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SUBTITLE A. INCOME TAXES
CHAPTER 1. NORMAL TAXES AND SURTAXES
SUBCHAPTER A. Determination of Tax Liability
PART IV. CREDITS AGAINST TAX
SUBPART D. Business Related Credits

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

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

(b) Applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings. For purposes of this section--

(1) Building placed in service during 1987. In the case of any qualified low-income building placed in service by the taxpayer during 1987, the term "applicable percentage" means--

(A) 9 percent for new buildings which are not federally subsidized for the taxable year, or

(B) 4 percent for--

- (i) new buildings which are federally subsidized for the taxable year, and
- (ii) existing buildings.

(2) Buildings placed in service after 1987.

(A) In general. In the case of any qualified low-income building placed in service by the taxpayer after 1987, the term "applicable percentage" means the appropriate percentage prescribed by the Secretary for the earlier of--

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

(ii) at the election of the taxpayer--

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

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

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

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

(i) 70 percent of the qualified basis of a building described in paragraph (1)(A), and

(ii) 30 percent of the qualified basis of a building described in paragraph (1)(B).

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

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

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

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

(3) Cross references.

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

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

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

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

(1) Qualified basis.

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

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

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

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

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

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

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

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

- (i) the numerator of which is the total floor space of the low-income units in such building, and
- (ii) the denominator of which is the total floor space of the residential rental units (whether or not occupied) in such building.

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

- (i) so much of the eligible basis of such building as is used throughout the year to provide supportive services designed to assist tenants in locating and retaining permanent housing, or
- (ii) 20 percent of the qualified basis of such building (determined without regard to this subparagraph).

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

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

- (i) beginning on the 1st day in the compliance period on which such building is part of such a project, and
- (ii) ending on the last day of the compliance period with respect to such building, and

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

Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937 (other than assistance under the Stewart B. McKinney Homeless Assistance Act of 1988 (as in effect on the date of the enactment of this sentence)).

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

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

(2) Existing buildings.

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

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

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

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

(ii) there is a period of at least 10 years between the date of its acquisition by the taxpayer and the later of--

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

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

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

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

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

(D) Special rules for subparagraph (B).

(i) Nonqualified substantial improvement. For purposes of subparagraph (B)(ii)--

(I) In general. The term "nonqualified substantial improvement" means any substantial improvement if section 167(k) (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990 [11/5/90]) was elected with respect to such improvement or section 168 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applied to such improvement.

(II) Date of substantial improvement. The date of a substantial improvement is the last day of the 24-month period referred to in subclause (III).

(III) Substantial improvement. The term "substantial improvement" means the improvements added to capital account with respect to the building during any 24-month period, but only if the sum of the amounts added to such account during such period equals or exceeds 25 percent of the adjusted basis of the building (determined without regard to paragraphs (2) and (3) of section 1016(a)) as of the 1st day of such period.

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

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

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

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

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

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

(iii) Related person, etc.

(I) Application of section 179. For purposes of subparagraph (B)(i), section 179(d) shall be applied by substituting "10 percent" for "50 percent" in section 267(b) and 707(b) and in section 179(b)(7).

(II) Related person. For purposes of subparagraph (B)(iii), a person (hereinafter in this subclause referred to as the "related person") is related to any person if the related person bears a relationship to such person specified in section 267(b) or 707(b)(1), or the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52). For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), "10 percent" shall be substituted for "50 percent".

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

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

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

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

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

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

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

(I) the cost of such unit, over

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

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

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

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

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

(C) INCLUSION OF BASIS OF PROPERTY USED TO PROVIDE SERVICES FOR CERTAIN NONTENANTS. -

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

(ii) LIMITATION.- The increase in the adjusted basis of any building which is taken in to account by reason of clause (i) shall not exceed 10 percent of the eligible basis of the qualified low-income housing project of which it is a part. For purposes of the preceding sentence, all community service facilities which are part of the same qualified low-income housing project shall be treated as one facility.

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

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

(5) Special rules for determining eligible basis.

(A) Eligible basis reduced by federal grants. If, during any taxable year of the compliance period, a grant is made with respect to any building or the operation thereof and any portion of such grant is funded with Federal funds (whether or not includible in gross income), the eligible basis of such building for such taxable year and all succeeding taxable years shall be reduced by the portion of such grant which is so funded.

(B) Eligible basis not to include expenditures where section 167(k) (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990 [11/5/90]) elected. The eligible basis of any building shall not include any portion of its adjusted basis which is attributable to amounts with respect to which an election is made under section 167(k) (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990 [11/5/90]).

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

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

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

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

(ii) Qualified census tract.

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

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

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

(iii) Difficult development areas.

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

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

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

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

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

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

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

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

(A) In general. On application by the taxpayer, the Secretary (after consultation with the appropriate Federal official) may waive paragraph (2)(B)(ii) with respect to any federally-assisted building if the Secretary determines that such waiver is necessary--

(i) to avert an assignment of the mortgage secured by property in the project (of which such building is a part) to the Department of Housing and Urban Development or the Farmers Home Administration, or

(ii) to avert a claim against a Federal mortgage insurance fund (or such Department or Administration) with respect to a mortgage which is so secured.

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

(B) Federally-assisted building. For purposes of subparagraph (A), the term "federally-assisted building" means any building which is substantially assisted, financed, or operated under--

(i) section 8 of the United States Housing Act of 1937,

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(ii) section 221(d)(3) or 236 of the National Housing Act, or

(iii) section 515 of the Housing Act of 1949, as such Acts are in effect on the date of the enactment of the Tax Reform Act of 1986.

(C) Low-income buildings where mortgage may be prepaid. A waiver may be granted under subparagraph (A) (without regard to any clause thereof) with respect to a federally-assisted building described in clause (ii) or (iii) of subparagraph (B) if--

(i) the mortgage on such building is eligible for prepayment under subtitle B of the Emergency Low Income Housing Preservation Act of 1987 or under section 502(c) of the Housing Act of 1949 at any time within 1 year after the date of the application for such a waiver,

(ii) the appropriate Federal official certifies to the Secretary that it is reasonable to expect that, if the waiver is not granted, such building will cease complying with its low-income occupancy requirements, and

(iii) the eligibility to prepay such mortgage without the approval of the appropriate Federal official is waived by all persons who are so eligible and such waiver is binding on all successors of such persons.

(D) Buildings acquired from insured depository institutions in default. A waiver may be granted under subparagraph (A) (without regard to any clause thereof) with respect to any building acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

(E) Appropriate federal official. For purposes of subparagraph (A), the term "appropriate Federal official" means--

(i) the Secretary of Housing and Urban Development in the case of any building described in subparagraph (B) by reason of clause (i) or (ii) thereof, and

(ii) the Secretary of Agriculture in the case of any building described in subparagraph (B) by reason of clause (iii) thereof.

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

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

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

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

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

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

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

(e) Rehabilitation expenditures treated as separate new building.

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

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

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

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

(3) Minimum expenditures to qualify.

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

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

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

(I) The requirement of this subclause is met if such amount is not less than 10 percent of the adjusted basis of the building (determined as of the 1st day of such period and without regard to paragraphs (2) and (3) of section 1016(a)).

(II) The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units in the building, is \$ 3,000 or more.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) the denominator of which is 12.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(II) a credit would be allowed for rehabilitation expenditures with respect to such building if subsection (e)(3)(A)(ii)(I) did not apply and if subsection (e)(3)(A)(ii)(II) were applied by substituting "\$ 2,000" for "\$ 3,000".

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

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

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

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

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

(2) Rent-restricted units.

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

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

(i) does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof),

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

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

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

For purposes of clause (iii), the term "supportive service" means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or

intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subsection (i)(3)(B)(iii), such term includes any service provided to assist tenants in locating and retaining permanent housing.

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

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

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

In the case of a project with respect to which a credit is allowable by reason of this section and for which financing is provided by a bond described in section 142(a)(7), the imputed income limitation shall apply in lieu of the otherwise applicable income limitation for purposes of applying section 142(d)(4)(B)(ii).

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

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

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

(E) Units where federal rental assistance is reduced as tenant's income increases. If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income

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of the occupants thereof exceeds the income limitation applicable under paragraph (1), such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if--

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

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

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

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

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

(3) Date for meeting requirements.

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

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

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

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

(iii) Date prior building is treated as placed in service. For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in service on the most recent date any additional building elected by the taxpayer (with respect to such prior building) was placed in service.

(C) Special rule. A building--

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

(ii) other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified low-income building, shall in no event be treated as a qualified low-income building unless the project is a qualified low-income housing project (without regard to such building) on the date such building is placed in service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Exception where increase in qualified basis.

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

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

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

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

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

(E) Exception where 10 percent of cost incurred.

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

second calendar year following the calendar year in which the allocation is made.

(ii) Qualified building. For purposes of clause (i), the term "qualified building" means any building which is part of a project if the taxpayer's basis in such project (as of the later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation is made) is more than 10 percent of the taxpayer's reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)). Such term does not include any existing building unless a credit is allowable under subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year.

(F) Allocation of credit on a project basis.

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

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

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

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

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

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

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

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

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

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

(3) Housing credit dollar amount for agencies.

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

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

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

- (i) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,
- (ii) the greater of -
 - (I) \$1.75 (\$1.50 for 2001) multiplied by the State population, or
 - (II) \$2,000,000,
- (iii) the amount of State housing credit ceiling returned in the calendar year, plus
- (iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

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

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

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

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

- (I) the unused State housing credit ceiling for the year preceding such year, over
- (II) the aggregate housing credit dollar amount allocated for such year.

(iii) Formula for allocation of unused housing credit carryovers among qualified states. The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the

aggregate unused housing credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146(j).

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

- (I) which allocated its entire State housing credit ceiling for the preceding calendar year, and
- (II) for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii).

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

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

- (I) the population of such city, bears to
- (II) the population of the entire State.

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

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

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

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

(H) COST-OF-LIVING ADJUSTMENT.

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

- (I) Such Dollar amount, multiplied by
- (II) the cost-of-living adjustment determined under section (1)(f)(3) for such calendar year by substituting 'calendar year 2001' for 'calendar year 1992' in subparagraph (B) thereof.

(ii) ROUNDING.-

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

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

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

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

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

(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing.

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

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

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

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

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

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

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

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

(D) Treatment of certain subsidiaries.

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

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

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

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

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

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

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

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

(iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person,

(iv) which prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 [42 USCS @ 1437f] because of the status of the prospective tenant as such a holder,

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

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

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

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

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

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

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

(ii) ending on the later of--

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

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

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

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

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

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

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

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

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

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

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

(i) the sum of--

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

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

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

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

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

(G) Adjusted investor equity.

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

(I) such amount, multiplied by

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

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

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

(iii) Base calendar year. For purposes of this subparagraph, the term "base calendar year" means

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the calendar year with or within which the 1st taxable year of the credit period ends.

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

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

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

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

(7) Special rules.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Determination of whether building is federally subsidized.

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

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

(i) in the case of a loan, the principal amount of such loan, and

(ii) in the case of a tax-exempt obligation, the proceeds of such obligation.

(C) Special rule for subsidized construction financing. Subparagraph (A) shall not apply to any tax-exempt obligation or below market Federal loan

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used to provide construction financing for any building if--

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

(ii) such obligation is redeemed, and such loan is repaid, before such building is placed in service.

(D) Below market federal loan. For purposes of this paragraph, the term "below market Federal loan" means any loan funded in whole or in part with Federal funds if the interest rate payable on such loan is less than the applicable Federal rate in effect under section 1274(d)(1) (as of the date on which the loan was made). Such term shall not include any loan which would be a below market Federal loan solely by reason of assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 (as in effect on the date of the enactment of this sentence).

(E) BUILDINGS RECEIVING HOME ASSISTANCE OR NATIVE AMERICAN HOUSING ASSISTANCE.

(i) In general. Assistance provided under the HOME Investment Partnerships Act [42 USCS @@ 12701 et seq., generally; for full classification, consult USCS tables volumes] (as in effect on the date of the enactment of this subparagraph) or the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (as in effect on October 1, 1997 with respect to any building shall not be taken into account under subparagraph (D) if 40 percent or more of the residential units in the building are occupied by individuals whose income is 50 percent or less of area median gross income. Subsection (d)(5)(C) shall not apply to any building to which the preceding sentence applies.

(ii) Special rule for certain high-cost housing areas. In the case of a building located in a city described in section 142(d)(6), clause (i) shall be applied by substituting "25 percent" for "40 percent".

(3) Low-income unit.

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

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

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

(B) Exceptions.

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

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

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

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

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

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

(C) Special rule for buildings having 4 or fewer units. In the case of any building which has 4 or fewer residential rental units, no unit in such building shall be treated as a low-income unit if the units in such building are owned by--

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

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

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

(i) by an individual who is--

(I) a student and receiving assistance under title IV of the Social Security Act [42 USCS @@ 601 et seq.], or

(II) enrolled in a job training program receiving assistance under the Job Training Partnership Act [29 USCS @@ 1501 et seq., generally; for full classification, consult USCS Tables volumes] or under other similar Federal, State, or local laws, or

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

(I) single parents and their children and such parents and children are not dependents (as defined in section 152) of another individual, or

(II) married and file a joint return.

(E) Owner-occupied buildings having 4 or fewer units eligible for credit where development plan.

(i) In general. Subparagraph (C) shall not apply to the acquisition or rehabilitation of a building pursuant to a development plan of action sponsored by a State or local government or a qualified

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nonprofit organization (as defined in subsection (h)(5)(C)).

(ii) Limitation on credit. In the case of a building to which clause (i) applies, the applicable fraction shall not exceed 80 percent of the unit fraction.

(iii) Certain unrented units treated as owner-occupied. In the case of a building to which clause (i) applies, any unit which is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

(4) New building. The term "new building" means a building the original use of which begins with the taxpayer.

(5) Existing building. The term "existing building" means any building which is not a new building.

(6) Application to estates and trusts. In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax under subsection (j) shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(7) Impact of tenant's right of 1st refusal to acquire property.

(A) In general. No Federal income tax benefit shall fail to be allowable to the taxpayer with respect to any qualified low-income building merely by reason of a right of 1st refusal held by the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency to purchase the property after the close of the compliance period for a price which is not less than the minimum purchase price determined under subparagraph (B).

(B) Minimum purchase price. For purposes of subparagraph (A), the minimum purchase price under this subparagraph is an amount equal to the sum of--

(i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and

(ii) all Federal, State, and local taxes attributable to such sale.

Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii).

(j) Recapture of credit.

(1) In general. If--

(A) as of the close of any taxable year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than

(B) the amount of such basis as of the close of the preceding taxable year, then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount.

(2) Credit recapture amount. For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of--

(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if the accelerated portion of the credit allowable by reason of this section were not allowed for all prior taxable years with respect to the excess of the amount described in paragraph (1)(B) over the amount described in paragraph (1)(A), plus

(B) interest at the overpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

(3) Accelerated portion of credit. For purposes of paragraph (2), the accelerated portion of the credit for the prior taxable years with respect to any amount of basis is the excess of--

(A) the aggregate credit allowed by reason of this section (without regard to this subsection) for such years with respect to such basis, over

(B) the aggregate credit which would be allowable by reason of this section for such years with respect to such basis if the aggregate credit which would (but for this subsection) have been allowable for the entire compliance period were allowable ratably over 15 years.

(4) Special rules.

(A) Tax benefit rule. The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) Only basis for which credit allowed taken into account. Qualified basis shall be taken into account under paragraph (1)(B) only to the extent such basis was taken into account in determining the credit under subsection (a) for the preceding taxable year referred to in such paragraph.

(C) No recapture of additional credit allowable by reason of subsection (f)(3). Paragraph (1) shall apply to a decrease in qualified basis only to the extent such decrease exceeds the amount of qualified basis with respect to which a credit was allowable for the taxable year referred to in paragraph (1)(B) by reason of subsection (f)(3).

(D) No credits against tax. Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, D or G of this part.

(E) No recapture by reason of casualty loss. The increase in tax under this subsection shall not apply to a reduction in qualified basis by reason of a casualty loss

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to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

(F) No recapture where de minimis changes in floor space. The Secretary may provide that the increase in tax under this subsection shall not apply with respect to any building if--

(i) such increase results from a de minimis change in the floor space fraction under subsection (c)(1), and

(ii) the building is a qualified low-income building after such change.

(5) Certain partnerships treated as the taxpayer.

(A) In general. For purposes of applying this subsection to a partnership to which this paragraph applies--

(i) such partnership shall be treated as the taxpayer to which the credit allowable under subsection (a) was allowed,

(ii) the amount of such credit allowed shall be treated as the amount which would have been allowed to the partnership were such credit allowable to such partnership,

(iii) paragraph (4)(A) shall not apply, and

(iv) the amount of the increase in tax under this subsection for any taxable year shall be allocated among the partners of such partnership in the same manner as such partnership's taxable income for such year is allocated among such partners.

(B) Partnerships to which paragraph applies. This paragraph shall apply to any partnership which has 35 or more partners unless the partnership elects not to have this paragraph apply.

(C) Special rules.

(i) Husband and wife treated as 1 partner. For purposes of subparagraph (B)(i), a husband and wife (and their estates) shall be treated as 1 partner.

(ii) Election irrevocable. Any election under subparagraph (B), once made, shall be irrevocable.

(6) No recapture on disposition of building (or interest therein) where bond posted. In the case of a disposition of a building or an interest therein the taxpayer shall be discharged from liability for any additional tax under this subsection by reason of such disposition if--

(A) the taxpayer furnishes to the Secretary a bond in an amount satisfactory to the Secretary and for the period required by the Secretary, and

(B) it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

(k) Application of at-risk rules. For purposes of this section--

(1) In general. Except as otherwise provided in this subsection, rules similar to the rules of section 49(a)(1) (other than subparagraphs (D)(ii)(II) and (D)(iv)(I) thereof), section 49(a)(2), and section 49(b)(1) shall apply in

determining the qualified basis of any building in the same manner as such sections apply in determining the credit base of property.

(2) Special rules for determining qualified person. For purposes of paragraph (1)--

(A) In general. If the requirements of subparagraphs (B), (C), and (D) are met with respect to any financing borrowed from a qualified nonprofit organization (as defined in subsection (h)(5)), the determination of whether such financing is qualified commercial financing with respect to any qualified low-income building shall be made without regard to whether such organization--

(i) is actively and regularly engaged in the business of lending money, or

(ii) is a person described in section 49(a)(1)(D)(iv)(II).

(B) Financing secured by property. The requirements of this subparagraph are met with respect to any financing if such financing is secured by the qualified low-income building, except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if--

(i) a security interest in such building is not permitted by a Federal agency holding or insuring the mortgage secured by such building, and

(ii) the proceeds from the financing (if any) are applied to acquire or improve such building.

(C) Portion of building attributable to financing. The requirements of this subparagraph are met with respect to any financing for any taxable year in the compliance period if, as of the close of such taxable year, not more than 60 percent of the eligible basis of the qualified low-income building is attributable to such financing (reduced by the principal and interest of any governmental financing which is part of a wrap-around mortgage involving such financing).

(D) Repayment of principal and interest. The requirements of this subparagraph are met with respect to any financing if such financing is fully repaid on or before the earliest of--

(i) the date on which such financing matures,

(ii) the 90th day after the close of the compliance period with respect to the qualified low-income building, or

(iii) the date of its refinancing or the sale of the building to which such financing relates.

In the case of a qualified nonprofit organization which is not described in section 49(a)(1)(D)(iv)(II) with respect to a building, clause (ii) of this subparagraph shall be applied as if the date described therein were the 90th day after the earlier of the date the building ceases to be a qualified low-income building or the date which is 15 years after the close of a compliance period with respect thereto.

(3) Present value of financing. If the rate of interest on any financing described in paragraph (2)(A) is less than the

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rate which is 1 percentage point below the applicable Federal rate as of the time such financing is incurred, then the qualified basis (to which such financing relates) of the qualified low-income building shall be the present value of the amount of such financing, using as the discount rate such applicable Federal rate. For purposes of the preceding sentence, the rate of interest on any financing shall be determined by treating interest to the extent of government subsidies as not payable.

(4) Failure to fully repay.

(A) In general. To the extent that the requirements of paragraph (2)(D) are not met, then the taxpayer's tax under this chapter for the taxable year in which such failure occurs shall be increased by an amount equal to the applicable portion of the credit under this section with respect to such building, increased by an amount of interest for the period--

(i) beginning with the due date for the filing of the return of tax imposed by chapter 1 for the 1st taxable year for which such credit was allowable, and

(ii) ending with the due date for the taxable year in which such failure occurs, determined by using the underpayment rate and method under section 6621.

