credit Program for projects located in Vermont. It is intended to answer questions most frequently asked about the program, but is not a substitute for the current regulations under Section 42 of the Internal Revenue Code.

The requirements presented must be met fully and consistently in order to retain the tax credits. If there are any questions that have not been fully answered, please feel free to contact the person at VHFA listed below.

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9. EXHIBITS

IRS REGULATIONS:

[Exhibit 1](#): **Section 42 of the Internal Revenue Code**

[Exhibit 2](#): **Compliance Monitoring Regulations** (At Website: Select Browse/Search CFR Titles, Scroll Down, Select first box in Title 26. Scroll to bottom and click Continue. Select Browse Parts 1.1-1.60, Select Part 1, Select 1.42-5)

[Exhibit 3](#): **For Use by General Public** (At Website: Select Browse/Search CFR Titles, Scroll Down, Select first box in Title 26. Scroll to bottom and click Continue. Browse Parts 1.1-1.60, Select Part 1, Select 1.42-9)

[Exhibit 4](#): **Utility Allowances** (At Website: In the Quick Search Box, Type in “Section 42 Utility Allowance Regulations Update”)

[Exhibit 4-1](#): **HUD’s Utility Schedule Model** (At Website: Click on HUD Utility Model)

[Exhibit 5](#): **Tenant Services** (At Website: Select Browse/Search CFR Titles, Scroll Down, Select first box in Title 26. Scroll to bottom and click Continue. Browse Parts 1.1-1.60, Select Part 1, Select 1.42-11)

[Exhibit 6](#): **Available Unit Rule** (At Website: Select Browse/Search CFR Titles, Scroll Down, Select first box in Title 26. Scroll to bottom and click Continue. Browse Parts 1.1-1.60, Select Part 1, Select 1.42-15)

[Exhibit 7](#): **Resident Manager’s Unit** (IRS Revenue Ruling 92-61) – attached to bottom of manual

[Exhibit 8](#): **One Time Election to Change Rent Formula** (IRS Revenue Procedure 94-9) – attached to bottom of manual

[Exhibit 9](#): **Gross Rent Floor** (IRS Revenue Procedure 94-57) – attached to bottom of manual

[Exhibit 10](#): **Documentation Requirement for Assets Under \$5,000** (IRS Revenue Procedure 94-65) – attached to bottom of manual

[Exhibit 11](#): **Treatment of Vacant Units** (At Website: Select Browse/Search CFR Titles, Scroll Down, Select first box in Title 26. Scroll to bottom and click Continue. Browse Parts 1.1-1.60, Select Part 1, Select 1.42-5, Scroll down to 5(c)(ix))

[Exhibit 12](#): **Section 8 Assistance** (At Website: Scroll down to 42(g)(2)(E))

[Exhibit 13](#): **RD Assistance** (At Website: Scroll down to 42(g)(2)(B)(iv))

IRS FORMS:

[Exhibit 14](#): **IRS Form 8609**

[Exhibit 15](#): **IRS Schedule A of Form 8609**

[Exhibit 16](#): **IRS Form 8823**

[Exhibit 16-1](#): **IRS Form 8586**

[Exhibit 16-2](#): **IRS Form 3800**

VHFA DOCUMENTS AND FORMS:

[Exhibit 17](#): **Qualified Allocation Plan (QAP)**

[Exhibit 18](#): **VHFA LIHTC Compliance Monitoring Status Report Form**

[Exhibit 19](#): **VHFA Income Limit and Rent Limit Charts by Bedroom Size**

[Exhibit 20](#): **Income Limit and Rent Limit Chart – 30/50/60/80**

[Exhibit 21](#): **VHFA Tenant File Review Form**

[Exhibit 22](#): **VHFA Physical Inspection Form**

[Exhibit 23](#): **VHFA Unit Inspection Form**

[Exhibit 24](#): **Sample Housing Application**

REQUIRED FORMS:

[Exhibit 25](#): **Owner’s Certificate of Continuing Program Compliance Form**

[Exhibit 25-1](#): **Fair Housing Questionnaire**

[Exhibit 25-2](#): **LIHTC Questionnaire**

[Exhibit 26](#): **Tenant Income Certification Form**

[Exhibit 27](#): **Resident Annual Self Certification**

[Exhibit 28](#): **Employment Verification Form**

[Exhibit 29](#): **Student Verification Form**

[Exhibit 30](#): **Under \$5,000 Asset Certification Form**

[Exhibit 31](#): **Zero Income Certification Form**

[Exhibit 32](#): **Student Status Verification**

HUD REGULATIONS:

[Exhibit 33](#): **HUD Published Income Limits** (30%, 50% and 80% of median)

[Exhibit 34](#): **Fair Housing Amendments Act of 1988** (Title 42 of US Code, Chapter 45, Subchapter I, Sec. 3604)

[Exhibit 35](#): **Chapter 5 of the HUD Section 8 Handbook 4350.3** (At Website: Scroll down to 4350.3)

[Exhibit 36](#): **Chapter 5 Exhibits of the HUD Section 8 Handbook 4350.3** (At Website: Scroll down to 4350.3)

EXHIBIT 7: Resident Manager's Unit (IRS Revenue Ruling 92-61)

Part 1. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 42. – Low-Income Housing Credit

(Also Section 103, 142; 1.103-8.)

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

Rev. Rul. 92-61

ISSUE

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

FACTS

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

LAW AND ANALYSIS

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

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

Section 42(c)(1)(B) of the Code defines the applicable fraction as the smaller of the unit fraction or the floor space fraction. Section 42(c)(1)(B) defines the unit fraction as the fraction the numerator of which is the number of low-income units in the building and the denominator of which is the number of residential rental units, whether or not occupied, in the building. Section 42(c)(1)(D) defines the floor space fraction as the fraction the numerator of which is the total floor space of the low-income units in the building and the denominator of which is the total floor space of the residential rental units, whether or not occupied, in the building. In general, under section 42(i)(3)(B), a

low-income unit is any unit that is rent-restricted and occupied by individual meeting the income limitation applicable to the building.

Section 42(d)(1) of the Code provides that the eligible basis of a new building is its adjusted basis as of the close of the first tax year of the credit period. Section 42(d)(4)(A) provides that, except as provided in section 42(d)(4)(B), the adjusted basis of any building is determined without regard to the adjusted basis of any property that is not residential rental property. Section 42(d)(4)(B) provides that the adjusted basis of any building includes the adjusted basis of property of a character subject to the allowance for depreciation used in common areas or provided as comparable amenities to all residential rental units in the building.

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

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

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

LP's resident manager's unit is properly considered a facility reasonably required by the project, not a residential rental unit for purposes of section 42 of the Code. Consequently, the unit is not included in either the numerator or denominator of the applicable fraction under section 42(c)(1)(B) for purposes of determining the qualified basis of the building for the first year of the credit period.

Therefore, as of the end of the first year of the credit period, the adjusted basis of the unit occupied by LP's resident manager is included in the building's eligible basis under section 42(d)(1) of the Code, but the unit is excluded from the applicable fraction under section 42(c)(1)(B). Because all of the residential rental units in LP's building are low-income units, the applicable fraction for the building is "one" (69/69, using the unit fraction).

If in a later year of the credit period, the resident manager's unit is converted to a residential rental unit, the unit will be included in the denominator of the applicable fraction for that year. If the unit also becomes a low-income unit in that year, the unit will be included in the numerator of the

applicable fraction for that year. In this case, the applicable fraction will also be “one” (70/70, using the unit fraction).

HOLDING

The adjusted basis of a unit occupied by a full-time resident manager is included in the eligible basis of a qualified low-income building under section 42(d)(1) of the Code, but the unit is excluded from the applicable fraction under section 42(c)(1)(B) for purposes of determining the building’s qualified basis.

EFFECTIVE DATE

The internal Revenue Service will not apply this revenue ruling to any building placed in service prior to September 9, 1992, or to any building receiving an allocation of credit prior to September 9, 1992, unless the owner files or has filed a return that is consistent with this ruling. Similarly, the Service will not apply this revenue ruling to any building described in section 42(h)(4)(B) of the Code with respect to which bonds were issued prior to September 9, 1992, unless the owner files or has filed a return that is consistent with this ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Paul F. Handleman of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Handleman at (202) 622-3040 (not a toll free call).

EXHIBIT 8: One Time Election to Change Rent Formula (IRS Revenue Procedure 94-9)

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, Section 42.)