(B) Applicable portion. For purposes of subparagraph (A), the term "applicable portion" means the aggregate decrease in the credits allowed to a taxpayer under section 38 for all prior taxable years which would have resulted if the eligible basis of the building were reduced by the amount of financing which does not meet requirements of paragraph (2)(D).

(C) Certain rules to apply. Rules similar to the rules of subparagraphs (A) and (D) of subsection (j)(4) shall apply for purposes of this subsection.

(l) Certifications and other reports to Secretary.

(1) Certification with respect to 1st year of credit period. Following the close of the 1st taxable year in the credit period with respect to any qualified low-income building, the taxpayer shall certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes)--

(A) the taxable year, and calendar year, in which such building was placed in service,

(B) the adjusted basis and eligible basis of such building as of the close of the 1st year of the credit period,

(C) the maximum applicable percentage and qualified basis permitted to be taken into account by the appropriate housing credit agency under subsection (h),

(D) the election made under subsection (g) with respect to the qualified low-income housing project of which such building is a part, and

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

In the case of a failure to make the certification required by the preceding sentence on the date

prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of subsection (a) with respect to such building for any taxable year ending before such certification is made.

(2) Annual reports to the Secretary. The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth--

(A) the qualified basis for the taxable year of each qualified low-income building of the taxpayer,

(B) the information described in paragraph (1)(C) for the taxable year, and

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

The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor.

(3) Annual reports from housing credit agencies. Each agency which allocates any housing credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying--

(A) the amount of housing credit amount allocated to each building for such year,

(B) sufficient information to identify each such building and the taxpayer with respect thereto, and

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

The penalty under section 6652(j) shall apply to any failure to submit the report required by the preceding sentence on the date prescribed therefor.

(m) Responsibilities of housing credit agencies.

(1) Plans for allocation of credit among projects.

(A) In general. Notwithstanding any other provision of this section, the housing credit dollar amount with respect to any building shall be zero unless--

(i) such amount was allocated pursuant to a qualified allocation plan of the housing credit agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part,

(ii) such agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project,

(iii) a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project is conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by such agency, and

(iv) a written explanation is available to the general public for any allocation of a housing credit

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dollar amount which is not made in accordance with established priorities and selection criteria of the housing credit agency.

(B) Qualified allocation plan. For purposes of this paragraph, the term "qualified allocation plan" means any plan--

(i) which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions,

(ii) which also gives preference in allocating housing credit dollar amounts among selected projects to--

(I) projects serving the lowest income tenants,

(II) projects obligated to serve qualified tenants for the longest periods, and

(III) projects which are located in qualified census tracts (as defined in subsection (d) (5) (C)) and the development of which contributes to a concerted community revitalization plan,

(iii) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

(C) Certain selection criteria must be used. The selection criteria set forth in a qualified allocation plan must include--

(i) project location,

(ii) housing needs characteristics,

(iii) project characteristics including whether the project includes the use of existing housing as part of a community revitalization plan,

(iv) sponsor characteristics,

(v) tenant populations with special housing needs,

(vi) public housing waiting lists,

(vii) tenant populations of individuals with children, and

(viii) projects intended for eventual tenant ownership.

(D) Application to bond financed projects. Subsection (h)(4) shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located.

(2) Credit allocated to building not to exceed amount necessary to assure project feasibility.

(A) In general. The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

(B) Agency evaluation. In making the determination under subparagraph (A), the housing credit agency shall consider--

(i) the sources and uses of funds and the total financing planned for the project,

(ii) any proceeds or receipts expected to be generated by reason of tax benefits,

(iii) the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries, and

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

Clause (iii) shall not be applied so as to impede the development of projects in hard-to-develop areas.

Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

(C) Determination made-when credit amount applied for and when building placed in service.

(i) In general. A determination under subparagraph (A) shall be made as of each of the following times:

(I) The application for the housing credit dollar amount.

(II) The allocation of the housing credit dollar amount.

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

(ii) Certification as to amount of other subsidies. Prior to each determination under clause (i), the taxpayer shall certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.

(D) Application to bond financed projects. Subsection (h)(4) shall not apply to any project unless the governmental unit which issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of subparagraphs (A) and (B).

(n) Regulations. The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations--

(1) dealing with--

(A) projects which include more than 1 building or only a portion of a building,

(B) buildings which are placed in service in portions,

(2) providing for the application of this section to short taxable years,

(3) preventing the avoidance of the rules of this section, and

(4) providing the opportunity for housing credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of

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regulations and other administrative guidance from the Secretary.

(o) TERMINATION¹

END OF SECTION

SECTION 13142(b)(6) AND (c) OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1993

(6) EFFECTIVE DATES.-

(A) IN GENERAL.-Except as provided in subparagraphs (B) and (C), the amendments made by this subsection shall apply to-

(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings after June 30, 1992, or

(ii) buildings placed in service after June 30, 1992, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

(B) WAIVER AUTHORITY AND PROHIBITED DISCRIMINATION.-The amendments made by paragraphs (3) and (4) shall take effect on the date of the enactment of this Act.

(C) HOME ASSISTANCE.-The amendment made by paragraph (2) shall apply to periods after the date of the enactment of this Act.

(c) ELECTION TO DETERMINE RENT LIMITATION BASED ON NUMBER OF BEDROOMS AND DEEP RENT SKEWING.-

(1) In the case of a building to which the amendments made by subsection (e)(1) or (n)(2) of section 7108 of the Revenue Reconciliation Act of 1989 did not apply, the taxpayer may elect to have such amendments apply to such building if the taxpayer has met the requirements of the procedures described in section 42(m)(1)(B)(iii) of the Internal Revenue Code of 1986.

(2) In the case of the amendment made by such subsection (e)(1), such election shall apply only with respect to tenants first occupying any unit in the building after the date of the election.

(3) In the case of the amendment made by such subsection (n)(2), such election shall apply only if rents of low-income tenants in such building do not increase as a result of such election.

(4) An election under this subsection may be made only during the 180 day period beginning on the date of the enactment of this Act and, once made, shall by irrevocable.

SECTIONS 11407(b)(1) AND (c) OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990

(b)(10) EFFECTIVE DATES.-

(A) IN GENERAL.- Except as otherwise provided in this paragraph, the amendments made by this subsection shall apply to -

(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1990, or

(ii) buildings placed in service after December 31, 1990, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

(B) TENANT RIGHTS, ETC.-The amendments made by paragraphs (1),(6),(8), and (9) shall take effect on the date of the enactment of this Act.

(C) MONITORING.- The amendment made by paragraph (2) shall take effect on January 1, 1992, and shall apply to buildings placed in service before, on, or after such date.

(D) STUDY.- The Inspector General of the Department of Housing and Urban Development and the Secretary of the Treasury shall jointly conduct a study of the effectiveness of the amendment made by paragraph (5) [restricting credit for Section 8 Moderate Rehabilitation projects] in carrying out the purposes of section 42 of the Internal Revenue Code of 1986. The report of such study shall be submitted not later than January 1, 1993, to the Committee on Ways and Means of the House of Representative and the Committee on Finance of the Senate.

(c) ELECTION TO ACCELERATE CREDIT INTO 1990.-

(1) IN GENERAL.- At the election of an individual, the credit determined under section 42 of the Internal Revenue Code of 1986 for the taxpayer's first taxable year ending on or after October 25, 1990, shall be 150 percent of the amount which would (but for this paragraph) be so allowable with respect to investments held by such individual on or before October 25, 1990.

(2) REDUCTION IN AGGREGATE CREDIT TO REFLECT INCREASED 1990 CREDIT.- The aggregate credit allowable to any person under section 42 of such Code with respect to any investment for taxable years after the first taxable year referred to in paragraph (1) shall be reduced on a pro rate basis by the amount of the increased credit allowable by reason of paragraph (1) with respect to such first taxable year.

(3) ELECTION.- The election under paragraph (1) shall be made at the time and in the manner prescribed by the Secretary of the Treasury or his delegate, and, once made, shall be irrevocable. In the case of a partnership, such election shall be made by the partnership.

¹*Section 13142(a) of the Omnibus Budget Reconciliation Act of 1993 states:

Sec. 13142 LOW-INCOME HOUSING CREDIT.

(a) PERMANENT EXTENSION.-

(1) IN GENERAL.- Section 42 (relating to low-income housing credit) is amended by striking subsection (o).

(2) EFFECTIVE DATE.-The amendment made by paragraph (1) shall apply to periods ending after June 30, 1992.

RELATED SECTIONS OF INTERNAL REVENUE CODE OF 1986 PERTAINING TO THE LOW INCOME HOUSING TAX CREDIT²

Sec. 39 CARRYBACK AND CARRYFORWARD OF UNUSED CREDITS

(d) TRANSITIONAL RULES.-

(4) NO CARRYBACK OF LOW INCOME HOUSING TAX CREDIT BEFORE 1987.- No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 42 (relating to low-income housing credit) may be carried back to taxable year ending before January 1, 1987.

Sec. 55 ALTERNATIVE MINIMUM TAX

(c) REGULAR TAX-

(1) IN GENERAL.- For purposes of this section, the term 'regular tax' mean the regular tax liability for the taxable year (as defined in section 26(b)) reduced by the foreign tax credit allowable under section 27(a) and the section 936 credit allowable under section 27(b). Such term shall not include any tax imposed by section 402(e) and shall not include any increase in tax under section 49(b) or 50(a) or subsection (j) or (k) of section 42.

Sec. 142(d) TAX EXEMPT BONDS: DEEP RENT SKEWED PROJECT RULES

(d) QUALIFIED RESIDENTIAL RENTAL PROJECT.-

For purposes of this section

(1) IN GENERAL.- The term 'qualified residential rental project' means any project for residential rental property if, at all times during the qualified project period, such project meets the requirements of subparagraph (A) or (B), whichever is elected by the issuer at the time of the issuance of the issue with respect to such project:

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

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

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

(2) DEFINITIONS AND SPECIAL RULES.- For purposes of this subsection-

(A) QUALIFIED PROJECT PERIOD.- The term 'qualified project period' means the period beginning on

the 1st day on which 10 percent of the residential units in the project are occupied and ending on the latest of-

(i) the date which is 15 years after the date on which 50 percent of the residential units in the project are occupied,

(ii) the 1st day on which no tax-exempt private activity bond issued with respect to the project is outstanding, or

(iii) the date on which any assistance provided with respect to the project under section 8 of the United States Housing Act of 1937 terminates.

(B) INCOME OF INDIVIDUALS; ARE MEDIAN GROSS INCOME.- The income of individuals and area median gross income shall be determined by the Secretary in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937 (or, if such program is terminated, under such program as in effect immediately before such termination). Determinations under the preceding sentence shall include adjustments for family size.

Section 7872(g) shall not apply in determining the income of individuals under this subparagraph.

(3) CURRENT INCOME DETERMINATIONS.-

For purposes of this subsection-

(A) IN GENERAL.- The determination of whether the income of a resident of a unit in a project exceeds the applicable income limit shall be made at least annually on the basis of the current income of the resident.

(B) CONTINUING RESIDENTS INCOME MAY INCREASE ABOVE THE APPLICABLE LIMIT.- If the income of a resident of a unit in a project did not exceed the applicable income limit upon commencement of such resident's occupancy of such unit (or as of any prior determination under subparagraph (A)) the income of such resident shall be treated as continuing to not exceed the applicable income limit. The preceding sentence shall cease to apply to any resident whose income as of the most recent determination under subparagraph (A) exceeds 140 percent of the applicable income limit if after such determination, but before the next determination, any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit.

(4) SPECIAL RULE IN CASE OF DEEP RENT SKEWING.-

(A) IN GENERAL.- In the case of any project described in subparagraph (B) the 2d sentence of subparagraph (B) of paragraph (3) shall be applied by substituting-

(i) '170 percent' for '140 percent,' and

(ii) any low-income unit in the same project is occupied by a new resident whose income exceeds 40 percent of area median gross income for any residential unit of comparable or smaller size in the

² *As amended through the Omnibus Budget Reconciliation Act of 1989.

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same project is occupied by a new resident whose income exceeds the applicable income limit.

(B) **DEEP RENT SKEWED PROJECT.**- A project is described in this subparagraph if the owner of the project elects to have this paragraph apply and, at all times during the qualified project period, such project meets the requirements of clauses (i),(ii), and (iii).

(i) The project meets the requirements of this clause if 15 percent or more of the low-income units in the project are occupied by individuals whose income is 40 percent or less of area median gross income.

(ii) The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed 30 percent of the applicable income limit which applies to individuals occupying the unit.

(iii) The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed 1/2 of the average gross rent with respect to units of comparable size which are not occupied by individuals who meet the applicable income limit.

(C) **DEFINITIONS APPLICABLE TO SUBPARAGRAPH (B).**- For purposes of subparagraph (B)-

(i) **LOW-INCOME UNIT.**- The term 'low-income unit' means any unit which is required to be occupied by individuals who meet the applicable income limit.

(ii) **GROSS RENT.**- The term 'gross rent' includes-

(I) any payment under section 8 of the United States Housing Act of 1937, and

(II) any utility allowance determined by the Secretary after taking into account such determinations under such section 8.

(5) **APPLICABLE INCOME LIMIT.**- For purposes of paragraphs (3) and (4), the term 'applicable income limit' means-

(A) the limitation under subparagraph (A) or (B) of paragraph (1) which applies to the project, or

(B) in the case of a unit to which paragraph (4)(B)(i) applies, the limitation which applies to such unit.

(6) **SPECIAL RULE FOR CERTAIN HIGH COST HOUSING AREA.**- In the case of a project located in a city having 5 boroughs and a population in excess of 5,000,000 subparagraph (B) of paragraph (1) shall be applied by substituting "25 percent" for "40 percent."

(7) **CERTIFICATION TO SECRETARY.**- The operator of any project with respect to which an election was made under this subsection shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual certification as to whether such project continues to meet the requirements of this subsection. Any failure to comply with the provisions of the preceding sentence shall not affect the tax-exempt status of any bond but shall

subject the operator to penalty, as provided in section 6652(j).

Sec. 469(i) PASSIVE LOSS RULES: \$25,000 EXCEPTION
(i) **\$25,000 OFFSET FOR RENTAL REAL ESTATE ACTIVITIES.**-

(1) **IN GENERAL.**- In the case of any natural person, subsection (a) shall not apply to that portion of the passive activity loss or the deduction equivalent (within the meaning of subsection (j)(5)) of the passive activity credit for any taxable year which is attributable to all rental real estate activities with respect to which such individual actively participated in such taxable year (and if any portion of such loss or credit arose in another taxable year, in such other taxable year).

(2) **DOLLAR LIMITATION.**- The aggregate amount to which paragraph (1) applies for any taxable year shall not exceed \$25,000.

(3) **PHASE-OUT EXEMPTION.**-

(A) **IN GENERAL.**- In the case of any taxpayer, the \$25,000 amount under paragraph (2) shall be reduced (but not below zero) by 50 percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds \$100,000.

(B) **SPECIAL PHASE-OUT OF REHABILITATION CREDIT.**³- In the case of any portion of the passive activity credit for any taxable year which is attributable to the rehabilitation credit determined under section 47, subparagraph (A) shall be applied by substituting "\$200,000" for "\$100,000".

(C) **EXCEPTION FOR LOW-INCOME HOUSING CREDIT.**** - Subparagraph (A) shall not apply to any portion of the passive activity credit for any taxable year which is attributable to any credit determined under section 42.

(D) **ORDERING RULES TO REFLECT EXCEPTION AND SEPARATE PHASE-OUT.**⁴- If subparagraph (B) or (C) applies for any taxable year, paragraph (1) shall be applied-

(i) first to the passive activity loss,

(ii) second to the portion of the passive activity credit to which subparagraph (B) or (C) does not apply,

(iii) third to the portion of such credit to which subparagraph (B) applies, and

³ *Section 7109 of the Omnibus Budget Reconciliation Act of 1989 establishes:

(b) EFFECTIVE DATES.-

(1) IN GENERAL.- Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 1989, in taxable years ending after such date.

(2) SPECIAL RULE WHERE INTEREST HELD IN PASS-THRU ENTITY.- In the case of a taxpayer who holds an indirect interest in the property described in paragraph (1), the amendments made by this section shall apply only if such interest is acquired after December 31, 1989.

⁴ **Footnote for subparagraph (B) is applicable as well.

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(iv) then to the portion of such credit to which subparagraph (C) applies.

(E) ADJUSTED GROSS INCOME.- For purposes of this paragraph, adjusted gross income shall be determined without regard to-

(i) any amount includible in gross income under section 86,

(ii) the amount excludible from gross income under section 135,

(iii) any amount allowable as a deduction under section 219, and

(iv) any passive activity loss or any loss allowable by reason of subsection (c)(7).

(4) SPECIAL RULE FOR ESTATES.-

(A) IN GENERAL.- In the case of taxable years of an estate ending less than 2 years after the date of the death of the decedent, this subsection shall apply to all rental real estate activities with respect to which such decedent actively participated before his death..

(B) REDUCTION FOR SURVIVING SPOUSE'S EXEMPTION.- For purposes of subparagraph (A), the \$25,000 amount under paragraph (2) shall be reduced by the amount of the exemption under paragraph (1) (without regard to paragraph (3)) allowable to the surviving spouse of the decedent for the taxable year ending with or within the taxable year of the estate.

(5) MARRIED INDIVIDUALS FILING SEPARATELY.-

(A) IN GENERAL.- Except as provided in subparagraph (B), in the case of any married individual filing a separate return, this subsection shall be applied by substituting-

(i) "\$12,500" for "\$25,000" each place it appears,

(ii) "\$50,000 for "\$100,000" in paragraph (3)(A), and

(iii) "\$100,000" for "\$200,000" in paragraph (3)(B).

(B) TAXPAYER NOT LIVING APART.- This subsection shall not apply to a taxpayer who-

(i) is a married individual filing a separate return for any taxpayer year, and

(ii) does not live apart from his spouse at all times during such taxable year.

(6) ACTIVE PARTICIPATION.-

(A) IN GENERAL.- An individual shall not be treated as actively participating with respect to any interest in any rental real estate activity for any period if, at any time during such period, such interest (including

any interest of the spouse of the individual) is less than 10 percent (by value) of all interests in such activity.

(B) NO PARTICIPATION REQUIREMENT FOR LOW-INCOME HOUSING OR REHABILITATION CREDIT.- Paragraphs (1) and (4)(A) shall be applied without regard to the active participation requirement in the case of-

(i) any credit determined under section 42 for any taxable year, or

(ii) any rehabilitation credit (determined under section 47).

(C) INTEREST AS A LIMITED PARTNER.- Except as provided in regulations, no interest as a limited partner in a limited partnership shall be treated as an interest with respect to which the taxpayer actively participates.

(D) PARTICIPATION BY SPOUSE - In determining whether a taxpayer actively participates, the participation of the spouse of the taxpayer shall be taken into account.

SECTION 7108 OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1989

(r)(8) GUIDANCE ON DIFFICULT DEVELOPMENT AREAS AND POSTING OF BOND TO AVOID RECAPTURE- Not less than 180 days after the date of the enactment of this Act-

(A) the Secretary of Housing and Urban Development shall publish initial guidance on the designation of difficult development areas under section (42)(d)(5)(C)(iii) of such Code, as added by this section, and

(B) the Secretary of the Treasury shall publish initial guidance under section 42(j)(6) of such Code (relating to no recapture on disposition of building (or interest therein) where bond posted).

EFFECTIVE DATES OF AMENDMENTS MADE BY THE OMNIBUS BUDGET RECONCILIATION ACT OF 1989.

In general, the amendments contained in the Omnibus Budget Reconciliation Act of 1989, apply to low-income buildings that receive tax credit allocations for calendar year 1990. In the case of projects not subject to the state volume caps, and not requiring a credit allocation, by virtue of being bond - financed and qualifying under Sec. 42(h)(4), the amendments will apply to buildings placed in service after December 31, 1989 but only with respect to bonds issued after such date. Exceptions are duly footnoted in the text.*

*Amendment limiting 1989 tax act amendments to bond-financed projects where bonds were issued after 1989 made by section 11701(a)(11) of the Omnibus Budget Reconciliation Act of 1990.

IRC SECTION 42

GLOSSARY OF SECTION 42 AND 142 OF IRS CODE PERTAINING TO LOW INCOME HOUSING TAX CREDITS

Subject	Reference	Subject	Reference
Accelerated Portion of Credit	Sec42(j)(3)	Credit Allocation, Underwriting	Sec42(h)(6)(C)
Acquisitions	Sec42(d)(7)	Credit Allowable	Sec42(h)
Acquisitions	Sec42(f)(4)(B)	Credit Limitation	Sec42(h)(1)(D)(ii)
Acquisitions - Federally Assisted	Sec42(d)(6)	Credit Period	Sec42(f)
Adjusted Basis	Sec42(d)(2)(C)	Credit Period	Sec42(f)(5)(B)(i)(II)
Adjusted Basis, Determination of	Sec42(d)(4)	Credit Period, Existing Bldg.	Sec42(f)(5)
Adjusted Investor Equity	Sec42(h)(6)(G)	Date for Meeting Requirements	Sec42(g)(3)
Agency, Project Evaluation	Sec42(m)(2)(B)	Date of Determination	Sec42(e)(3)(C)
Allocation Plan	Sec42(m)(1)(B)	De Minimis Equity Contributions	Sec42(g)(6)
Allocation, Amount Necessary	Sec42(h)(6)(C)	Deep Rent Skewed Projects	Sec142(d)(4)(B)
Allocation, Jurisdiction	Sec42(h)(7)(A)	Deep Rent Skewing Rules	Sec142(d)
Allocation, Over	Sec42(h)(7)(C)	Deep Rent Skewing Rules	Sec142(d)(4)
Annual Reports	Sec42(1)(2)	Defaulted Property	Sec42(d)(6)(A)
Annual Reports	Sec42(1)(3)	Defaulted Property	Sec42(d)(6)(D)
Applicable Fraction	Sec42(c)(1)(B)	Depreciation	Sec42(d)(4)(C)
Applicable Portion Reduction, Financing	Sec42(k)(4)(B)	Determination of Percentage	Sec42(h)(7)(C)(ii)
Appropriate Federal Official	Sec42(d)(6)(E)	Determination of Percentage	Sec42(h)(7)(D)
Approval of Allocation Plan	Sec42(m)(1)(A)(i)	Difficult Development Areas	Sec42(d)(5)(C)(iii)
Area Median Income	Sec142(d)(2)(B)	Disproportionate Standards for Units	Sec42(d)(3)
At-risk Rules	Sec42(k)(1)	Effect of Noncompliance	Sec42(h)(6)(K)
At-risk Security, Property	Sec42(k)(2)(B)	Election of Taxpayer	Sec42(f)(1)(B)
Base Calendar Year	Sec42(h)(6)(G)(iii)	Election of Taxpayer, Irrevocable	Sec42(g)(1)(B)
Bin Numbers-Multiple Bldgs.	Sec42(g)(3)(D)	Eligible Basis - Existing Building	Sec42(d)(2)
Binding Commitment	Sec42(h)(1)(C)	Eligible Basis - Federal Grants	Sec42(d)(5)(A)
Bond Financed Buildings	Sec42(h)(4)	Eligible Basis - New Building	Sec42(d)(1)
Bond Financed Buildings	Sec42(h)(6)(C)(ii)	Eligible Basis - Requirements	Sec42(d)(2)(B)
Bond Financed Project	Sec42(m)(1)(D)	Eligible Basis - Determination of	Sec42(d)(5)
Bonds, Posting	Sec42(j)(6)	Eligible Basis - Election to Reduce	Sec42(i)(2)(B)
Carryover	Sec42(h)(1)(C)	Eviction of Existing Low-Income Tenants	Sec42(h)(6)(E)(ii)
Carryover, 1 Year	Sec42(h)(3)(C)(iii)	Exception - 10% Rehab	Sec42(e)(3)(B)
Carryover, Formula	Sec42(h)(3)(D)(iii)	Exception - 10% Rehab	Sec42(f)(5)(B)(ii)(II)
Carryover, Unused	Sec42(h)(3)(ii)	Excess Cost	Sec42(d)(3)(B)
Casualty Loss	Sec42(j)(4)(E)	Expenditures - Special Rules	Sec42(e)(4)
Certification by Applicant	Sec42(m)(2)(C)	Extended Low Income Commitment	Sec42(h)(6)
Certification to Secretary	Sec142(d)(7)	Extended Use Period	Sec42(h)(6)(D)
Certification to Secretary	Sec42(1)	Federal Grants	Sec42(d)(5)(A)
Common Areas	Sec42(d)(4)(B)	Federal Loan	Sec42(i)(2)(A)
Community Development Block Grant	Sec42(i)(2)(D)	Federal Loan, Below Market	Sec42(i)(2)(C)
Compliance Period	Sec42(i)(1)	Federal Loan, Below Market	Sec42(i)(2)(D)
Continuing Care Facilities	Sec42(g)(2)(B)	Federal Rental Assistance	Sec42(g)(2)(E)
Correction of Errors	Sec42(n)(4)	Federally Assisted Building	Sec42(d)(6)(B)
Cost of Acquisition	Sec42(e)(2)(B)	Federally Subsidized	Sec42(i)(2)(A)
Cost of Living Adjustment	Sec42(h)(6)(G)(ii)	Financial Feasibility	Sec42(m)(2)
Credit Allocation, Loss of	Sec42(h)(1)(D)(iii)	Financing, Applicable Portion Reduction	Sec42(k)(4)(B)
Credit Allocation, Time	Sec42(h)(1)(B)	Financing, Failure to Repay	Sec42(k)(4)

IRC SECTION 42

Subject	Reference	Subject	Reference
Financing, Present Value	Sec42(k)(3)	Non-Profit, Qualified Corporation	Sec42(h)(5)(D)
Financing, Repayment	Sec42(k)(2)(D)	Non-Profit , Subsidiaries	Sec42(h)(5)(D)
Financing, Terms	Sec42(k)(2)(C)	Notification of Local Official	Sec42(m)(1)(A)(ii)
Floor Space Fraction	Sec42(c)(1)(D)	Offer to Sell	Sec42(h)(6)(E)(i)
Foreclosure	Sec42(d)(2)(D)(ii)(IV)	Option to Purchase, 15 years	Sec42(h)(6)(E)(i)
Foreclosure	Sec42(h)(6)(E)(i)	Option to Purchase, Terms	Sec42(h)(6)(F)
Four Units or Less	Sec42(i)(3)(C)	Owner Occupied Building	Sec42(i)(3)(E)
Four Units or Less	Sec42(i)(3)(E)	Owner Occupied/Unrented Units	Sec42(i)(3)(D)(iii)
Gross Rent	Sec42(g)(2)(B)	Owner-occupied, Four Units or Less	Sec42(i)(3)(E)
Gross Rent, Deep Rent Skewed	Sec142(d)(4)(C)(ii)	Partnership	Sec42(j)(5)
High Cost Areas	Sec42(d)(5)(C)	Period For Finding a Buyer	Sec42(h)(6)(I)
High Cost Areas, 5MM Population	Sec142(d)(6)	Placed in Service	Sec42(b)(2)(A)
Home Rule City	Sec42(h)(3)(E)	Placed in Service	Sec42(g)(3)(A)
Homeless	Sec42(i)(3)(B)	Placed in Service	Sec42(g)(3)(B)
Housing Credit Agency	Sec42(h)(2)(B)	Placed in Service	Sec42(g)(3)(C)
Housing Credit Agency	Sec42(h)(3)	Placed in Service, Allocation	Sec42(h)(7)(D)
Housing Credit Agency	Sec42(h)(8)(A)	Project Basis	Sec42(h)(1)(F)
Housing Credit Agency, Jurisdiction	Sec42(h)(7)(A)	Project Evaluation	Sec42(m)(2)(C)
Housing Credit Agency, Specify \$ & %	Sec42(h)(7)(D)	Project Feasibility	Sec42(m)(2)
Housing Credits, Unused	Sec42(h)(3)(D)(i)	Project Period	Sec42(h)(1)(F)(ii)
Housing Credits, Unused	Sec42(h)(3)(D)(ii)	Project Underwriting, 3 Evaluations	Sec42(m)(2)(C)
Housing Credits, Unused	Sec42(h)(3)(D)(iii)	Purchase Opportunity, Housing Agency	Sec42(h)(6)(E)(i)
Imputed Income Limitations	Sec42(g)(2)(C)	Purchase Opportunity, Tenant	Sec42(g)(6)
Imputed Income Limitations	Sec42(g)(2)(D)	Qualified Allocation Plan	Sec42(m)(1)(A)(i)
Income Limitation	Sec42(g)(2)(C)	Qualified Allocation Plan	Sec42(m)(1)(B)
Income Limitations	Sec42(g)(2)(D)	Qualified Basis	Sec42(c)
Irrevocable Rent Election	Sec42(g)(1)	Qualified Basis, Determination of	Sec42(c)(1)(A)
Job Training, Student Housing	Sec42(i)(3)(D)	Qualified Basis, Increases in	Sec42(f)(3)
Local Official Notification	Sec42(m)(1)(ii)	Qualified Basis, Increases in	Sec42(h)(1)(D)(ii)
Long-Term Commitment	Sec42(h)(6)	Qualified Basis, Increases in	Sec42(h)(1)(D)(i)
Low Income Unit	Sec142(d)(4)(C)(i)	Qualified Basis, Supportive Services	Sec42(c)(1)(E)
Low-Income Unit	Sec42(i)(3)	Qualified Census Tract	Sec42(d)(5)(C)(ii)
Median Gross Income	Sec42(g)(2)(A)	Qualified Census Tract	Sec42(d)(5)(C)(i)
Minimum Long Term Commitment	Sec42(h)(6)	Qualified Contract	Sec42(h)(6)(F)
Minimum Long Term Commitment	Sec42(h)(6)(B)	Qualified Corporation	Sec42(h)(5)(D)(ii)
Minimum Purchase Price	Sec42(i)(8)(B)	Qualified Low Income Building	Sec42(c)(2)
Minimum Purchase Price	Sec42(g)(6)(B)	Qualified Low Income Housing	Sec42(g)
Minimum Set-Aside Requirement	Sec42(g)(3)(A)	Qualified Nonprofit Organization	Sec42(h)(5)(C)
MSA	Sec42(d)(5)(C)(ii)(II)	Qualified Nonprofit Organization	Sec42(k)(2)(D)
Multiple Buildings	Sec42(g)(3)(D)	Qualified Person	Sec42(k)(2)
Multiple Buildings	Sec42(h)(6)(L)	Qualified Project Period	Sec142(d)(2)
New Buildings	Sec42(i)(4)	Qualified Residential Rental Project	Sec142(d)
Noncompliance Reporting	Sec42(m)(1)(C)(iv)	Qualified State	Sec42(h)(3)(D)
Nonmetropolitan Area	Sec42(d)(5)(C)(IV)	Recapture	Sec42(j)(4)(F)
Nonqualified Substantial Improvement	Sec42(d)(D)(i)	Recapture	Sec42(j)(6)
Non-Profit Set-Aside	Sec42(h)(5)	Recapture of Credit	Sec42(j)(1)
Non-Profit, Qualified Corporation	Sec42(h)(5)(C)	Recapture of Credit	Sec42(J)(2)

IRC SECTION 42

Subject	Reference	Subject	Reference
Reduction Area Medium Income	Sec42(g)(2)(A)	Tax-exempt, Reduce Eligible Basis	Sec42(i)(2)(B)
Rehabilitation	Sec42(e)	Time of Certification	Sec42(l)(1)
Rehabilitation Expenditures	Sec42(e)(2)	Transfer of Ownership	Sec42(d)(D)(ii)
Rehabilitation Expenditures	Sec42(e)(3)(A)	Transfer of Ownership	Sec42(d)(D)(iii)
Rehabilitation Expenditures	Sec42(e)(3)(B)	Transitional Housing	Sec42(i)(3)(B)
Rehabilitation Expenditures	Sec42(f)(4)(B)(II)	Transitional Housing	Sec42(i)(3)(B)(iii)
Rehabilitation – Minimum	Sec42(e)(3)	Underwriting	Sec42(h)(6)(C)
Related Person	Sec42(d)(2)(D)(iii)	Unit Fraction	Sec42(c)(1)(C)
Rent Requirements, Date for Meeting	Sec42(g)(3)	Unused Housing Credit Carryovers	Sec42(h)(3)(D)
Rent Restricted Units	Sec42(g)(2)	Utility Allowance	Sec42(g)(2)(B)(ii)
Responsibilities of Housing Agencies	Sec42(m)	Waiver of 10 Year Rule	Sec42(d)(6)(C)
Right of 1st Refusal	Sec42(i)(8)	\$.9375 Per Person	Sec42(h)(3)(C)(i)
Sale of Portion of Building	Sec42(h)(6)(J)	\$.9375 Per Person	Sec42(o)(2)(D)(2)
Scattered Site Projects	Sec42(g)(7)	1st Year Credit Period	Sec42(f)(2)(A)
Section 501	Sec42(h)(5)(C)	1.5 Persons per Bedroom	Sec42(g)(2)(C)
Section 8	Sec42(b)(1)	3-year Extended Use Period	Sec42(h)(6)(E)(ii)
Section 8	Sec42(g)(2)(B)	10 year Period Existing Building	Sec42(d)(2)(B)
Section 8, Deep Rent Skewed	Sec142(d)(4)(C)(ii)	10 year Period Existing Building	Sec42(d)(6)
Section 147, Approval Process Allocation	Sec42(m)(1)(A)(i)	10 Year Taxable Period	Sec42(f)(1)
Selection Criteria	Sec42(m)(1)(B)	10 Year Taxable Period	Sec42(h)(2)
Selection Criteria	Sec42(m)(1)(C)	11th Year Credit Period	Sec42(f)(2)(B)
Set-Aside, Override	Sec42(h)(5)(E)	15th year Option	Sec42(h)(6)(E)(i)
Single Room Occupancy	Sec42(i)(3)(B)(iv)	20-50 Test	Sec42(g)(1)(A)
Special Housing Needs	Sec42(g)(2)(B)(iii)	20-50 Test	Sec142(d)(1)
State	Sec42(h)(8)(B)	40-60 Test	Sec42(g)(1)(B)
State Agency – LIHTC	Sec42(h)(3)(B)	40-60 Test	Sec142(d)(1)
State Credit Ceiling	Sec42(h)(3)(C)	167 (K)	Sec42(d)(5)(B)
State Credit Ceiling, Population	Sec42(h)(3)(C)	\$3,000 Rehab Cost	Sec42(e)(3)(A)(ii)(II)
Student Housing, Gov't Job Training	Sec42(i)(3)(D)	5% Cost of Living Adjustment	Sec42(h)(6)(G)(ii)
Substantial Improvement	Sec42(d)(2)(D)(i)(III)	10% of Cost	Sec42(h)(1)(E)
Suitability for Occupancy	Sec42(i)(3)(B)(ii)	10% of the Adjusted Basis	Sec42(e)(3)(A)(ii)(I)
Supportive Services	Sec42(c)(1)(E)	30% Income Limit	Sec142(d)(4)(B)(ii)
Supportive Services	Sec42(g)(2)(B)(iii)	30% Other Buildings - 4%	Sec42(b)
Tax Benefit Rule	Sec42(j)(4)(A)	50% of Market Rent, Deep Rent Skewed	Sec142(d)(4)(B)(iii)
Tax-exempt Bonds	Sec42(h)(4)	70% New Building - 9%	Sec42(b)
Tax-exempt Bonds	Sec42(h)(4)(B)	130% of Eligible Basis	Sec42(d)(5)(C)(i)(I)
Tax-exempt Bonds	Sec42(o)(2)	130% of Eligible Basis	Sec42(d)(5)(C)(i)(II)
Tax-exempt Bonds/Project	Sec42(m)(1)(D)	40% Income Limit	Sec142(d)(3)(B)
Tax-exempt, Construction Financing	Sec42(i)(2)(C)	70% Income Limit, Deep Rent Skewed	Sec142(d)(4)(A)

ANNEX B: INTENTIONALLY LEFT BLANK

ANNEX C: INCOME AND RENT LIMITS 2013

Region *		Studios	I Br	2 Brs	3 Brs	4 Brs
PUERTO RICO HOUSING FINANCE AUTHORITY						
LOW INCOME HOUSING TAX CREDIT PROGRAM						
Rent Restrictions						
Effective Date: 4-Dec-12						
Aguadilla-Isabela-San Sebastián						
50% of Median Income	Rent	\$ 233	\$ 250	\$ 300	\$ 346	\$ 373
60% of Median Income	Rent	\$ 280	\$ 300	\$ 360	\$ 415	\$ 447
Arecibo						
50% of Median Income	Rent	\$ 246	\$ 263	\$ 316	\$ 365	\$ 407
60% of Median Income	Rent	\$ 295	\$ 316	\$ 379	\$ 438	\$ 489
Barranquitas-Aibonito-Quebradillas						
50% of Median Income	Rent	\$ 242	\$ 259	\$ 311	\$ 359	\$ 401
60% of Median Income	Rent	\$ 291	\$ 311	\$ 373	\$ 431	\$ 481
Caguas						
50% of Median Income	Rent	\$ 270	\$ 308	\$ 347	\$ 400	\$ 447
60% of Median Income	Rent	\$ 324	\$ 347	\$ 417	\$ 480	\$ 537
Fajardo						
50% of Median Income	Rent	\$ 280	\$ 320	\$ 360	\$ 416	\$ 465
60% of Median Income	Rent	\$ 336	\$ 360	\$ 432	\$ 499	\$ 558
Guayama						
50% of Median Income	Rent	\$ 246	\$ 281	\$ 316	\$ 365	\$ 407
60% of Median Income	Rent	\$ 295	\$ 316	\$ 379	\$ 438	\$ 489
Mayagüez						
50% of Median Income	Rent	\$ 266	\$ 285	\$ 341	\$ 394	\$ 440
60% of Median Income	Rent	\$ 319	\$ 342	\$ 409	\$ 473	\$ 528
Ponce						
50% of Median Income	Rent	\$ 285	\$ 305	\$ 366	\$ 422	\$ 471
60% of Median Income	Rent	\$ 342	\$ 366	\$ 439	\$ 507	\$ 565
San Germán-Cabo Rojo						
50% of Median Income	Rent	\$ 231	\$ 247	\$ 296	\$ 342	\$ 382
60% of Median Income	Rent	\$ 277	\$ 297	\$ 355	\$ 411	\$ 459
San Juan-Guaynabo						
50% of Median Income	Rent	\$ 297	\$ 318	\$ 382	\$ 441	\$ 492
60% of Median Income	Rent	\$ 357	\$ 382	\$ 459	\$ 529	\$ 591
Yauco						
50% of Median Income	Rent	\$ 227	\$ 243	\$ 292	\$ 338	\$ 377
60% of Median Income	Rent	\$ 273	\$ 292	\$ 351	\$ 405	\$ 453
All Other						
50% of Median Income	Rent	\$ 227	\$ 243	\$ 292	\$ 338	\$ 377
60% of Median Income	Rent	\$ 273	\$ 292	\$ 351	\$ 405	\$ 421

* See page 3 for the list of Municipalities within each region.