Rev. Proc. 94-9

SECTION 1. PURPOSE

This revenue procedure informs owners of low-income buildings how to make the election provided by § 13142(c)(1) of the Revenue Reconciliation Act of 1993 (RRA 1993), Pub. L. No. 103-66, 107 Stat. 416, 439-40 (1993). The election is available to owners of low-income buildings not covered by § 7108(e)(1) of the Revenue Reconciliation Act of 1989 (1989 Act), 1990-1 C.B. 210, 220, and allows these owners to determine the gross rent limitation for rent-restricted units under the number of bedrooms method of § 42(g)(2)(C) of the Internal Revenue Code.

SECTION 2. BACKGROUND

Section 7108(e)(1) of the 1989 Act changed the method for computing the maximum allowable gross rent in determining if a unit is rent-restricted under § 42(g)(2)(A). This 1989 Act amendment applies to allocations of housing credit dollar amounts (Allocations) made after 1989 (or, to bond-financed buildings placed in service after 1989, to the extent § 42(h)(4) applies to the building). Prior to the 1989 Act amendment of § 42(g)(2), the maximum allowable gross rent for a rent-restricted unit under § 42(g)(2)(A) was determined on the basis of, and varied in accordance with, the actual number of individuals occupying the unit. Under that method, the maximum allowable rent for a rent-restricted unit varies in accordance with the number of individuals occupying the unit.

For a building subject to § 7108(e)(1) of the 1989 Act, a unit in a building is rent-restricted if the gross rent for the unit does not exceed 30 percent of the imputed income limitation applicable to the unit under § 42(g)(2)(C). Section 42(g)(2)(C) provides that the imputed income limitation applicable to a unit is the income limitation that would apply under § 42(g)(1) to individuals occupying the unit if the number of individuals occupying the unit were as follows: (i) for a unit that does not have a separate bedroom, 1 individual, and (ii) for a unit that has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom. This method is known as the number of bedrooms method.

Section 13142(c)(1) of the RRA 1993 allows an owner of a low-income building not covered by § 7108(e)(1) of the 1989 Act to elect to determine the gross rent limitation under the number of bedrooms method of § 42(g)(2)(C). Thus, owners of low-income buildings that received Allocations before 1990 (or of bond-financed buildings placed in service before 1990, to the extent § 42(h)(4) applies to the building) can make the election provided for in § 13142(c)(1) of the RRA 1993.

Section 13142(c) of the RRA 1993 places the following conditions on this election: (1) the building owner must have met the requirements of § 42(m)(1)(B)(iii) (relating to state housing credit agency procedures for monitoring compliance with § 42); (2) the owner must make the election during the 180 day period beginning on the date of enactment of the RRA 1993; (3) the owner can only apply the number of bedrooms method to tenants first occupying any rent-restricted unit in the building after the date of the election, and the building owner must apply the number of bedrooms method to all rent

restricted units whose tenants first occupy any unit in the building after the date of the election; and (4) once made, neither the building owner nor any subsequent owner may revoke the election.

SECTION 3. SCOPE

This revenue procedure applies to owners of low-income buildings whose buildings were not subject to the amendments to § 42(g)(2) made by § 7108(e)(1) of the 1989 Act.

SECTION 4. ELECTION PROCEDURE

To make the election to determine the gross rent limitation based on the number of bedrooms method, a building owner must-

.01 By February 7, 1994, send a written statement signed under penalty of perjury to the Internal Revenue Service Center, P.O. Box 245, Philadelphia, PA 19255, that states:

(a) That the building owner elects to use the number of bedrooms method of § 42(g)(2)(C);

(b) That the building owner meets the requirements of the procedures of the compliance monitoring plan in effect on the date of the election that is implemented by the state housing credit agency responsible for monitoring the building;

(c) That the building owner will only apply the elected method to tenants first occupying any unit in the building after the date of the election; and

(d) The building identification number assigned to the building, the building or project name, the building or project address, and the owner's name and taxpayer identification number.

.02 Simultaneously send a copy of the election document to the state housing credit agency responsible for monitoring the building.

.03 Attach a copy of the election document to the building's 8609 Form filed for the tax year in which the building owner made the election.

.04 Keep a copy of the election document with the building's records. This copy must stay with the building's records regardless of any ownership transfer.

SECTION 5. EFFECTIVE DATE OF ELECTION

An election under section 4 of this revenue procedure made after publication or the revenue procedure is effective when filed with the Internal Revenue Service Center in Philadelphia, PA. An election under § 13142(c)(1) to use the number of bedrooms method made before the publication of this revenue procedure is effective when made if: (1) the building owner complied with the requirements of § 13142(c) of the RRA 1993, and (2) the building owner perfects the election by following the requirements in section 4 of this revenue procedure.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for elections made on or after August 10, 1993.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jeffrey A. Erickson of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Jeffrey A. Erickson at (202) 622-3040 (not a toll free call).

EXHIBIT 9: Gross Rent Floor (IRS Revenue Procedure 94-57)

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, §§ 42; 1.42-13(a).)

Rev. Proc. 94-57

SECTION 1. PURPOSE

This revenue procedure informs owners of qualified low-income housing projects and housing credit agencies (Agencies) when the gross rent floor in § 42(g)(2)(A) of the Internal Revenue Code takes effect.

SECTION 2. BACKGROUND

On May 5, 1993, new area median gross income (AMGI) figures went into effect for the United States Department of Housing and Urban Development programs and other federal programs that use AMGI figures, including the § 42 low-income housing tax credit program. In some areas, the AMGI level fell below previous levels.

Section 42(g)(1) defines a qualified low-income housing project as any project for residential rental use that meets one of the following requirements: (A) 20 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 50 percent or less of AMGI, as adjusted for family size, or (B) 40 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 60 percent or less of AMGI, as adjusted for family size.

Section 42(g)(2)(A) provides that, under § 42(g)(1), a residential unit is rent-restricted if the gross rent for the unit does not exceed 30 percent of the imputed income limitation applicable to the unit. Under § 42(g)(2)(C), the imputed income limitation applicable to a unit is the income limitation that would apply under § 42(g)(1) to individuals occupying the unit if the number of individuals occupying the unit were as follows: (i) in the case of a unit that does not have a separate bedroom, one individual, or (ii) in the case of a unit that has one or more separate bedrooms, 1.5 individuals for each separate bedroom.

For calculating gross rent on a rent-restricted unit, § 7108(e)(2) of the Revenue Reconciliation Act of 1989, 1990-1 C.B. 214, 220, amended § 42(g)(2)(A) to provide that the amount of the income limitation under § 42(g)(1) applicable for any period is not less than the limitation applicable for the earliest period the building that contains the unit was included in the determination of whether the project is a qualified low-income housing project (the gross rent floor). Section 42(g)(3)(A) provides that, except as otherwise provided in § 42(g)(3), a building is treated as a qualified low-income building only if the project (of which the building is a part) meets the requirements of § 42(g)(1) not later than the close of the first year of the credit period for the building.

Section 42(h)(1)(A) provides that the amount of credit determined under § 42 for any taxable year for any building shall not exceed the housing credit dollar amount allocated to the building under § 42(h). Under § 42(m)(2)(A), the housing credit dollar amount allocated to a project shall not exceed the amount an Agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. Section 42(m)(2)(B)

provides that in making the determination under § 42(m)(2)(A), an Agency shall consider (i) the sources and uses of funds and the total financing planned for the project, (ii) any proceeds or receipts expected to be generated by reason of tax benefits, (iii) the percentage of housing credit dollar amounts used for project costs other than the cost of intermediaries, and (iv) the reasonableness of the developmental and operational costs of the project. The gross rent under § 42(g)(2)(A) that a low-income housing project may generate is a source of funds an Agency must consider in making the determination under § 42(m)(2)(A).

Section 42(h)(4)(A) provides that § 42(h)(1) does not apply to the portion of any credit allowable under § 42(a) that is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under § 103 if (i) the obligation is taken into account under § 146, and (ii) principal payments on the financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide the financing. Section 42(h)(4)(B) provides that for purposes of § 42(h)(4)(A), if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by an obligation described in § 42(h)(4)(A), § 42(h)(1) does not apply to any portion of the credit allowable under § 42(a) for the building. Section 42(m)(2)(D) provides that § 42(h)(4) does not apply to any project unless the governmental unit that issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of § 42(m)(2)(A) and (B). Upon making this determination, an Agency will issue a "determination letter" to a building.

Under § 1.42-13(a) of the Income Tax Regulations, the Secretary may provide guidance through various publications in the Internal Revenue Bulletin to carry out the purposes of § 42.

SECTION 3. SCOPE

This revenue procedure applies to Agencies and owners of qualified low-income housing projects, as defined by § 42(g)(1).