PUERTO RICO HOUSING FINANCE AUTHORITY		Effective Date: 4-Dec-12				
LOW INCOME HOUSING TAX CREDIT PROGRAM						
Income Limits						
Persons per Family Region *		1	2	3	4	5
Aguadilla-Isabela-San Sebastián						
50% of Median Income	Income	\$ 9,350	\$ 10,650	\$ 12,000	\$ 13,300	\$ 14,400
60% of Median Income	Income	\$ 11,220	\$ 12,780	\$ 14,400	\$ 15,960	\$ 17,280
Arecibo						
50% of Median Income	Income	\$ 9,850	\$ 11,250	\$ 12,650	\$ 14,050	\$ 15,200
60% of Median Income	Income	\$ 11,820	\$ 13,500	\$ 15,180	\$ 16,860	\$ 18,240
Barranquitas-Aibonito-Quebradillas						
50% of Median Income	Income	\$ 9,700	\$ 11,050	\$ 12,450	\$ 13,800	\$ 14,950
60% of Median Income	Income	\$ 11,640	\$ 13,260	\$ 14,940	\$ 16,560	\$ 17,940
Caguas						
50% of Median Income	Income	\$ 10,800	\$ 12,350	\$ 13,900	\$ 15,400	\$ 16,650
60% of Median Income	Income	\$ 12,960	\$ 14,820	\$ 16,680	\$ 18,480	\$ 19,980
Fajardo						
50% of Median Income	Income	\$ 11,200	\$ 12,800	\$ 14,400	\$ 16,000	\$ 17,300
60% of Median Income	Income	\$ 13,440	\$ 15,360	\$ 17,280	\$ 19,200	\$ 20,760
Guayama						
50% of Median Income	Income	\$ 9,850	\$ 11,250	\$ 12,650	\$ 14,050	\$ 15,200
60% of Median Income	Income	\$ 11,820	\$ 13,500	\$ 15,180	\$ 16,860	\$ 18,240
Mayagüez						
50% of Median Income	Income	\$ 10,650	\$ 12,150	\$ 13,650	\$ 15,150	\$ 16,400
60% of Median Income	Income	\$ 12,780	\$ 14,580	\$ 16,380	\$ 18,180	\$ 19,680
Ponce						
50% of Median Income	Income	\$ 11,400	\$ 13,000	\$ 14,650	\$ 16,250	\$ 17,550
60% of Median Income	Income	\$ 13,680	\$ 15,600	\$ 17,580	\$ 19,500	\$ 21,060
San Germán-Cabo Rojo						
50% of Median Income	Income	\$ 9,250	\$ 10,550	\$ 11,850	\$ 13,150	\$ 14,250
60% of Median Income	Income	\$ 11,100	\$ 12,660	\$ 14,220	\$ 15,780	\$ 17,100
San Juan-Guaynabo						
50% of Median Income	Income	\$ 11,900	\$ 13,600	\$ 15,300	\$ 16,950	\$ 18,350
60% of Median Income	Income	\$ 14,280	\$ 16,320	\$ 18,360	\$ 20,340	\$ 22,020
Yauco						
50% of Median Income	Income	\$ 9,100	\$ 10,400	\$ 11,700	\$ 13,000	\$ 14,050
60% of Median Income	Income	\$ 10,920	\$ 12,480	\$ 14,040	\$ 15,600	\$ 16,860
All Other						
50% of Median Income	Income	\$ 9,100	\$ 10,400	\$ 11,700	\$ 13,000	\$ 14,050
60% of Median Income	Income	\$ 10,920	\$ 12,480	\$ 14,040	\$ 15,600	\$ 16,860

* See page 3 for the list of Municipalities within each region.

**PUERTO RICO HOUSING FINANCE AUTHORITY
 LOW INCOME HOUSING TAX CREDIT PROGRAM
 Income and Rent Restrictions**

Municipalities within Regions
 (as defined by HUD)

REGION	MUNICIPALITIES
Aguadilla-Isabela-San Sebastián	Aguada, Aguadilla, Añasco, Isabela, Lares, Moca, Rincón, San Sebastián
Arecibo	Arecibo, Camuy, Hatillo
Barranquitas-Aibonito-Quebradillas	Aibonito, Barranquitas, Ciales, Maunabo, Orocovis, Quebradillas
Caguas	Caguas, Cayey, Cidra, Gurabo, San Lorenzo
Fajardo	Ceiba, Fajardo, Luquillo
Guayama	Arroyo, Guayama, Patillas
Mayagüez	Hormigueros, Mayagüez
Ponce	Juana Díaz, Peñuelas, Ponce, Villalba
San Germán-Cabo Rojo	Cabo Rojo, Lajas, Sabana Grande, San Germán
San Juan-Bayamón	Agua Buenas, Barceloneta, Bayamón, Canóvanas, Carolina, Cataño, Comerio, Corozal, Dorado, Florida, Guaynabo, Humacao, Juncos, Las Piedras, Loiza, Manatí, Morovis, Naguabo, Naranjito, Río Grande, San Juan, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Yabucoa
Yauco	Guánica, Guayanilla, Peñuelas, Yauco
All Other (Nonmetropolitan Area)	Adjuntas, Coamo, Culebra, Jayuya, Las Marías, Maricao, Salinas, Santa Isabel, Utuado, Vieques

Los limites de ingresos informados por HUD son a base de personas y no habitaciones (br).
Ademas, HUD solo informa los limites de ingreso para las medianas de ingreso del 30%, very low-income (50%) y low-income (80%). Sin embargo, para el programa de Tax Credit es necesario determinar el 60% de las medianas de ingreso.

60% median income = 50% income limits * 1.20

Las rentas maximas se calculan a base del 30% del ingreso mensual de cada persona.
Por lo tanto, para calcular la renta por br es necesario convertir los ingresos a base de br ya que los provistos por HUD son a base de personas.

HUD a estimado esta conversion como sigue:

1 br = income limit of 1.5 person * 30% / 12 months

La unica excepcion son los studios

studio=income limit of 1 person * 30% /12 months

ejemplos:

60% de la mediana de ingresos en Ponce

3 br * 1.5 persons= 4.50

= Average Income limits of 4 & 5 persons * 30% / 12 months

= (16,080+17,460/2) * 30% / 12 months

= 419

1 br * 1.5 persons= 1.50

= Average Income limits of 1 & 2 persons * 30% / 12 months

= (11,280 + 12,900/2) * 30% / 12 months

= 302

si el calculo de las personas por br da a un numero entero, se utilizara ese income limit

2 br* 1.5 persons= 3.00

= Income limit of 3 persons * 30% / 12 months

= \$14,520 * 30% / 12 months

= 363

4 br* 1.5 persons= 6.00

= Income limit of 6 persons * 30% / 12 months

= \$18,720 * 30% / 12 months

= 468



DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Forms G-1041 and G-1041A, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Forms G-1041 and G-1041A, Genealogy Index Search Request and Genealogy Records Request.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on February 16, 2012, at 77 FR 9259, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 21, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief Regulatory Coordinator, Regulatory Coordination Division, Clearance Office, 20 Massachusetts Avenue, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202-272-0997 or via email at uscisfrcomment@dhs.gov, and to the OMB USCIS Desk Officer via facsimile at 202-395-5806 or via email at oir_submission@omb.eop.gov.

When submitting comments by email please make sure to add OMB Control Number 1615-0096 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Genealogy Index Search Request and Genealogy Records Request.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms G-1041 and G-1041A. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and households. USCIS will use these forms will to facilitate an accurate and timely response to genealogy index search and records requests.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Form G-1041—2,570 responses (electronically submitted) at .50 hours (30 minutes) per response and 1,080 responses (submitted by mail) at .58 hours (35 minutes).

Form G-1041A—1,683 responses (electronically submitted) at 1 hour (60 minutes) per response and 823 responses (submitted by mail) at 1.08 hours (68 minutes).

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,483.4 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: <http://www.regulations.gov/search/index.jsp>.

If additional information is required contact: USCIS, Regulatory Coordination Division, 20

Massachusetts Avenue, Washington, DC 20529, (202) 272-1470.

Dated: April 16, 2012.

Laura Dawkins,

Acting Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012-9617 Filed 4-19-12; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5633-N-01]

Statutorily Mandated Designation of Qualified Census Tracts for Section 42 of the Internal Revenue Code of 1986

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This notice designates "Qualified Census Tracts" (QCTs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under Section 42 of the Internal Revenue Code of 1986 for 2013. HUD is making new designation of QCTs at this time on the basis of new data from the 2010 Decennial Census and the 2006-2010 tabulations of American Community Survey (ACS). The 2012 Difficult Development Areas (DDAs) designated in the **Federal Register** notice published on October 27, 2011 (76 FR 66741) are not changed by this notice and remain in effect.

FOR FURTHER INFORMATION CONTACT: For questions on how QCTs are designated and on geographic definitions, contact Michael K. Hollar, Senior Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW., Room 8234, Washington, DC 20410-6000; telephone number 202-402-5878, or send an email to Michael.K.Hollar@hud.gov. For specific legal questions pertaining to Section 42, contact Branch 5, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224; telephone number 202-622-3040, fax number 202-622-4753. For questions about the "HUB Zones" program, contact Mariana Pardo, Assistant Administrator for Procurement Policy, Office of Government Contracting, Small Business Administration, 409 Third Street SW., Suite 8800, Washington, DC

20416; telephone number 202-205-8885, fax number 202-205-7167, or send an email to hubzone@sba.gov. A text telephone is available for persons with hearing or speech impairments at 202-708-8339. (These are not toll-free telephone numbers.) Additional copies of this notice and paper copies of the tables listing designated 2013 QCTs are available through HUD User at 800-245-2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice and additional information about DDAs and QCTs, including the tables listing the 2013 QCTs designated by this notice, are available electronically on the Internet at <http://www.huduser.org/datasets/qct.html>.

SUPPLEMENTARY INFORMATION:

This Notice

This notice designates QCTs for each of the 50 states, the District of Columbia, and Puerto Rico based on data from the 2010 Decennial Census and the 2006-2010 tabulations of ACS data. HUD is making the designation of QCTs for 2013 earlier than it has in recent years to provide more time for the public to adjust to the revised list of QCTs because QCTs have not changed substantially since 2007, and because the boundaries and numbering of Census Tracts established for the 2010 Decennial Census may differ from those established for the 2000 Census, upon which past QCT designations were based. However, the effective date of the revised list of QCTs will still be the beginning of calendar year 2013 as described in this notice. The list of Census Tracts designated as QCTs by this notice are not published in the **Federal Register**, but are available electronically on the Internet at <http://www.huduser.org/datasets/qct.html>. Paper copies of this notice and the tables listing the 2013 QCTs are available through HUD User at 800-245-2691 for a small fee to cover duplication and mailing costs.

The designations of QCTs under Section 42 of the Internal Revenue Code published in the **Federal Register** on December 12, 2002, (67 FR 76451) for the U.S. Virgin Islands, and on December 19, 2003, (68 FR 70982) for American Samoa, Guam, and the Northern Mariana Islands, remain in effect because data from the 2010 Decennial Census is not available for these areas.

The 2012 DDAs designated in the **Federal Register** notice published on October 27, 2011 (76 FR 66741) are not changed by this notice and remain in effect.

2010 Census and 2006-2010 American Community Survey Data

Data from the 2010 Census on total population of census tracts, metropolitan areas, and the nonmetropolitan parts of states are used in the designation of QCTs. OMB published new metropolitan area definitions incorporating 2000 Census data first in OMB Bulletin No. 03-04 on June 6, 2003, and updated periodically through OMB Bulletin No. 10-02 on December 1, 2009. The FY2012 income limits used to designate QCTs are based on these metropolitan statistical area (MSA) definitions with modifications to account for substantial differences in rental housing markets (and in some cases median income levels) within MSAs. This QCT designation uses the current OMB metropolitan area definitions without modification for purposes of evaluating how many census tracts can be designated under the population cap, but uses the HUD-modified definitions and their associated area median incomes for determining QCT eligibility.

Because the 2010 Decennial Census did not include questions on respondent household income, HUD uses 2006-2010 ACS data to designate QCTs. The ACS tabulates data collected over 5 years to provide estimates of socioeconomic variables for small areas containing fewer than 20,000 persons, like Census Tracts. The 2006-2010 ACS tabulations are the first to be issued according to the same Census Tract geographic boundaries as the 2010 Census tabulations.

Background

The U.S. Department of the Treasury (Treasury) and its Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of the IRC, including the LIHTC found at Section 42 (26 U.S.C. 42). The Secretary of HUD is required to designate DDAs and QCTs by IRC Section 42(d)(5)(B). In order to assist in understanding HUD's mandated designation of DDAs and QCTs for use in administering IRC Section 42, a summary of the section is provided. The following summary does not purport to bind Treasury or the IRS in any way, nor does it purport to bind HUD, since HUD has authority to interpret or administer the IRC only in instances where it receives explicit statutory delegation.

Summary of the Low-Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low-income housing. IRC Section 42

provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Each state is allowed a credit ceiling based on a statutory formula indicated at IRC Section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year; however, to the extent such unallocated credits are not used by then, the credits go into a national pool to be redistributed as additional credit to states satisfying certain criteria. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides IRC Section 42 credits derived from the credit ceiling, states may also provide IRC Section 42 credits to owners of buildings based on the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided under the tax-exempt bond "volume cap" do not reduce the credits available from the credit ceiling.

The credits allocated to a building are based on the cost of units placed in service as low-income units under particular minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC; either: (1) 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income (AMGI), or (2) 40 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term "rent-restricted" means that gross rent, including an allowance for tenant-paid utilities, cannot exceed 30 percent of the tenant's imputed income limitation (i.e., 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar-for-dollar. It is taken annually for a term of 10 years and is intended to yield a present value of either: (1) 70 percent of the "qualified basis" for new construction or substantial rehabilitation expenditures that are not federally subsidized (as defined in Section 42(i)(2)), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing buildings or projects that are federally subsidized. The actual credit rates are adjusted

monthly for projects placed in service after 1987 under procedures specified in IRC Section 42. Individuals can use the credits up to a deduction equivalent of \$25,000 (the actual maximum amount of credit that an individual can claim depends on the individual's marginal tax rate). For buildings placed in service after December 31, 2007, individuals can use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credits against ordinary income tax, and, for buildings placed in service after December 31, 2007, against the alternative minimum tax. These corporations also can deduct losses from the project.

The qualified basis represents the product of the building's "applicable fraction" and its "eligible basis." The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low-income units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to a capital account that are incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated DDAs or designated QCTs, eligible basis can be increased up to 130 percent from what it would otherwise be. This means that the available credits also can be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased to as much as 91 percent.

Under section 42(d)(5)(B) of the Code, a QCT is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income less than 60 percent of the AMGI or, where the poverty rate is at least 25 percent. There is a limit on the number of QCTs in any Metropolitan Statistical Area ("MSA") that may be designated to receive an increase in eligible basis: all of the designated census tracts within a given MSA may not together contain more than 20 percent of the total population of the MSA. For purposes of HUD designations of QCTs, all non-metropolitan areas in a state are treated as if they constituted a single metropolitan area.

IRC Section 42(d)(5)(B)(v) allows states to award an increase in basis up

to 30 percent to buildings located outside of federally designated DDAs and QCTs if the increase is necessary to make the building financially feasible. This state discretion applies only to buildings allocated credits under the state housing credit ceiling and is not permitted for buildings receiving credits in connection with tax-exempt bonds. Rules for such designations shall be set forth in the LIHTC-allocating agencies' qualified allocation plans (QAPs).

Explanation of HUD Designation Methodology

A. Qualified Census Tracts

In developing this list of QCTs, HUD used 2010 Census 100-percent count data on total population, total households, and population in households; the median household income and poverty rate as estimated in the 2006–2010 ACS tabulations; the FY2012 Very Low-Income Limits (VLILs) computed at the HUD Metropolitan FMR Area (HMFA) level¹ to determine tract eligibility; and the MSA definitions published in OMB Bulletin No. 10–02 on December 1, 2009, for determining how many eligible tracts can be designated under the statutory 20 percent population cap.

HUD uses the HMFA-level AMGIs to determine QCT eligibility because the statute, specifically 26 U.S.C. 42(d)(5)(C)(iv)(II), refers to the same section of the Code that defines income for purposes of tenant eligibility and unit maximum rent, specifically 26 U.S.C. 42(g)(4). By rule, the IRS sets these income limits according to HUD's VLILs, which, starting in FY2006 and thereafter, are established at the HMFA level. Similarly, HUD uses the entire MSA to determine how many eligible

¹ FY2012 HUD income limits for very low-income households (very low-income limits, or VLILs) are based on 50 percent of AMGI. In formulating the FY2012 Fair Market Rents (FMRs) and VLILs, HUD modified the current OMB definitions of MSAs to account for substantial differences in rents among areas within each new MSA that were in different FMR areas under definitions used in prior years. HUD formed these "HUD Metro FMR Areas" (HMFAs) in cases where one or more of the parts of newly defined MSAs that previously were in separate FMR areas had 2000 Census based 40th-percentile recent-mover rents that differed, by 5 percent or more, from the same statistic calculated at the MSA level. In addition, a few HMFAs were formed on the basis of very large differences in AMGIs among the MSA parts. All HMFAs are contained entirely within MSAs. All non-metropolitan counties are outside of MSAs and are not broken up by HUD for purposes of setting FMRs and VLILs. (Complete details on HUD's process for determining FY2012 FMR areas and FMRs are available at <http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html#data=fmr12>. Complete details on HUD's process for determining FY2012 income limits are available at <http://www.huduser.org/portal/datasets/il/il12/index.html>.)

tracts can be designated under the 20 percent population cap as required by the statute (26 U.S.C. 42(d)(5)(C)(ii)(III)), which states that MSAs should be treated as singular areas. The QCTs were determined as follows:

1. To be eligible to be designated a QCT, a census tract must have 50 percent of its households with incomes below 60 percent of the AMGI or have a poverty rate of 25 percent or more. HUD calculates 60 percent of AMGI by multiplying by a factor of 1.2 the HMFA or nonmetropolitan county FY2012 VLIL adjusted for inflation to 2010 dollars.

2. For each census tract, whether or not 50 percent of households have incomes below the 60 percent income standard (income criterion) was determined by: (a) Calculating the average household size of the census tract, (b) applying the income standard after adjusting it to match the average household size, and (c) comparing the average-household-size-adjusted income standard to the median household income for the tract reported in the 2006–2010 ACS tabulations.² Since 50 percent of households in a tract have incomes above and below the tract median household income, if the tract median household income is less than the average-household-size-adjusted income standard for the tract, then more than 50 percent of households have incomes below the standard.

3. For each census tract, the poverty rate was determined by dividing the population with incomes below the poverty line by the population for whom poverty status has been determined.³

4. QCTs are those census tracts in which 50 percent or more of the households meet the income criterion, or 25 percent or more of the population is in poverty, such that the population of all census tracts that satisfy either one or both of these criteria does not exceed 20 percent of the total population of the respective area.

5. In areas where more than 20 percent of the population resides in eligible census tracts, census tracts are designated as QCTs in accordance with the following procedure:

² If the confidence interval around the median household income determined from the margin of error for the estimate as published by Census included \$0, HUD determined the tract to be ineligible for evaluation as a QCT under the income criterion due to lack of a reliable income statistic.

³ If the confidence interval around the estimates of the population for whom poverty status has been determined or the number of persons below poverty included zero persons as determined from the margins of error for the estimates as published by Census, HUD determined the tract to be ineligible for evaluation as a QCT under the poverty rate criterion due to lack of reliable poverty statistics.

a. Eligible tracts are placed in one of two groups. The first group includes tracts that satisfy both the income and poverty criteria for QCTs. The second group includes tracts that satisfy either the income criterion or the poverty criterion, but not both.

b. Tracts in the first group are ranked from lowest to highest by the ratio of the tract average-household-size-adjusted income limit to the median household income. Then, tracts in the first group are ranked from lowest to highest by the poverty rate. The two ranks are averaged to yield a combined rank. The tracts are then sorted on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, more populous tracts are ranked above less populous ones.

c. Tracts in the second group are ranked from lowest to highest by the ratio of the tract average-household-size-adjusted income limit to the median household income. Then, tracts in the second group are ranked from lowest to highest by the poverty criterion. The two ranks are then averaged to yield a combined rank. The tracts are then sorted on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, more populous tracts are ranked above less populous ones.

d. The ranked first group is stacked on top of the ranked second group to yield a single, concatenated, ranked list of eligible census tracts.

e. Working down the single, concatenated, ranked list of eligible tracts, census tracts are designated until the designation of an additional tract would cause the 20 percent limit to be exceeded. If a census tract is not designated because doing so would raise the percentage above 20 percent, subsequent census tracts are then considered to determine if one or more census tract(s) with smaller population(s) could be designated without exceeding the 20 percent limit.

B. Exceptions to OMB Definitions of MSAs and Other Geographic Matters

As stated in OMB Bulletin No. 10-02 defining metropolitan areas:

“OMB establishes and maintains the definitions of Metropolitan * * * Statistical Areas, * * * solely for statistical purposes * * * OMB does not take into account or attempt to anticipate any non-statistical uses that may be made of the definitions[.] In cases where * * * an agency elects to use the Metropolitan * * * Area definitions in nonstatistical programs, it is the sponsoring agency’s responsibility to ensure that the definitions are appropriate for such use. An

agency using the statistical definitions in a nonstatistical program may modify the definitions, but only for the purposes of that program. In such cases, any modifications should be clearly identified as deviations from the OMB statistical area definitions in order to avoid confusion with OMB’s official definitions of Metropolitan * * * Statistical Areas.”

Following OMB guidance, the estimation procedure for the FY2012 VLILs incorporates the current OMB definitions of metropolitan areas based on the new Core-Based Statistical Area (CBSA) standards, but makes adjustments to the definitions in order to separate subparts of these areas in cases where FMRs (and in a few cases, VLILs) would otherwise change significantly if the new area definitions were used without modification. In CBSAs where sub-areas are established, it is HUD’s view that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may become so in the future as the social and economic integration of the CBSA component areas increases.

The geographic baseline for the new estimation procedure is the CBSA Metropolitan Areas (referred to as Metropolitan Statistical Areas or MSAs) and CBSA Non-Metropolitan Counties (non-metropolitan counties include the county components of Micropolitan CBSAs where the counties are generally assigned separate FMRs). The proposed HUD-modified CBSA definitions allow for sub-area FMRs within MSAs based on the boundaries of “Old FMR Areas” (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY2005 FMRs. Collectively, they include June 30, 1999, OMB-definition Metropolitan Statistical Areas and Primary Metropolitan Statistical Areas (old definition MSAs/PMSAs), metropolitan counties deleted from old definition MSAs/PMSAs by HUD for FMR-setting purposes, and counties and county parts outside of old definition MSAs/PMSAs referred to as non-metropolitan counties.) Sub-areas of MSAs are assigned their own FMRs when the sub-area 2000 Census Base FMR differs significantly from the MSA 2000 Census Base FMR (and in some cases where the 2000 Census base AMGI differs significantly from the MSA 2000 Census Base AMGI). MSA subareas, and the remaining portions of MSAs after sub-areas have been determined, are referred to as “HUD Metro FMR Areas (HMFAs)” to distinguish these areas from OMB’s official definition of MSAs.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), HMFAs are defined according

to county subdivisions or minor civil divisions (MCDs), rather than county boundaries. However, since no part of a HMFA is outside an OMB-defined, county-based MSA, all New England nonmetropolitan counties are kept intact for purposes of designating Nonmetropolitan QCTs.

Future Designations

QCTs are designated periodically as new data become available, or as metropolitan area definitions change. QCTs are being updated at this time to reflect the availability of 2010 Decennial Census data on population and 2006–2010 ACS data on tract median household incomes and poverty rates.

Effective Date

The 2013 lists of QCTs are effective:

- (1) For allocations of credit after December 31, 2012; or
- (2) For purposes of IRC Section 42(h)(4), if the bonds are issued and the building is placed in service after December 31, 2012.

If an area is not on a subsequent list of QCTs, the 2013 lists are effective for the area if:

- (1) The allocation of credit to an applicant is made no later than the end of the 365-day period after the applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or
- (2) For purposes of IRC Section 42(h)(4), if:
 - (a) The bonds are issued or the building is placed in service no later than the end of the 365-day period after the applicant submits a complete application to the bond-issuing agency, and
 - (b) The submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A “complete application” means that no more than *de minimis* clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a “multiphase project,” the QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of IRC Section 42(h)(4), the QCT status of the site of the project

that applies for all phases of the project is that which applied when the first of the following occurred: (a) The building(s) in the first phase were placed in service, or (b) the bonds were issued.

For purposes of this notice, a "multiphase project" is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) The multiphase composition of the project (i.e., total number of buildings and phases in project, with a description of how many buildings are to be built in each phase and when each phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that applicant identifies the buildings in the project for which credit is (or will be) sought;

(2) The aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the Qualified Allocation Plan (QAP) of the LIHTC-allocating agency, or the annual per-capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(3) All applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary's designee, has sole legal authority to designate DDAs and QCTs, by publishing lists of geographic entities as defined by, in the case of DDAs, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the IRC and associated regulations, including **Federal Register** notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

The designations of DDAs under IRC Section 42, published in the **Federal**

Register on October 27, 2011 (76 FR 66741), remain in effect.

Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose QCT status.

(*Case A*) Project A is located in a 2012 QCT that is NOT a designated QCT in 2013. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2012. Credits are allocated to Project A on October 30, 2013. Project A is eligible for the increase in basis accorded a project in a 2012 QCT because the application was filed BEFORE January 1, 2013 (the effective date for the 2013 QCT lists), and because tax credits were allocated no later than the end of the 365-day period after the filing of the complete application for an allocation of tax credits.

(*Case B*) Project B is located in a 2012 QCT that is NOT a designated QCT in 2013 or 2014. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2012. Credits are allocated to Project B on March 30, 2014. Project B is NOT eligible for the increase in basis accorded a project in a 2012 QCT because, although the application for an allocation of tax credits was filed BEFORE January 1, 2013 (the effective date of the 2013 QCT lists), the tax credits were allocated later than the end of the 365-day period after the filing of the complete application.

(*Case C*) Project C is located in a 2013 QCT that was not a QCT in 2012. Project C was placed in service on November 15, 2012. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2013. The bonds that will support the permanent financing of Project C are issued on September 30, 2013. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2013 QCT, because the project was placed in service BEFORE January 1, 2013.

(*Case D*) Project D is located in an area that is a QCT in 2012, but is NOT a QCT in 2013. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2012. Bonds are issued for Project D on April 30, 2013, but Project D is not placed in service until January 30, 2014. Project D is eligible for the increase in basis available to projects located in 2012 QCTs because: (1) One of the two events necessary for triggering the effective

date for buildings described in Section 42(h)(4)(B) of the IRC (the two events being bonds issued and buildings placed in service) took place on April 30, 2013, within the 365-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D was in a QCT, and (3) both the issuance of the bonds and placement in service of Project D occurred after the application was submitted.

(*Case E*) Project E is a multiphase project located in a 2012 QCT that is NOT a designated QCT in 2013. The first phase of Project E received an allocation of credits in 2012, pursuant to an application filed March 15, 2012, which describes the multiphase composition of the project. An application for tax credits for the second phase of Project E is filed with the allocating agency by the same entity on March 15, 2013. The second phase of Project E is located on a contiguous site. Credits are allocated to the second phase of Project E on October 30, 2013. The aggregate amount of credits allocated to the two phases of Project E exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that applications were made in multiple phases. The second phase of Project E is, therefore, eligible for the increase in basis accorded a project in a 2012 QCT, because it meets all of the conditions to be a part of a multiphase project.

(*Case F*) Project F is a multiphase project located in a 2012 QCT that is NOT a designated QCT in 2013. The first phase of Project F received an allocation of credits in 2012, pursuant to an application filed March 15, 2012, which does not describe the multiphase composition of the project. An application for tax credits for the second phase of Project F is filed with the allocating agency by the same entity on March 15, 2014. Credits are allocated to the second phase of Project F on October 30, 2014. The aggregate amount of credits allocated to the two phases of Project F exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP. The second phase of Project F is, therefore, NOT eligible for the increase in basis accorded a project in a 2012 QCT, since it does not meet all of the conditions for a multiphase project, as defined in this notice. The original application for credits for the first phase did not describe the multiphase composition of the project. Also, the application for credits for the second phase of Project F was not made in the

year immediately following the first phase application year.

Findings and Certifications

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no Finding of No Significant Impact is required.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely designates DDAs as required under Section 42 of the IRC, as amended, for the use by political subdivisions of the states in allocating the LIHTC. This notice also details the technical methodology used in making such designations. As a result, this notice is not subject to review under the order.

Dated: April 13, 2012.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2012-9630 Filed 4-19-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Public Meetings of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee (ISAC). Comprised of 30 nonfederal invasive species experts and

stakeholders from across the nation, the purpose of the Advisory Committee is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues.

Purpose of Meeting: The meeting will be held on May 22-24, 2012 in Portland, Oregon, and will focus primarily on invasive species in the Pacific Northwest. A "systems thinking" approach to this meeting in both ecological and management contexts, will center on topics that: (1) Pertain to invasive species issues at the community and ecosystem level; or that, (2) holistically address prevention, eradication, control and restoration activities within the region. A copy of the meeting agenda is available on the NISC Web site, www.invasivespecies.gov.

DATES: Meeting of the Invasive Species Advisory Committee: Tuesday, May 22, 2012 and Thursday, May 24, 2012; beginning at approximately 8 a.m., and ending at approximately 5 p.m. each day. Members will be participating in an off-site field tour on Wednesday, May 23, 2012. *The field tour is closed to the public.*

ADDRESSES: The Benson Hotel, 309 SW Broadway, Portland, Oregon 97205. The general session on May 22, 2012 and May 24, 2012 will be held in the Crystal Ballroom.

FOR FURTHER INFORMATION CONTACT:

Kelsey Brantley, National Invasive Species Council Program Specialist and ISAC Coordinator, (202) 513-7243; Fax: (202) 371-1751.

Dated: April 16, 2012.

Lori C. Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 2012-9546 Filed 4-19-12; 8:45 am]

BILLING CODE 4310-RK-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-R-2011-N276;
FGRS1261080000V5-123-FF08RSFC00]

Sears Point Wetland and Watershed Restoration Project, Sonoma County, CA; Final Environmental Impact Report and Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Game (CDFG), in cooperation with the Sonoma Land Trust (SLT), announce that a final environmental impact report and environmental impact statement (EIR/EIS) for the Sears Point Wetland and Watershed Restoration Project is now available. The final EIR/EIS, which we prepared and now announce in accordance with the National Environmental Policy Act of 1969 (NEPA), describes the restoration of approximately 2,300 acres (ac) of former farmland located in Sonoma County, California, near the San Pablo Bay. The final EIR/EIS responds to all comments we received on the draft document. The restoration project, which would be implemented by the SLT, would restore natural estuarine ecosystems on diked baylands, while providing public access and recreational and educational opportunities compatible with ecological and cultural resources protection. The U.S. Army Corps of Engineers, San Francisco District, and the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration are cooperating agencies on the final EIR/EIS.

ADDRESSES: The Final EIR/EIS is available at:

- Refuge Headquarters Office, San Pablo Bay National Wildlife Refuge, 2100 Highway 37, Petaluma, CA 94954; (707) 769-4200.
- San Francisco Bay National Wildlife Refuge Complex, 9500 Thornton Avenue, Newark, CA 94560; (510) 792-0222.
- John F. Kennedy Public Library, 505 Santa Clara, Vallejo, CA 94590.
- Internet: www.sonomalandtrust.org.

FOR FURTHER INFORMATION CONTACT: Don Brubaker, Refuge Manager, San Pablo Bay NWR, (707) 769-4200 x100 (phone); don_brubaker@fws.gov (email), or Julian Meisler, Baylands Program Manager, Sonoma Land Trust, at (707) 526-6930 x109 (phone); julian@sonomalandtrust.org (email).

SUPPLEMENTARY INFORMATION:

2013 IRS SECTION 42(d)(5)(B) QUALIFIED CENSUS TRACTS

(2010 Decennial Census and 2006-2010 American Community Survey Data; OMB Metropolitan Area Definitions, December 1, 2009)

METROPOLITAN AREA: Abilene, TX Metro Area

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT									
Taylor County	101.00	102.00	103.00	104.00	108.00	109.00	117.00	121.00	122.00	131.00			

METROPOLITAN AREA: Aguadilla-Isabela-San Sebastián, PR Metro Area

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Aguada Municipio	4304.02	4305.02											
Aguadilla Municipio	4004.00	4006.00	4008.00	4010.00	4011.00	4013.01							
Isabela Municipio	4106.00	4107.02											
Lares Municipio	9583.00	9584.00											
Moca Municipio	4204.02												
San Sebastián Municipio	92.00	9589.00	9593.00										

METROPOLITAN AREA: Akron, OH Metro Area

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT											
Portage County	6012.00	6014.00	6015.01	6015.02	6015.03								
Summit County	5011.00	5017.00	5018.00	5019.00	5021.01	5021.02	5022.00	5025.00	5031.00	5032.00	5033.00	5034.00	
	5035.00	5038.00	5041.00	5042.00	5044.00	5045.00	5046.00	5052.00	5053.00	5056.00	5057.00	5058.00	
	5064.00	5065.00	5066.00	5068.00	5074.00	5075.00	5083.01	5083.99	5086.00	5088.00	5089.00	5090.00	
	5101.00	5103.01	5301.05										

METROPOLITAN AREA: Albany, GA Metro Area

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Dougherty County	1.00	2.00	8.00	14.03	15.00	106.01	107.00	114.00					
Terrell County	1203.00												

**2013 IRS SECTION 42(d)(5)(B) QUALIFIED CENSUS TRACTS
(2010 Decennial Census and 2006-2010 American Community Survey Data; OMB Metropolitan Area Definitions, December 1, 2009)**

METROPOLITAN AREA: Evansville, IN-KY Metro Area

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Vanderburgh County, IN	1.00	8.00	10.00	11.00	12.00	13.00	14.00	17.00	19.00	20.00	21.00	23.00								
	25.00	26.00	37.02	104.03																
Henderson County, KY	201.00	202.00	203.00	204.00																
Webster County, KY	9604.00																			

METROPOLITAN AREA: Fairbanks, AK Metro Area

COUNTY OR COUNTY EQUIVALENT	TRACT																			
Fairbanks North Star Borough	1.00	10.00																		

METROPOLITAN AREA: Fajardo, PR Metro Area

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Fajardo Municipio	1503.02	1505.00																		
Luquillo Municipio	1401.02	1402.01																		

METROPOLITAN AREA: Fargo, ND-MN Metro Area

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Clay County, MN	203.00	204.00																		
Cass County, ND	3.00	5.02	6.00	7.00	8.01	10.02	101.06													

METROPOLITAN AREA: Farmington, NM Metro Area

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
San Juan County	5.04	7.05	9428.01	9428.02	9428.03	9429.00	9431.00													



**2013 IRS SECTION 42(d)(S)(B) QUALIFIED CENSUS TRACTS
(2010 Decennial Census and 2006-2010 American Community Survey Data; OMB Metropolitan Area Definitions, December 1, 2009)**

METROPOLITAN AREA: Mankato-North Mankato, MN Metro Area

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Blue Earth County	1706.00	1707.00	1711.01	1712.02														

METROPOLITAN AREA: Mansfield, OH Metro Area

COUNTY OR COUNTY EQUIVALENT	TRACT																	
Richland County	5.00	6.00	7.00	10.00	14.00	31.00												

METROPOLITAN AREA: Mayagüez, PR Metro Area

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT									
Mayaguez Municipio	801.00	802.00	803.00	804.00	805.00	806.00	809.00	810.00	811.00	812.00								

METROPOLITAN AREA: McAllen-Edinburg-Mission, TX Metro Area

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT											
Hidalgo County	205.01	206.00	207.23	211.00	215.00	218.04	221.04	221.05	222.04	225.02	228.00	231.03						
	231.04	235.11	235.14	237.00	241.12	241.14	242.01	243.02	244.02	244.03	244.04	246.00						

METROPOLITAN AREA: Medford, OR Metro Area

COUNTY OR COUNTY EQUIVALENT	TRACT																	
Jackson County	1.00	5.02	13.01	16.01	19.00													

**2013 IRS SECTION 42(d)(5)(B) QUALIFIED CENSUS TRACTS
(2010 Decennial Census and 2006-2010 American Community Survey Data; OMB Metropolitan Area Definitions, December 1, 2009)**

METROPOLITAN AREA: Pocatello, ID Metro Area

COUNTY OR COUNTY EQUIVALENT	TRACT													
Bannock County	6.00	8.00	14.00	16.01										

METROPOLITAN AREA: Ponce, PR Metro Area

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Juana Diaz Municipio	7102.00	7104.00												
Ponce Municipio	702.02	703.00	704.00	708.00	709.00	710.00	713.00	716.02	718.00	719.00	723.00	727.04		
	730.09													

METROPOLITAN AREA: Portland-South Portland-Biddeford, ME Metro Area

COUNTY OR COUNTY EQUIVALENT	TRACT													
Cumberland County	1.00	3.00	5.00	6.00	11.00	12.00	28.00							
York County	61.02													

METROPOLITAN AREA: Portland-Vancouver-Hillsboro, OR-WA Metro Area

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Clackamas County, OR	222.01	9800.00												
Multnomah County, OR	9.02	11.01	21.00	22.03	33.01	34.01	34.02	40.01	40.02	49.00	51.00	52.00		
	55.00	56.00	74.00	76.00	77.00	83.01	83.02	84.00	86.00	90.00	93.01	95.01		
	96.04	96.06	97.01	98.01	100.01	103.04	106.00							
Washington County, OR	307.00	310.05	312.00	316.13	317.05	320.05	324.09	325.01	331.01	332.00				
Yamhill County, OR	308.01	308.02												
Clark County, WA	405.09	410.05	411.11	412.05	416.00	417.00	421.00	423.00	424.00	425.00	427.00			

**2013 IRS SECTION 42(d)(5)(B) NONMETROPOLITAN QUALIFIED CENSUS TRACTS
(2010 Decennial Census and 2006-2010 American Community Survey Data; OMB Metropolitan Area Definitions, December 1, 2009)**

NONMETROPOLITAN PART OF STATE: Wisconsin		TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Ashland County	9400.00	9504.00											
Dunn County	9707.00	9708.00											
Grant County	9609.00												
Lincoln County	9602.00												
Menominee County	9401.01	9401.02											
Portage County	9603.00	9604.00	9610.00										
Sauk County	10.02												
Sawyer County	9400.00												
Walworth County	5.01	5.02											

NONMETROPOLITAN PART OF STATE: Wyoming		TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Albany County	9629.00	9630.00	9634.00	9635.00	9637.00								

NONMETROPOLITAN PART OF: Puerto Rico		TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adjuntas Municipio	9563.00	9565.00	9567.00										
Coamo Municipio	9541.00	9543.00											
Maricao Municipio	9601.00												
Salinas Municipio	9526.00	9527.00	9532.00										
Utuado Municipio	9569.00	9574.00	9575.00										



Housing and Urban Development, 451 7th Street SW., Room 2000; Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

I. Background

RAD, authorized by the Consolidated and Further Continuing Appropriations Act, 2012, (Pub. L. 112–55, signed November 18, 2011) (2012 Appropriations Act) allows for the conversion of assistance under the public housing, Rent Supp, RAP, and Moderate Rehabilitation (Mod Rehab) programs (collectively, “covered programs”) to long-term, renewable assistance under Section 8 of the United States Housing Act of 1937. As provided in the **Federal Register** notice that HUD published on March 8, 2012, at 77 FR 14029, RAD has two separate components. This **Federal Register** notice applies only to the second component of RAD.

The second component of RAD, which is covered under Sections II and III of the Partial Implementation Notice (PIH Notice 2012–18), allows owners of projects funded under the Rent Supp, RAP and Mod Rehab programs with a contract expiration or termination occurring after October 1, 2006, and no later than September 30, 2013, to convert tenant protection vouchers (TPVs) to project-based vouchers (PBVs). There is no cap on the number of units that may be converted under this component of RAD and no requirement for competitive selection. While these conversions are not necessarily subject to current funding levels for each project or a unit cap similar to public housing conversions, the rents will be subject to rent reasonableness under the PBV program and are subject to the availability of overall appropriated amounts for TPVs.

II. Instructions for Processing of RAD Conversion Requests Submitted Under PIH Notice 2012–18, Rental Assistance Demonstration: Partial Implementation and Request for Comments

PIH Notice 2012–18 authorized owners of Rent Supp and RAP properties to submit requests for conversion of assistance under the terms and conditions enumerated in that Notice. The Partial Implementation Notice (PIH Notice 21012–18) stated that “any Rent Supp or RAP projects that convert their assistance prior to the issuance of the Final Notice will be governed by the terms of this interim authority. Any subsequent conversions will be subject to any future instructions issued by HUD in the Final Notice.”

HUD received several written requests under the Partial Implementation Notice

(PIH Notice 2012–18) to convert Rent Supp and RAP assistance under RAD prior to publication of the Final Notice (PIH Notice 2012–32) on July 26, 2012. These requests involved prospective conversions—requests to convert assistance in anticipation of a triggering event (a contract expiration or mortgage prepayment). Several conversions were still in progress at the time of publication of the Final Notice on July 26, 2012. Those owners that submitted requests to HUD Multifamily field offices to convert assistance, and for which conversion processing was underway following publication of the Partial Implementation Notice (PIH Notice 2012–18), may proceed to complete RAD conversions under the terms and requirements of the Partial Implementation Notice (PIH Notice 2012–18), provided that the Multifamily field office received a written request and/or supplemental materials from the owner or owner’s representative to convert Rent Supp or RAP assistance to PBV assistance during the time period from March 8, 2012 (the date of publication of the Partial Implementation Notice (PIH Notice 2012–18)) through July 26, 2012 (the date of publication of the Final Notice (PIH Notice 2012–32)). The written request and/or supplemental materials submitted to the Multifamily field office during this time period must have included the following:

1. Information on the number of units proposed for the conversion and information on the triggering event (Rent Supp or RAP contract expiration or mortgage prepayment) anticipated prior to September 30, 2013; and

2. Evidence of owner actions completed, or in progress, to meet tenant notification and tenant comment requirements. Acceptable evidence includes one or more of the following: a draft tenant notification letter; written request to the Multifamily field office staff to schedule the required resident briefing; a copy of a dated tenant notification letter posted at the property, with a date during the period from March 8, 2012 through July 26, 2012; written confirmation that a resident briefing had been held during the period from March 8, 2012 through July 26, 2012; a copy of a resident sign-in sheet from the required RAD tenant briefing; a listing of tenant comments received during the RAD resident comment period; and/or a written description of how the owner or owner’s representative responded to these comments; and

3. Information on the owner or property’s compliance with business practices, including at least one of the

following: REAC score; Management and Occupancy Review rating; and/or information on proposed management agent or proposed purchaser.