SECTION 4. PROCEDURE

Except for a low-income building described in § 42(h)(4)(B) (a bond-financed building), the Internal Revenue Service will treat the gross rent floor in § 42(g)(2)(A) as taking effect on the date an Agency initially allocates a housing credit dollar amount to the building under § 42(h)(1). However, the Service will treat the gross rent floor as taking effect on a building's placed in service date if the building owner designates that date as the date on which the gross rent floor will take effect for the building. An owner must make this designation to use the placed in service date and inform the Agency that made the allocation to the building no later than the date on which the building is placed in service.

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

An Agency should establish a procedure that will allow an owner to inform the Agency of this designation no later than the date the owner's building is placed in service.

For the effect of a change in AMGI on the initial qualification of a tenant as a low-income tenant and the available unit rule, see Rev. Rul. 94-57.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for low-income housing projects receiving initial allocations or determination letters issued after September 23, 1994. For those projects that received initial allocations or determination letters prior to this effective date, for purposes of establishing the gross rent floor in § 42(g)(2)(A), owners and Agencies may use a date based on a reasonable interpretation of § 42.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jeffrey A. Erickson of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Erickson at (202) 622-3040 (not a toll free call).

EXHIBIT 10: Documentation Requirement for Assets Under \$5,000 (IRS Revenue Procedure 94-65)

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, § 42)

Rev. Proc. 94-65, 1994-41 I.R.B. 10

SECTION 1. PURPOSE

This revenue procedure informs housing credit agencies (Agency) and owners of qualified low-income housing projects (owners) when a signed, sworn statement by a low-income tenant will satisfy the documentation requirement of § 1.42-5(b)(1)(vii) of the Income Tax Regulations.

SECTION 2. BACKGROUND

Section 1.42-5 provides the minimum requirements that an Agency's compliance monitoring procedure must contain to satisfy its compliance monitoring duties under § 42(m)(1)(B)(iii). Section 1.42-5(b)(1)(vi) provides that an Agency must require an owner to keep records for each qualified low-income building in the project that show for each year in the compliance period the annual income certifications of each low-income tenant per unit. Section 1.42-5(b)(1)(vii) provides that an Agency must require an owner to keep documents for each qualified low-income building in its project for each year in the compliance period that support each low-income tenant's income certification. The term "low-income tenant" refers to the individuals occupying a rent-restricted unit in a qualified low-income housing project whose annual income satisfies the § 42(g)(1) income limitation elected by the owner of the project. Examples of the documentation required under § 1.42-5(b)(1)(vii) include a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation. A verification of income from a third party is referred to as a "third party verification."

The Internal Revenue Service has determined that an owner may satisfy the documentation requirement of § 1.42-5(b)(1)(vii) for a low-income tenant's income from assets by obtaining a signed, sworn statement from the tenant or prospective tenant if (1) the tenant's or prospective tenant's Net Family assets do not exceed \$5,000, and (2) the tenant or prospective tenant provides a signed, sworn statement to this effect to the building owner. See H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 544 (1993).

SECTION 3. SCOPE

This revenue procedure applies to Agencies and owners of qualified low-income housing projects.

SECTION 4. PROCEDURE

.01 To determine a tenant's Net Family assets, owners and Agencies must use the definition of "Net Family assets" in 24 CFR 813.102, which provides definitions for the H.U.D. Section 8 Program.

.02 Except as provided in sections 4.03 and 4.04 of this revenue procedure, an Agency's monitoring procedure may provide that an owner may satisfy the documentation requirement for income from assets in § 1.42-5(b)(1)(vii) for a low-income tenant whose Net Family assets do not exceed \$5,000 by annually obtaining a signed, sworn statement that includes the following:

- (1) That the tenant's Net Family assets do not exceed \$5,000, and
- (2) The tenant's annual income from Net Family assets.

.03 An Agency's monitoring procedure, however, may not permit an owner to rely on a low-income tenant's signed, sworn statement of annual income from assets if a reasonable person in the owner's position would conclude that the tenant's income is higher than the tenant's represented annual income. In this case, the owner must obtain other documentation of the low-income tenant's annual income from assets to satisfy the documentation requirement in § 1.42-5(b)(1)(vii).

.04 An Agency's monitoring procedure may continue to require that an owner obtain documentation, other than the statement described in section 4.02 of this revenue procedure, to support a low-income tenant's annual certification of income from assets.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective October 11, 1994.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jeffrey A. Erickson of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Erickson at (202) 622-3040 (not a toll-free call).