If the above conditions are met, the Department will continue to work with the owner to process the conversion request under the terms and conditions of the Partial Implementation Notice (PIH Notice 2012–18). Such requests will be subject to a 45-day grace period. Owners must meet all submission requirements of PIH Notice 2012–18 within 45 calendar days following publication of this **Federal Register** notice, which is the date provided for this purpose under the **DATES** heading at the beginning of this notice.

Any RAD request that does not meet all submission requirements detailed in PIH Notice 2012–18 within this 45-day period will be rejected in writing. The owner shall have the option to submit a new RAD conversion request under the terms and requirements of the Final Notice, PIH Notice 2012–32.

To the extent that any submission requirements or deadlines in PIH Notice 2012–18 or PIH Notice 2012–32 are not consistent with this notice, this notice governs.

Dated: September 24, 2012.

Sandra B. Henriquez,
Assistant Secretary for Public and Indian Housing.

Carol J. Galante,
Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 2012–23910 Filed 9–27–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5652–N–01]

Statutorily Mandated Designation of Difficult Development Areas for 2013

AGENCY: Office of the Secretary, Department of Housing and Urban Development.

ACTION: Notice.

SUMMARY: This notice designates “Difficult Development Areas” (DDAs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under Section 42 of the Internal Revenue Code of 1986 (IRC). The United States Department of Housing and Urban Development (HUD) makes DDA designations annually. In addition to announcing the 2013 DDA designations, this notice responds to public comment received in response to the proposed use of Small Area Fair Market Rents (FMRs) for designating DDAs as



published in the notice "Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2012", published in the **Federal Register** on October 27, 2011. After considering the public comments, HUD has decided to delay by one year the adoption of small area DDAs. The 2014 DDAs will be published in a separate notice at a later date after further consideration of the Small DDA concept.

Qualified Census Tracts (QCTs) for 2013 were previously designated in a notice published in the **Federal Register** on April 20, 2012.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions, contact Michael K. Hollar, Senior Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW., Room 8234, Washington, DC 20410-6000; telephone number 202-402-5878, or send an email to Michael.K.Hollar@hud.gov. For specific legal questions pertaining to Section 42, contact Branch 5, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224; telephone number 202-622-3040, fax number 202-622-4753. For questions about the "HUB Zones" program, contact Mariana Pardo, Assistant Administrator for Procurement Policy, Office of Government Contracting, Small Business Administration, 409 Third Street SW., Suite 8800, Washington, DC 20416; telephone number 202-205-8885, fax number 202-205-7167, or send an email to hubzone@sba.gov. A text telephone is available for persons with hearing or speech impairments at 202-708-8339. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at 800-245-2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice and additional information about DDAs and QCTs, including the 2013 DDAs, are available electronically on the Internet at <http://www.huduser.org/datasets/qct.html>.

SUPPLEMENTARY INFORMATION:

This Notice

This notice designates DDAs for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. The designations of DDAs in this notice, which are attached

to this notice, are based on final Fiscal Year (FY) 2012 Fair Market Rents (FMRs), FY2012 income limits, and 2010 Census population counts.

This notice also responds to public comment HUD requested on the use of Small Area FMRs, estimated at the ZIP-code level and based on the relationship of ZIP-code rents to metropolitan area rents, as the housing cost component of the DDA formula rather than metropolitan-area FMRs (October 27, 2011, 76 FR 66741). HUD continues to believe that the small area concept best targets areas with high development costs, however, the Department has decided to delay the implementation for one year.

2010 Census, 2000 Census, and Metropolitan Area Definitions

Data from the 2010 Census on total population of metropolitan areas and nonmetropolitan areas are used in the designation of DDAs. The Office of Management and Budget (OMB) first published new metropolitan area definitions incorporating 2000 Census data in OMB Bulletin No. 03-04 on June 6, 2003, and updated them periodically through OMB Bulletin No. 10-02 on December 1, 2009. FY2012 FMRs and FY2012 income limits used to designate DDAs are based on these metropolitan statistical area (MSA) definitions, with modifications to account for substantial differences in rental housing markets (and, in some cases, median income levels) within MSAs.

Background

The U.S. Department of the Treasury (Treasury) and its Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of the IRC (26 U.S.C. 42), including the LIHTC found at Section 42. The Secretary of HUD is required to designate DDAs and QCTs by IRC Section 42(d)(5)(B). In order to assist in understanding HUD's mandated designation of DDAs and QCTs for use in administering IRC Section 42, a summary of the section is provided. The following summary does not purport to bind Treasury or the IRS in any way, nor does it purport to bind HUD, since HUD has authority to interpret or administer the IRC only when it receives explicit statutory delegation.

Summary of the Low-Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low-income housing. IRC Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing

projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Each state is allowed a credit ceiling based on a statutory formula indicated at IRC Section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year; however, to the extent such unallocated credits are not used by then, the credits go into a national pool to be redistributed to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides IRC Section 42 credits derived from the credit ceiling, states may also provide IRC Section 42 credits to owners of buildings based on the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided under the tax-exempt bond "volume cap" do not reduce the credits available from the credit ceiling.

The credits allocated to a building are based on the cost of units placed in service as low-income units under particular minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC; either: (1) 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income (AMGI), or (2) 40 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. A unit is "rent-restricted" if the gross rent, including an allowance for tenant-paid utilities, does not exceed 30 percent of the imputed income limitation (i.e., 50 percent or 60 percent of AMGI) applicable to that unit. The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar-for-dollar. It is taken annually for a term of 10 years and is intended to yield a present value of either: (1) 70 percent of the "qualified basis" for new construction or substantial rehabilitation expenditures that are not federally subsidized (as defined in IRC Section 42(i)(2)), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing buildings or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in IRC Section 42. Individuals

can use the credits up to a deduction equivalent of \$25,000 (the actual maximum amount of credit that an individual can claim depends on the individual's marginal tax rate). For buildings placed in service after December 31, 2007, individuals can use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credits against ordinary income tax, and, for buildings placed in service after December 31, 2007, against the alternative minimum tax. These corporations also can deduct losses from the project.

The qualified basis represents the product of the building's "applicable fraction" and its "eligible basis." The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low-income units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to a capital account that are incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated DDAs or designated QCTs, eligible basis can be increased up to 130 percent from what it would otherwise be. This means that the available credits also can be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased to as much as 91 percent.

IRC Section 42 defines a DDA as an area designated by the Secretary of HUD that has high construction, land, and utility costs relative to the AMGI. All designated DDAs in metropolitan areas (taken together) may not contain more than 20 percent of the aggregate population of all metropolitan areas, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan areas.

IRC Section 42(d)(5)(B)(v) allows states to award an increase in basis up to 30 percent to buildings located outside of federally designated DDAs and QCTs if the increase is necessary to make the building financially feasible. This state discretion applies only to buildings allocated credits under the state housing credit ceiling and is not permitted for buildings receiving credits in connection with tax-exempt bonds.

Rules for such designations shall be set forth in the LIHTC-allocating agencies' qualified allocation plans (QAPs).

Response to Public Comment on Designating Metropolitan DDAs Using Small Area FMRs

On October 27, 2011 (76 FR 66741), HUD published a notice announcing the 2012 Difficult Development Area (DDA) designations and sought public comments on a major policy change in the method of designating metropolitan DDAs starting with the 2013 designations. The methodology proposed in that notice uses Small Area Fair Market Rents (SAFMRs) defined at the ZIP Code level within metropolitan areas rather than existing Fair Market Rents (FMRs) established for HUD metropolitan FMR areas (HFMRs). Under the methodology described in that notice, zip code areas rather than HFMRs would be ranked according to a ratio comparing "construction, land, and utility costs relative to area median gross income."

The public comment period on this notice closed on December 27, 2011. HUD received 6 public comments in response to the October 27, 2011 notice during the official public comment period defined in the notice; however, one commenter submitted 2 separate comments identical in substance. Overall, one commenter supported the proposal while the remaining expressed opposition. The commenter supported the proposal because the small area DDA concept would reach more than double the number of metropolitan areas and more than triple the number of states. The commenter also stated that use of SAFMRs to set DDAs encourages balance between low- and high-poverty neighborhoods under the LIHTC basis boost.

The commenters in opposition expressed several reasons. First, two commenters stated that HUD has not furnished any data to substantiate this proposal. HUD acknowledges that the evaluative list of metropolitan zip codes that would be designated Small Area DDAs using this methodology and based on the data available to HUD at the time of publication was released near the end of the comment period. However, the list continues to be available at <http://www.huduser.org/portal/datasets/qct.html>. The commenters also stated, "It is inappropriate and premature to use SAFMRs for anything other than the current demonstration [of their use in the Housing Choice Voucher program]." HUD notes, however, that whether SAFMRs are expanded for use in the Housing Choice Voucher program is irrelevant to the decision of using the

areas as the unit of geography for DDA designation.

One commenter stated that HUD's proposal imposes burdens on cities with high housing costs, specifically, New York City. HUD acknowledges that DDA designations in cities with high housing costs, which were traditionally designated as DDAs in their entirety year after year, would be more limited since less than 100 percent of the metropolitan area would be eligible for the basis boost. However, many other metropolitan areas, some of which ranked just outside of the population-capped designation list, have high-cost areas which burden their cities' development and are also in need of federal assistance.

Finally, one commenter stated, "Along with the data problems of using ZIP-Code gross rent as an indicator, it is simply a false measure for high costs in a densely built, vertical city like New York." HUD acknowledges the shortcomings of using gross rent as an indicator. However, the Department believes that FMRs are the best indicator of construction, utility and land costs that is available consistently and uniformly for all areas across the country. House Report No. 101-247, September 20, 1989 [To accompany H.R. 3299, the Omnibus Budget Reconciliation Act of 1989] states that the Secretary of HUD may use market rents as a proxy for construction, land and utility costs. Thus, HUD's methodology follows Congressional intent. The commenter recommended that, "HUD permit an opt-out policy for high-cost cities with a high ratio of low-income households to vacant, affordable rental housing." The LIHTC statute states that the term "difficult development area" is "an area which has a high construction, land, and utility costs relative to area median gross income." It does not state that the number of low-income households or the availability of affordable housing is to be used as criteria for DDA designations.

After consideration of these comments, and others submitted informally after the end of official public comment period, HUD has decided to delay the implementation of the small area DDAs for one year. Updates on the implementation of the small area concept, including any proposed changes in the calculation methodology and an updated list of anticipated areas designated, will be provided on <http://www.huduser.org/>. The Department expects to publish the final list of 2014 small area DDAs in the first half of 2013.

Explanation of HUD Designation Methodology

A. Difficult Development Areas

In developing the list of DDAs, HUD compared housing costs with incomes. HUD used 2010 Census population for metropolitan and nonmetropolitan areas, and the MSA definitions, as published in OMB Bulletin No. 10–02 on December 1, 2009, with modifications, as described below. In keeping with past practice of basing the coming year's DDA designations on data from the preceding year, the basis for these comparisons is the FY2012 HUD income limits for very low-income households (very low-income limits, or VLILs), which are based on 50 percent of AMGI, and metropolitan FMRs based on the Final FY2012 FMRs used for the Housing Choice Voucher (HCV) program.

In formulating the FY2012 VLILs, HUD modified the current OMB definitions of MSAs to account for substantial differences in rents among areas within each new MSA that were in different FMR areas under definitions used in prior years. HUD formed these "HUD Metro FMR Areas" (HMFAs) in cases where one or more of the parts of newly defined MSAs that previously were in separate FMR areas had 2000 Census based 40th-percentile recent-mover rents that differed, by 5 percent or more, from the same statistic calculated at the MSA level. In addition, a few HMFAs were formed on the basis of very large differences in AMGIs among the MSA parts. All HMFAs are contained entirely within MSAs. All nonmetropolitan counties are outside of MSAs and are not broken up by HUD for purposes of setting FMRs and VLILs. (Complete details on HUD's process for determining FY2012 FMR areas and FMRs are available at <http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr12>. Complete details on HUD's process for determining FY2012 income limits are available at <http://www.huduser.org/portal/datasets/il/il12/index.html>.)

HUD's unit of analysis for designating metropolitan DDAs consists of: entire MSAs, in cases where these were not broken up into HMFAs for purposes of computing FMRs and VLILs; and HMFAs within the MSAs that were broken up for such purposes. Hereafter in this notice, the unit of analysis for designating metropolitan DDAs will be called the HMFA, and the unit of analysis for nonmetropolitan DDAs will be the nonmetropolitan county or county equivalent area. The procedure used in making the DDA calculations follows:

1. For each metropolitan HMFA and each nonmetropolitan county, HUD calculated a ratio. HUD used the final FY2012 two-bedroom FMR and the FY2012 four-person VLIL for this calculation.

a. The numerator of the ratio, representing the development cost of housing, was the area's final FY2012 FMR. In general, the FMR is based on the 40th-percentile gross rent paid by recent movers to live in a two-bedroom apartment. In metropolitan areas granted a FMR based on the 50th-percentile rent for purposes of improving the administration of HUD's HCV program (see 76 FR 52058), HUD used the 40th-percentile rent to ensure nationwide consistency of comparisons.

b. The denominator of the ratio, representing the maximum income of eligible tenants, was the monthly LIHTC income-based rent limit, which was calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where the VLIL was rounded to the nearest \$50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent-of-AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for HMFAs and for nonmetropolitan counties.

3. The DDAs are those with the highest ratios cumulative to 20 percent of the 2010 population of all metropolitan areas and all nonmetropolitan areas.

B. Application of Population Caps to DDA Determinations

In identifying DDAs, HUD applied caps, or limitations, as noted above. The cumulative population of metropolitan DDAs cannot exceed 20 percent of the cumulative population of all metropolitan areas, and the cumulative population of nonmetropolitan DDAs cannot exceed 20 percent of the cumulative population of all nonmetropolitan areas.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains those procedures. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio, as described above, was identical (to four decimal places) to the last area selected, and its inclusion resulted in

only a minor overrun of the cap. Thus, for both the designated metropolitan and nonmetropolitan DDAs, there may be minimal overruns of the cap. HUD believes the designation of additional areas in the above examples of minimal overruns is consistent with the intent of the IRC. As long as the apparent excess is small due to measurement errors, some latitude is justifiable, because it is impossible to determine whether the 20 percent cap has been exceeded. Despite the care and effort involved in a Decennial Census, the Census Bureau and all users of the data recognize that the population counts for a given area and for the entire country are not precise. Therefore, the extent of the measurement error is unknown. There can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20 percent limit.

C. Exceptions to OMB Definitions of MSAs and Other Geographic Matters

As stated in OMB Bulletin 10–02, defining metropolitan areas:

"OMB establishes and maintains the definitions of Metropolitan * * * Statistical Areas, * * * solely for statistical purposes. * * * OMB does not take into account or attempt to anticipate any non-statistical uses that may be made of the definitions[.] In cases where * * * an agency elects to use the Metropolitan * * * Area definitions in nonstatistical programs, it is the sponsoring agency's responsibility to ensure that the definitions are appropriate for such use. An agency using the statistical definitions in a nonstatistical program may modify the definitions, but only for the purposes of that program. In such cases, any modifications should be clearly identified as deviations from the OMB statistical area definitions in order to avoid confusion with OMB's official definitions of Metropolitan * * * Statistical Areas."

Following OMB guidance, the estimation procedure for the FY2012 FMRs and income limits incorporates the current OMB definitions of metropolitan areas based on the Core-Based Statistical Area (CBSA) standards, as implemented with 2000 Census data, but makes adjustments to the definitions, in order to separate subparts of these areas in cases where FMRs (and in a few cases, VLILs) would otherwise change significantly if the new area definitions were used without modification. In CBSAs where subareas are established, it is HUD's view that the geographic extent of the housing markets are not yet the same as the

geographic extent of the CBSAs, but may approach becoming so as the social and economic integration of the CBSA component areas increases.

The geographic baseline for the FMR and income limit estimation procedure is the CBSA Metropolitan Areas (referred to as Metropolitan Statistical Areas or MSAs) and CBSA Non-Metropolitan Counties (nonmetropolitan counties include the county components of Micropolitan CBSAs where the counties are generally assigned separate FMRs). The HUD-modified CBSA definitions allow for subarea FMRs within MSAs based on the boundaries of "Old FMR Areas" (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY2005 FMRs. Collectively, they include the June 30, 1999, OMB definitions of MSAs and Primary MSAs (old definition MSAs/PMSAs), metropolitan counties deleted from old definition MSAs/PMSAs by HUD for FMR-setting purposes, and counties and county parts outside of old definition MSAs/PMSAs referred to as nonmetropolitan counties). Subareas of MSAs are assigned their own FMRs and Income Limits when the subarea 2000 Census Base FMR differs significantly from the MSA 2000 Census Base FMR (or, in some cases, where the 2000 Census base AMGI differs significantly from the MSA 2000 Census Base AMGI). MSA subareas, and the remaining portions of MSAs after subareas have been determined, are referred to as "HUD Metro FMR Areas (HMFAs)," to distinguish such areas from OMB's official definition of MSAs.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), HMFAs are defined according to county subdivisions or minor civil divisions (MCDs), rather than county boundaries. However, since no part of an HMFA is outside an OMB-defined, county-based MSA, all New England nonmetropolitan counties are kept intact for purposes of designating Nonmetropolitan DDAs.

For the convenience of readers of this notice, the geographical definitions of designated Metropolitan DDAs are included in the list of DDAs.

Future Designations

DDAs are designated annually as updated income and FMR data are made public.

Effective Date

The 2013 lists of DDAs are effective:

(1) For allocations of credit after December 31, 2012; or

(2) for purposes of IRC Section 42(h)(4), if the bonds are issued and the building is placed in service after December 31, 2012.

If an area is not on a subsequent list of DDAs, the 2013 lists are effective for the area if:

(1) The allocation of credit to an applicant is made no later than the end of the 365-day period after the applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or

(2) for purposes of IRC Section 42(h)(4), if:

(a) The bonds are issued or the building is placed in service no later than the end of the 365-day period after the applicant submits a complete application to the bond-issuing agency, and

(b) the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A "complete application" means that no more than *de minimis* clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a "multiphase project," the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of IRC Section 42(h)(4), the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) The building(s) in the first phase were placed in service, or (b) the bonds were issued.

For purposes of this notice, a "multiphase project" is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) The multiphase composition of the project (i.e., total number of buildings and phases in project, with a description of how many buildings are to be built in each phase and when each phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that applicant identifies the buildings in the

project for which credit is (or will be) sought;

(2) The aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the Qualified Allocation Plan (QAP) of the LIHTC-allocating agency, or the annual per-capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(3) All applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary's designee, has legal authority to designate DDAs and QCTs, by publishing lists of geographic entities as defined by, in the case of DDAs, the Census Bureau, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the IRC and associated regulations, including **Federal Register** notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

The 2013 designations of "Qualified Census Tracts" under IRC Section 42 published April 20, 2012 (77 FR 23735) remain in effect. The above language regarding 2013 and subsequent designations of DDAs also applies to the designations of QCTs published April 20, 2012 and to subsequent designations of QCTs.

Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose DDA status. The examples covering DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2013 DDA that is NOT a designated DDA in 2014. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2013. Credits are allocated to Project A on October 30, 2014. Project A is

eligible for the increase in basis accorded a project in a 2013 DDA because the application was filed before January 1, 2014 (the assumed effective date for the 2014 DDA lists), and because tax credits were allocated no later than the end of the 365-day period after the filing of the complete application for an allocation of tax credits.

(Case B) Project B is located in a 2013 DDA that is NOT a designated DDA in 2014 or 2015. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2013. Credits are allocated to Project B on March 30, 2015. Project B is not eligible for the increase in basis accorded a project in a 2013 DDA because, although the application for an allocation of tax credits was filed before January 1, 2014 (the assumed effective date of the 2014 DDA lists), the tax credits were allocated later than the end of the 365-day period after the filing of the complete application.

(Case C) Project C is located in a 2013 DDA that was not a DDA in 2012. Project C was placed in service on November 15, 2012. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2013. The bonds that will support the permanent financing of Project C are issued on September 30, 2013. Project C is not eligible for the increase in basis otherwise accorded a project in a 2013 DDA, because the project was placed in service before January 1, 2013.

(Case D) Project D is located in an area that is a DDA in 2013, but is not a DDA in 2014. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2013. Bonds are issued for Project D on April 30, 2014, but Project D is not placed in service until January 30, 2015. Project D is eligible for the increase in basis available to projects located in 2013 DDAs because: (1) One of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B) of the IRC (the two events being bonds issued

and buildings placed in service) took place on April 30, 2014, within the 365-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D was in a DDA, and (3) both the issuance of the bonds and placement in service of Project D occurred after the application was submitted.

(Case E) Project E is a multiphase project located in a 2013 DDA that is not a designated DDA in 2014. The first phase of Project E received an allocation of credits in 2013, pursuant to an application filed March 15, 2013, which describes the multiphase composition of the project. An application for tax credits for the second phase Project E is filed with the allocating agency by the same entity on March 15, 2014. The second phase of Project E is located on a contiguous site. Credits are allocated to the second phase of Project E on October 30, 2014. The aggregate amount of credits allocated to the two phases of Project E exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that applications were made in multiple phases. The second phase of Project E is, therefore, eligible for the increase in basis accorded a project in a 2013 DDA, because it meets all of the conditions to be a part of a multiphase project.

(Case F) Project F is a multiphase project located in a 2013 DDA that is not a designated DDA in 2014. The first phase of Project F received an allocation of credits in 2013, pursuant to an application filed March 15, 2013, which does not describe the multiphase composition of the project. An application for tax credits for the second phase of Project F is filed with the allocating agency by the same entity on March 15, 2015. Credits are allocated to the second phase of Project F on October 30, 2015. The aggregate amount of credits allocated to the two phases of Project F exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's

QAP. The second phase of Project F is, therefore, not eligible for the increase in basis accorded a project in a 2013 DDA, since it does not meet all of the conditions for a multiphase project, as defined in this notice. The original application for credits for the first phase did not describe the multiphase composition of the project. Also, the application for credits for the second phase of Project F was not made in the year immediately following the first phase application year.

Findings and Certifications

Environmental Impact

This notice involves the establishment of fiscal requirements or procedures that are related to rate and cost determinations and do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any policy document that has federalism implications if the document imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of Section 6 of the executive order. This notice merely designates DDAs as required under Section 42 of the IRC, as amended, for the use by political subdivisions of the states in allocating the LIHTC. This notice also details the technical methodology used in making such designations. As a result, this notice is not subject to review under the order.

2013 IRS SECTION 42(d)(5)(B) METROPOLITAN DIFFICULT DEVELOPMENT AREAS

(OMB Metropolitan Area Definitions, December 1, 2009 [MSA] and derived FY2012 HUD Metro FMR Area Definitions [HMFA])

State	Metropolitan Area	Metropolitan Area Components
Arizona	Yuma, AZ MSA	Yuma County
California	Los Angeles-Long Beach, CA HMFA	Los Angeles County
	Orange County, CA HMFA	Orange County
	Oxnard-Thousand Oaks-Ventura, CA MSA	Ventura County
	Riverside-San Bernardino-Ontario, CA MSA	Riverside County
	Salinas, CA MSA	Monterey County
	San Diego-Carlsbad-San Marcos, CA MSA	San Diego County
	San Francisco, CA HMFA	Marin County
	Santa Barbara-Santa Maria-Goleta, CA MSA	Santa Barbara County
	Santa Cruz-Watsonville, CA MSA	Santa Cruz County
	Cape Coral-Fort Myers, FL MSA	Lee County
	Fort Lauderdale, FL HMFA	Broward County
	Miami-Miami Beach-Kendall, FL HMFA	Miami-Dade County
	Orlando-Kissimmee-Sanford, FL MSA	Lake County
Port St. Lucie, FL MSA	Martin County	
Punta Gorda, FL MSA	Charlotte County	
Sebastian-Vero Beach, FL MSA	Indian River County	
Tampa-St. Petersburg-Clearwater, FL MSA	Hernando County	
Hawaii	Honolulu, HI MSA	Honolulu County
New Jersey	Atlantic City-Hammonton, NJ MSA	Atlantic County
	Jersey City, NJ HMFA	Hudson County
New York	Vineland-Millville-Bridgeton, NJ MSA	Cumberland County
	Nassau-Suffolk, NY HMFA	Nassau County
New York	New York, NY HMFA	Bronx County
		Queens County
		Suffolk County
		Kings County
		Richmond County
		New York County
		Rockland County
		Putnam County
		Westchester County
		Isabela Municipio
Puerto Rico	Aguadilla-Isabela-San Sebastián, PR MSA	Aguadilla Municipio
		Moca Municipio
	Arecibo, PR HMFA	Camuy Municipio
	Barrancas-Aibonito-Quebradillas, PR HMFA	Barrancas Municipio
		Quebradillas Municipio
	Caguas, PR HMFA	Caguas Municipio
		San Lorenzo Municipio
	Fajardo, PR MSA	Fajardo Municipio
	Guayama, PR MSA	Guayama Municipio
	Mayaguez, PR MSA	Mayaguez Municipio
Ponce, PR MSA	Ponce Municipio	
Puerto Rico	San Germán-Cabo Rojo, PR MSA	Lajas Municipio
		Barceloneta Municipio
	San Juan-Guaynabo, PR HMFA	Cataño Municipio
		Florida Municipio
		Las Piedras Municipio
		Naguabo Municipio
		Toa Alta Municipio
		Vega Baja Municipio
		Guánica Municipio
		Peñuelas Municipio
Puerto Rico		Yauco Municipio
		Yauco Municipio

2013 IRS SECTION 42(d)(5)(B) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (OMB Metropolitan Area Definitions, December 1, 2009)

State	Nonmetropolitan Counties or County Equivalents	
Texas	Anderson County	
	Borden County	
	Colorado County	
	Dallam County	
	Freestone County	
	Hockley County	
	Jack County	
	Kenedy County	
	King County	
	Live Oak County	
	Martin County	
	Nacogdoches County	
	Polk County	
	San Saba County	
	Tyler County	
	Washington County	
	Yoakum County	
	Rich County	
	Addison County	
	Rutland County	
	Essex County	
	Westmoreland County	
	Clallam County	
	Lewis County	
	Eastern District	
	Guam	
	Northern Mariana Islands	
	Puerto Rico	
	Utah	
	Vermont	
	Virginia	
	Washington	
	American Samoa	
	Guam	
	Northern Mariana Islands	
	Puerto Rico	
	Virgin Islands	
	Anderson County	Anderson County
	Brewster County	Brewster County
	Concho County	Concho County
Deaf Smith County	Deaf Smith County	
Gillespie County	Gillespie County	
Hopkins County	Hopkins County	
Jasper County	Jasper County	
Kent County	Kent County	
Kleberg County	Kleberg County	
Llano County	Llano County	
Matagorda County	Matagorda County	
Navarro County	Navarro County	
Rains County	Rains County	
Stephens County	Stephens County	
Uvalde County	Uvalde County	
Wilbarger County	Wilbarger County	
Young County	Young County	
Wayne County	Wayne County	
Bennington County	Bennington County	
Washington County	Washington County	
Lancaster County	Lancaster County	
Island County	Island County	
Mason County	Mason County	
Manu'a District	Manu'a District	
Rota Municipality	Rota Municipality	
Coamo Municipio	Coamo Municipio	
Maricao Municipio	Maricao Municipio	
Vieques Municipio	Vieques Municipio	
St. John	St. John	
St. Thomas	St. Thomas	
Angellina County	Angellina County	
Brown County	Brown County	
Cottle County	Cottle County	
Donley County	Donley County	
Henderson County	Henderson County	
Houston County	Houston County	
Jeff Davis County	Jeff Davis County	
Kerr County	Kerr County	
Lamar County	Lamar County	
McMullen County	McMullen County	
Montague County	Montague County	
Oldham County	Oldham County	
Reagan County	Reagan County	
Throckmorton County	Throckmorton County	
Van Zandt County	Van Zandt County	
Willacy County	Willacy County	
Beaumont County	Beaumont County	
Bee County	Bee County	
Childress County	Childress County	
Crane County	Crane County	
Erath County	Erath County	
Hill County	Hill County	
Howard County	Howard County	
Jim Wells County	Jim Wells County	
Kimble County	Kimble County	
Limestone County	Limestone County	
Marion County	Marion County	
Moore County	Moore County	
Palo Pinto County	Palo Pinto County	
Refugio County	Refugio County	
Titus County	Titus County	
Walker County	Walker County	
Winkler County	Winkler County	
Orange County	Orange County	
Windsor County	Windsor County	
Northampton County	Northampton County	
Jefferson County	Jefferson County	
San Juan County	San Juan County	
Swains Island	Swains Island	
Western District	Western District	
Tinian Municipality	Tinian Municipality	
Jayuya Municipio	Jayuya Municipio	
Santa Isabel Municipio	Santa Isabel Municipio	
Saipan Municipality	Saipan Municipality	
Culebra Municipio	Culebra Municipio	
Salinas Municipio	Salinas Municipio	

Dated: September 24, 2012.

Erika C. Poethig,
Acting Assistant Secretary for Policy
Development and Research.

[FR Doc. 2012-23900 Filed 9-27-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. ONRR-2012-0003]

15-Day Extension of Call for Nominations for the U.S. Extractive Industries Transparency Initiative Advisory Committee

AGENCY: Office of Natural Resources Revenue, U.S. Department of the Interior.

ACTION: Notice.

SUMMARY: The United States Department of the Interior (DOI) published a request for nominees and comments on July 27, 2012. Subsequently, DOI published a 30-day extension of this nomination period. This **Federal Register** Notice extends the nomination and comment period end date by an additional 15 days.

DATES: Nominations will be accepted through October 11, 2012.

ADDRESSES: You may submit nominations to the Committee by any of the following methods.

- Mail or hand-carry nominations to Ms. Shirley Conway; Department of the Interior; Office of Natural Resources Revenue; 1849 C Street NW—MS 4211; Washington, DC 20240.

- Email nominations to Shirley.Conway@onrr.gov or EITI@ios.doi.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Conway, Office of Natural Resources Revenue; telephone (202) 513-0598; fax (202) 513-0682; email Shirley.Conway@onrr.gov. Mailing address: Department of the Interior; Office of Natural Resources Revenue; 1849 C Street NW.—MS 4211; Washington, DC 20240.

SUPPLEMENTARY INFORMATION: On July 27, 2012, the Department published in the **Federal Register** a notice of establishment of the United States Extractive Industries Transparency Initiative (USEITI) Multi-Stakeholder Group (MSG). This notice also included a request for nominees and comments under a standard 30-day period. In response to feedback and public requests, the Department extended this period for an additional 30 days to September 26, 2012. To maximize the

opportunity for nominee submissions, the Department is extending this nomination period for an additional 15 days. The new nomination and comment period ends October 11, 2012. If you have already submitted your nomination materials, you are not required to resubmit.

Dated: September 25, 2012.

Paul A. Mussenden,
Deputy Assistant Secretary for Natural Resources Revenue Management.

[FR Doc. 2012-23940 Filed 9-26-12; 11:15 am]

BILLING CODE 4310-T2-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-R-2012-N095; 1265-0000-10137-S3]

Bear Lake National Wildlife Refuge, Bear Lake County, ID and Oxford Slough Waterfowl Production Area, Franklin and Bannock Counties, ID; Draft Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for the Bear Lake National Wildlife Refuge (NWR, Refuge), 7 miles south of Montpelier, Idaho; the Refuge-managed Thomas Fork Unit (Unit) in Montpelier; and the Oxford Slough Waterfowl Production Area (WPA) in Oxford, Idaho, for public review and comment. The Draft CCP/EA describes our proposal for managing the Refuge for the next 15 years.

DATES: To ensure consideration, we need to receive your written comments by October 29, 2012.

ADDRESSES: You may submit comments, requests for more information, or requests for copies by any of the following methods. You may request a hard copy or a CD-ROM of the documents.

Email:
FWIPlanningComments@fws.gov. Include "Bear Lake NWR CCP" in the subject line.

Fax: Attn: Annette de Knijf, Refuge Manager, 208-847-1757.

U.S. Mail: Annette de Knijf, Refuge Manager, Bear Lake NWR, Box 9, Montpelier, ID 83254.

Web site: http://www.fws.gov/bearlake/refuge_planning.html; select "Contact Us."

In-Person Drop-off, Viewing or Pickup: You may drop off comments during regular business hours at Refuge Headquarters at 322 North 4th St. (Oregon Trail Center), Montpelier, ID.

FOR FURTHER INFORMATION CONTACT: Annette de Knijf, Refuge Manager, 208-847-1757.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process at Bear Lake NWR and Oxford Slough WPA. We started this process through a notice in the **Federal Register** (75 FR 35829; June 23, 2010).

Bear Lake National Wildlife Refuge

Bear Lake NWR was established in 1968 and is located in Bear Lake County, near the community of Montpelier, in southeast Idaho. The Refuge lies in Bear Lake Valley at approximately 5,925 feet in elevation in the historic location of Dingle Swamp. The Thomas Fork Unit is a 1,015-acre tract of land managed by the Refuge and situated at an elevation of 6,060 feet, approximately 20 miles east of Montpelier, Idaho, along U.S. Hwy. 30, near Border, Wyoming. The Unit's eastern boundary is the Wyoming State line. It contains upland and wet meadows used by sandhill cranes, and stream habitat important to the conservation of Bonneville cutthroat trout.

The Refuge is composed of a 16,000-acre emergent marsh, 1,200 acres of uplands, 550 acres of wet meadows, and 5 miles of riparian streams. Approximately 100 species of migratory birds nest at Bear Lake NWR, including large concentrations of colonial waterbirds, and many other species of wildlife utilize the Refuge during various periods of the year. In the early 1900s, the Telluride Canal Company substantially modified the natural hydrology of the former Dingle Swamp by diverting Bear River to flow into Bear Lake for irrigation storage. The indirect effects were numerous and significantly altered the hydrology and ecological processes of the Bear Lake Watershed.

Oxford Slough Waterfowl Production Area

Oxford Slough is the only waterfowl production area in the Service's Pacific Northwest region. It is located 10 miles north of Preston, Idaho, abutting the small town of Oxford in the Cache Valley. Oxford Slough is the drainage for Oxford and Deep Creeks, as well as other streams and creeks in the surrounding mountain ranges. Oxford Slough WPA provides valuable foraging habitat for species such as cranes, geese,

ANNEX E: BINDING COMMITMENT FOR SUBSEQUENT YEAR

BINDING COMMITMENT FOR A CERTIFICATE OF RESERVATION FOR A LOW INCOME HOUSING TAX CREDIT ALLOCATION IN 20__

The Puerto Rico Housing Finance Authority (**PRHFA** or **Allocating Agency**) hereby commits to reserving Low-Income Housing Tax Credits (**LIHTC**) pursuant to Section 42 (h)(1)(C) of the Internal Revenue Code of 1986, as amended (**Code**), by issuing this Binding Commitment:

1. Allocation Year: 20XX
2. Amount of Tax Credits to Be Reserved: \$_____
3. Name and Address of the Project:
Name: _____
Address: _____

4. Residential Buildings in the Project: _____
5. Units in the Project: _____
6. Type of building (s):
 New Construction
 Existing Building
 Substantial Rehabilitation
7. Name, Address and Taxpayer Identification Number of Project Owner:
Name: _____
Address: _____

Identification Number: _____
8. Name and Address of Allocating Agency:

PUERTO RICO HOUSING FINANCE AUTHORITY
P.O. Box 71361
San Juan, P.R. 00936-8461

9. Date of this Binding Commitment: _____, **20XX**.
10. Building Identification Numbers: **To Be Determined**
11. Project falls within one of the following categories (mark one):
- a. Credit is deemed necessary to facilitate the restructuring of financing provided to a project confronting economic difficulties.
 - b. Credit is deemed necessary to preserve the low-income housing status of the project or to maintain the total number of available low-income housing units in Puerto Rico.
 - c. Credit is requested in connection with the acquisition of a project from the government of Puerto Rico, or any department, agency, entity or political subdivision thereof.
 - d. Credit is requested in connection with a project using the Tax Credit Program as its only subsidy.
 - e. Project is part of a Community Revitalization Master Plan.
 - f. Due to unforeseen circumstances that PRHFA, at its sole discretion, believes are valid.
12. PRHFA commits itself to enter into a Carryover Allocation Agreement with the Project Owner in **20__**.
13. The Owner commits to achieve the Basic Threshold and Minimum Ranking Points as required in the 20__ Qualified Allocation Plan as well as to comply with any other pertinent law, rule, and regulation that may apply when the Project is submitted for evaluation. The Owner also commits to pay the applicable processing fee of the annual tax credit requested.

PRHFA represents and warrants that this Binding Commitment is binding on PRHFA and its successors and assigns and that PRHFA is the housing credit agency for the Commonwealth of Puerto Rico. It is intended that this Binding Commitment shall serve as a commitment to reserve Tax Credits to the Project Owner, its successors and assigns, under Section 42(h)(1)(C) of the Code with respect to the Project and that the State Housing Credit Ceiling [as defined in Section 42(h)(3)(C) of the Code] shall be reduced in the **20__** to reflect this commitment. Pursuant to Section 42(h)(1)(F) of the Code, the portion of the allocation which is to be allocated to each building in the Project shall be specified no later than the close of the calendar year in which each such building is placed in service and shall be reflected in IRS Forms 8609 for each such building. The Project Owner represents and warrants that no portion of the Project has been placed in service by the Project Owner in the calendar year, or prior to the calendar year, in which this Binding Commitment is made.

Owner agrees and acknowledges that all the terms, conditions, obligations and deadlines set forth in this Binding Commitment are requirements precedent to this reservation, and that the Project's failure to comply with all such terms and conditions will entitle the PRHFA, in its discretion, to revoke this reservation.

Agency: **Puerto Rico Housing Finance Authority**
P O Box 71361
San Juan, PR 00936-8461
COMMONWEALTH OF PUERTO RICO
ID Number: 66-0433752

By: _____
Executive Director

Commitment Date: _____, 20XX

Acknowledged, Agreed and Accepted:

Owner: _____
By: _____
Title: _____

Affidavit _____ :

Sworn to and subscribed before me by [name] , [title] of [name of General Partner] , General Partner of [name of Owner], of legal age, [legal status], and resident of _____, and [name] , Executive Director of Puerto Rico Housing Finance Authority, of legal age, [legal status], and resident of _____, both personally known to me.

In San Juan, Puerto Rico, on this _____, 20XX.

NOTARY PUBLIC

(SEAL)

ANNEX F: FAIR HOUSING ACT ACCESSIBILITY CHECKLIST

The following is a checklist of design and construction requirements of the Fair Housing Act. This checklist represents many, but not all, of the requirements to the Act. This checklist is not intended to be exhaustive; rather, it is a helpful guide in determining if the major requirements of the Act have been met in designing and constructing a particular multifamily development.

GENERAL REQUIREMENTS

- Development has buildings containing 4 or more units and was designed and constructed for first occupancy on or after March 13, 1991.
- If it is an elevator building, all units are “covered units”.
- All units in buildings with elevators have features required by the Act.
- If it is a non-elevator building, all ground-floor units “covered units”
- All ground floor units in buildings without elevators have features required by the Act.

NOTE: There is a narrow exception, which provides that a non-elevator building in a development need not meet all of the Act’s requirements if it is impractical to have an accessible entrance to the non-elevator building because of hilly terrain or other unusual characteristics of the site.

1. ACCESSIBLE BUILDING ENTRANCE ON AN ACCESSIBLE ROUTE

- The accessible route is a continuous, unobstructed path (no stairs) through the development that connects all buildings containing covered units and all other amenities.
- The accessible route also connects to parking lots, public streets, public sidewalks, and to public transportation stops.
- All slopes are no steeper than 8.33%.
- All slopes between 5% and 8.33% have handrails.
- Covered units have at least one entrance on an accessible route.
- There are sufficient curb cuts for a person using a wheelchair to reach every building in the development.

2. COMMON AND PUBLIC USE AREAS

- At least two percent of all parking spaces are designated as handicapped parking.
- At least, one parking space at each common and public use amenity is designated as handicapped parking.
- All handicapped parking spaces are properly marked.
- All handicapped parking spaces are at least 96” wide with a 60” wide access aisle, which can be shared between two spaces.
- The accessible aisle connects to a curb ramp and the accessible route.
- The rental or sales office is readily accessible and usable by persons with disabilities.

- ❑ All mailboxes, swimming pools, tennis courts, clubhouses, rest rooms, showers, laundry facilities, trash facilities, drinking fountains, public telephones, and other common and public use amenities offered by the development are readily accessible and usable by persons with disabilities.

3. **USABLE DOORS**

- ❑ All doors into and through covered units and common use facilities provide a clear opening of at least 32" nominal width.
- ❑ All doors leading into common use facilities have lever door handles that do not require grasping and twisting.
- ❑ Thresholds at doors to common use facilities are no greater than 1/2".
- ❑ All primary entrance doors to covered units have lever door handles that not require grasping and twisting.
- ❑ Thresholds at primary entrance doors to covered units are no greater than 3/4" and beveled.

4. **ACCESSIBLE ROUTE INTO AND THROUGH THE COVERED UNIT**

- ❑ All routes through the covered units are no less than 36" wide.

5. **ACCESSIBLE ENVIRONMENTAL CONTROLS**

- ❑ All light switches, electrical outlets, thermostats, and other environmental controls must be no less than 15" and no greater than 48" from the floor.

6. **REINFORCED BATHROOM WALLS FOR GRAB BARS**

- ❑ Reinforcements are built into the bathroom walls surrounding toilets, showers, and bathtubs for the future installation of grab bars.

7. **USABLE KITCHEN AND BATHROOMS**

- ❑ At least 30" x 48" of clear floor space at each kitchen fixture and appliance.
- ❑ At least 40" between opposing cabinets and appliances.
- ❑ At least a 60" diameter turning circle in U-shaped kitchens unless the cook top or sink at the end of the U-shaped kitchen has removable cabinets beneath for knee space.
- ❑ In bathroom, at least 30" x 48" of clear floor space outside the swing of the bathroom door.
- ❑ Sufficient clear floor space in front of and around sink, toilet, and bathtub for use by persons using wheelchairs.

This checklist represents many, but not all, of the accessible and adaptive design and construction requirements of the Fair Housing Act. This checklist is not a safe harbor for compliance with the Fair Housing Act. HUD and the Department of Justice recognize the following standards as safe harbors when used in conjunction with the Fair Housing Act, regulations, and Fair Housing Act Accessibility Guidelines (i.e. scoping requirements)

1. HUD's March 6, 1991 Fair Housing Accessibility Guidelines (the Guidelines), and the June 28, 1994 Supplemental Notice to Fair Housing Accessibility Guidelines, Questions and Answers about the Guidelines;
2. HUD's Fair Housing Act Accessibility Design Manual;
3. ANSI A117.1-1986, used in conjunction with the Act and HUD's regulations, and the Guidelines;
4. CABO/ANSI A117.1-1992, used in conjunction with the Act, HUD's regulations, and the Guidelines;
5. ICC/ANSI A117.1-1998, used in conjunction with the Act, HUD's regulations, and the Guidelines;
6. *Code Requirements for Housing Accessibility 2000 (CRHA)*, approved and published by the International Code Council (ICC), October 2000;
7. *International Building Code 2000 (IBC)* as amended by the *IBC 2001 Supplement to the International Codes*.

Failure to comply with all of the accessible and adaptive design and construction requirements of the Fair Housing Act may result in loss of tax credits pursuant to 26 C.F.R. § 1.42-9. Therefore, you should consult an attorney and/or design professional to ensure that the construction of the multi-family development complies with the accessible and adaptive design and construction requirements of the Fair Housing Act.

COVERED BUILDINGS**IS THE DEVELOPMENT SUBJECT TO THE ACT?**

- ✓ Development has buildings containing 4 or more units and was designed and constructed for first occupancy on or after March 13, 1991
- ✓ Building contains elevator so all units in building are "covered units"
- ✓ All units in buildings with elevators are designed and constructed with features required by the Act
- ✓ Building does not contain elevator so only ground-floor units in building are "covered units"
- ✓ All ground-floor units in buildings without elevators are designed and constructed with features required by the Act Development contains "covered units," so the public and common use facilities must be designed and constructed with features required by the Act NOTE: Fair Housing Act Accessibility Guidelines contains a narrow "Site Impracticality Exception" which provides that a non-elevator building does not have to meet all of the Act's requirements if it is impractical to have an accessible entrance to the building because of the natural hilly terrain or other unusual characteristics of the site.

FAIR HOUSING ACT CONTACT INFORMATION

Fair Housing Act - General Information U.S. Department of Housing and Urban Development Bryan Greene Office of Fair Housing & Equal Opportunity Tel: (202) 708-1145 Fax: (202) 708/3527 www.hud.gov

**Fair Housing Act - Accessibility Issues
U.S. Department of Housing and Urban Development
Cheryl Kent
Office of Fair Housing and Equal Opportunity
Tel: (202) 708-2333
Fax: (202) 708-1251**

**Section 202 and Section 811 Program Information
U.S. Department of Housing and Urban Development
Aretha Williams
Grant Policy and Management Division
Tel: (202) 708-2866**

**U.S. Justice Department - Point of Contact
Diane Houk, Esq.
Civil Rights Division
Housing Section
Tel: (202) 514-4713
Fax: (202) 514-1116
www.usdoj.gov/crt/housing**

**U.S. Treasury Department - Point of Contact
Jack Malgeri, Esq.
Internal Revenue Service
Office of Chief Counsel
Tel: (202) 622-3040
Fax: (202) 622-4753**

ANNEX G: OWNER'S CERTIFICATION

[THIS FORM MUST BE INCLUDED WITH APPLICATION]

CERTIFICATION

Individually, or as the general partner(s) or officers of the applicant entity, I am familiar with the provisions of the Tax Reform Act of 1986 and subsequent revisions, with respect to the Low Income Housing Tax Credit Program and to the best of my knowledge and belief, the applicant entity has complied, or will comply with all of the requirements which are prerequisite to issuance of tax credits by the Puerto Rico Housing Finance Authority. I understand that the Low Income Housing Tax Credit Program is governed and controlled by rules and regulations issued and to be issued by the United States Department of the Treasury.

To the best of my knowledge and belief, no information contained in this application or in the listed attachments is any way false or incorrect; that it is truly descriptive of the project or property for which Low Income Housing Tax Credits are being applied, and the proposed construction/rehabilitation will not violate zoning ordinances or deed restrictions.

I hereby make application to the Puerto Rico Housing Finance Authority for an allocation of housing tax credits. I agree that the Puerto Rico Housing Finance Authority or any of its directors, officers, employees, and agents will not be held responsible or liable for any representations made to the undersigned or its investors relating to the Low Income Housing Tax Credit Program: therefore, I assume the risk of all damages, losses, costs, and expenses related thereto and agree to indemnify and save harmless the Puerto Rico Housing Finance Authority or any of its directors, officers, employees, and agents against any and all claims, suits, losses, damages, costs, and expenses of any kind and of any nature that the Puerto Rico Housing Finance Authority may hereinafter suffer, incur, or pay arising out of its decision concerning the application for Low Income Housing Tax Credits or the use of the information concerning the application for Low Income Housing Tax Credits or the use of the information concerning the Low Income Housing Tax Credit Program. I also agree that the Puerto Rico Housing Finance Authority has made no representations about the effect of the tax credit upon my taxes or that of any other person connected with this project.

I understand and agree that my application for a low income housing credit, all attachments thereto, and all correspondence relating to my application in particular or the credit in general are subject to a request for disclosure under the Constitution and Laws of the Commonwealth of Puerto Rico and I expressly consent to such disclosure.

I hereby represent and certify to the Puerto Rico Housing Finance Authority that the owner, developer or applicant and their shareholders, directors, officers, and partners, as applicable, are in compliance with Section 42 requirements and that there are no

outstanding findings of noncompliance with the Agency's Office of Audit and Compliance as of the date of this application in any other project that received tax credit and in which they have an interest.

I further understand and agree that any and all correspondence to me (us) by the Puerto Rico Housing Finance Authority or other Puerto Rico Housing Finance Authority generated documents relating to my application are subject to a request for disclosure under the Constitution and Laws of the Commonwealth of Puerto Rico. I expressly consent to such disclosure. I agree to hold harmless the Puerto Rico Housing Finance Authority and the directors, officers, employees, and agents of the Puerto Rico Housing Finance Authority against all claims, suits, losses, damages, costs, and expenses or any kind (including, but not limited to, attorney's fees, litigation and court costs) directly or indirectly resulting from or arising out of the release of all information pertaining to my application pursuant to a request under such request. I further waive, with regard to such application, correspondence or other documents, any applicable rights of confidentiality that I may have under Section 6103 of the US Internal Revenue Code or other provisions of federal law.

I also agree that Puerto Rico Housing Finance Authority may request additional information in order to evaluate this application.

I hereby certify that the above information and any attachments in support thereof are true, accurate, and complete. I understand that any misrepresentations in this application or supporting documentation may result in a withdrawal of tax credits by the Puerto Rico Housing Finance Authority, my (and related parties) being barred from future program participation, and notification to the Internal Revenue Service.

Date: _____

Name of Applicant

Name of Development Project

By: _____

Title

I, the undersigned, a Notary Public in and for the Commonwealth of Puerto Rico, hereby certify that _____ whose name(s) _____ signed to the foregoing instrument, and who is known to me, acknowledged before me on this date that, being informed of the contents of this document, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____, 200__.

Notary Public

(SIGNED AND SEALED)

ANNEX H: ACCOUNTANT'S OPINION LETTER

[THIS FORM MUST BE INCLUDED WITH THE APPLICATION]

[ACCOUNTANT'S LETTERHEAD]

Insert Date

Puerto Rico Housing Finance Authority
P O Box 71361
San Juan, PR 00936-8461

Low Income Housing Tax Credit Program

Project: _____

Owner: _____

Gentlemen:

In connection with the application filed with the Authority by **(the "Owner")** for low income housing credits made available pursuant to Section 42 of the Internal Revenue Code of 1986, as amended, for low income units in **(insert number of buildings in development)** building(s) in the proposed reference Development, the undersigned, have made the following reviews:

1. Review of the provisions of the Internal Revenue Code of 1986, as amended (**Code**), and the regulations promulgated pursuant thereto (**Regulations**) applicable to low income housing credits.
2. Review of each computation of credits submitted to you by the owner with respect to each applicable type of credit for each building of the development.
3. Review, made with the Owner, of the projections, facts and circumstances with respect to the computations of the amount of each applicable type of credit for each building in accordance with the applicable provisions of the Code and the Regulations

Based upon the foregoing reviews, we, the undersigned, are of the opinion that the computations have been made and calculated in conformity with the applicable provisions of the Code and Regulations.

Sincerely,

/s/Independent Auditors

City, State

Date

ANNEX I: Attorney's Opinion Letter

[This Form Must Be Included With Application]

(This Opinion Must be Submitted Under Law Firm's Letterhead - Any changes to the form of opinion other than filling in blanks or making the appropriate selections in bracketed language must be accompanied by a black-lined version indicating all additional changes to the opinion. Altered opinions are subject to acceptance by the Authority and should be approved prior to the application deadline)

Date: _____

TO: Puerto Rico Housing Finance Authority
P.O. Box 71361
San Juan, Puerto Rico 00936-8461

RE: Low Income Housing Tax Credit Program
Project: _____
Owner: _____

Gentlemen:

This undersigned firm represents the above-referenced Owner as its counsel. It has received a copy of and has reviewed the completed application package (**Application**) dated _____ (of which this opinion is a part) submitted to you for the purpose of requesting, in connection with the captioned Development, a reservation of low income housing tax credits (**Credits**) available under Section 42 of the Internal Revenue Code of 1986, as amended (**Code**). It has also reviewed Section 42 of the Code, the regulations issued pursuant thereto and such other binding authority as it believes to be applicable to the issuance hereof (the regulations and binding authority hereinafter collectively referred to as the **Regulations**).

Based upon the foregoing reviews and upon due investigation of such matters as it deems necessary in order to render this opinion, but without expressing any opinion as to either the reasonableness of the estimated or projected figures or the veracity or accuracy of the factual representations set forth in the Application, the undersigned is of the opinion that:

1. It is more likely than not that the inclusion in eligible basis of the Development of such cost items or portions thereof, as set forth in Parts 22, 23 and 24 of the Application, complies with all applicable requirements of the Code and Regulations.
2. The calculations (a) of the Maximum Allowable Credit available under the Code with respect to the Development in Part 24 of the Application and (b) of the Estimated Qualified Basis of each building in the Development in Page 17 of the Application comply with all applicable requirements of the Code and regulations, including the selection of credit type implicit in such calculations.
3. The appropriate type(s) of allocation(s) have been requested in Part 2 of the Application.

4. The information set forth in Part 20 of the Application as to proposed rents satisfies all applicable requirements of the Code and Regulations.
5. The site of the captioned Development is controlled by the Owner, as identified in Part 15 of the Application, for a period of not less than four (4) months beyond the application deadline.
6. [Delete if inapplicable] The type of the nonprofit organization involved in the Development is an organization described in Code Section 501 (c)(3) or 501 (c)(4) and exempt from taxation under Code Section 501(a), whose purposes include the fostering of low-income housing.
7. [Delete if inapplicable] The nonprofit organization's ownership interest in the Development is all the general partnership interests of the ownership entity of the Development as described in Part 34 of the Application.
8. [Delete if inapplicable] It is more likely than not that the representations made under Part 22 of the Application as to the Development's compliance with or exception to the Code's minimum expenditure requirements for rehabilitation projects are correct.
9. [Delete if inapplicable] After reasonable investigation, the undersigned has no reason to believe that the representations made under Part 27 of the Application as to the Development's compliance with or eligibility for exception to the ten year *look-back-rule* requirement of Code §42(d)(2)(B) are not correct.

Finally, the undersigned is of the opinion that, if all information and representations contained in the Application and all current law were to remain unchanged, upon the placement in service of each building of the Development during this calendar year 20XX and/or, if the Owner intends to request all or any portion of its final allocation pursuant to Section 42(h)(1)(E) of the Code, upon compliance by the Owner with the requirements of such section, the Owner would be eligible under the applicable provisions of the Code and the Regulations to an allocation of Credits in the amount(s) requested in the Application.

This opinion is rendered solely for the purpose of inducing the Puerto Rico Housing Finance Authority (**PRHFA**) to issue a reservation of Credits to the Owner. Accordingly, it may be relied upon only by PRHFA and may not be relied upon by any other party for any other purpose.

 Firm Name
 By: _____
 Its: _____
 (Title)

ANNEX J: Designer's Preliminary Certification

[This Form Must Be Included With Application]

[This Opinion Must Be Submitted Under Designer Firm's Letterhead]

Date: _____

TO: Puerto Rico Housing Finance Authority
P.O. Box 71361
San Juan, Puerto Rico 00936-8461

RE: Low Income Housing Tax Credit Program
Project Name: _____
Owner: _____

Gentlemen:

The undersigned, an architect/engineer duly licensed and registered in Puerto Rico, will provide full design services, including without limitation, preparing for [project's owner], plans and specifications, in connection with the proposed construction/rehabilitation of a **(insert number of units in proposed development)** units project on certain real property known as [project's name] (the Premises).

The undersigned hereby certifies that:

1. The plans and specifications will be in compliance with the requirements of all municipal, local, state, and federal government authorities having jurisdiction thereover.
2. The condition of the Premises and the Project, after completion of the construction/rehabilitation in accordance with Plans and Specifications, will be in compliance with:
 - a. all government and municipal authorities having jurisdiction thereover;
 - b. all applicable zoning, building, fire and other federal, state, local laws, ordinances, rules, regulations, restrictions;
 - c. other requirements, including without limitations:
 - i. the Fair Housing Act,
 - ii. the American with Disabilities Act;
 - iii. other local and/or state access codes; and
 - iv. standards of professional practice.

Respectfully,

Firm Name

By: _____

Its: _____

(Title)

(SEAL)

ANNEX K: DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW INCOME HOUSING CREDITS

DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW-INCOME HOUSING TAX CREDITS

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW-INCOME HOUSING TAX CREDITS (this "Agreement"), dated as of by , a [*limited partnership or limited liability company*] organized and existing under the laws of the State of , and its successors and assigns (the "Owner") is given as conditions precedent to the allocation of low-income housing tax credits by Puerto Rico Housing Finance Authority, a public corporation subsidiary of the Government Development Bank, and an instrumentality of the Commonwealth of Puerto Rico (together with any successor its rights, duties and obligations, the "Authority").

WITNESSETH

WHEREAS, the Authority has been designated by the Governor of the Commonwealth of Puerto Rico as the housing tax credit agency for the Commonwealth of Puerto Rico for the allocation of low-income housing tax credit dollars pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, the Owner holds or will hold [*fee simple title or leasehold title*] to the real property located in the Municipality of , of the Commonwealth of Puerto Rico, as more fully described in **Exhibit A** attached hereto and made a part hereto (the "Land"), known as or to be know as [*name of the project*] (the "Project");

WHEREAS, Owner has applied to the Authority for an allocation of low-income housing tax credit dollars (the "Tax Credits");

WHEREAS, the Owner has represented to the Authority in Owner's application that it will impose additional rent restrictions or will covenant to maintain the rent and income restrictions under Section 42 of the Code for a period of time of [*15 years plus the number of additional years beyond the original compliance period*] years;

WHEREAS, the Code has required as a condition precedent to the allocation of the Tax Credit that the Owner execute, deliver and record in the appropriate Registry of the Property the deed covering this Agreement in order to create certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the Code by regulating and restricting the use, occupancy and transfer of the Project as set forth herein; and

WHEREAS, the Owner, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project will be and are covenants running with the Land for the term stated herein and binding upon all subsequent owners of the Project for such term, and are not merely personal covenants of the Owner;

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner agrees as follows:

SECTION 1 - DEFINITIONS

All words and phrases defined in Section 42 of the Code and all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, or the Internal Revenue Service, or the Department of Housing and Urban Development from time to time pertaining to Owner's obligations under Section 42 of the Code and affecting the Project (the "Regulations") will have the same meanings in this Agreement.

SECTION 2 - FILING AND RECORDING; COVENANTS TO RUN WITH THE LAND

a) Upon execution and delivery by the Owner, the Owner will cause this Agreement and all amendments hereto to be filed and recorded in the appropriate Registry of Property, and will pay all fees and charges incurred in connection therewith. Upon filing, the Owner will immediately transmit to the Authority a certified copy of the filed deed showing the date, volume and page numbers of record. The owner agrees that the Authority will not issue the Internal Revenue Service Form 8609 constituting final allocation of the Tax Credit unless and until the Authority has received the filed certified copy of the deed containing the land use in this Agreement.

b) The Owner intends, declares, and covenants, on behalf of itself and all future owners and operators of the Project during the term of this Agreement, that this Agreement and the covenants and restrictions set forth in this Agreement regulating and restricting the use, occupancy and transfer of the Land and the Project (i) will be and are covenants running with the Land, encumbering the Project for the term of this Agreement, binding upon the Owner's successors in title and all subsequent owners and operators of the Project, (ii) are not merely personal covenants of the Owner, and (iii) will bind the Owner (and the benefits will inure to the Authority and any past, present or prospective tenant of the Project) and its respective successors and assigns during the term of this Agreement.

The Owner hereby agrees that any and all requirements of the laws of the Commonwealth of Puerto Rico to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land will be deemed to be satisfied in full, and that any requirements of privileges of estate are

intended to be satisfied. For the longer of the period this Tax Credit is claimed or the term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof will expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein will survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Agreement.

c) The Owner covenants to obtain the consent of any prior recorded lienholder on the Project to this Agreement and such consent will be a condition precedent to the issuance of Internal Revenue Service Form 8609 constituting final allocation of the Tax Credit.

SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The Owner hereby represents covenants and warrants as follows:

(a) The Owner (i) is a [limited partnership or limited liability company] duly organized and existing under the laws of the State of , and is qualified to transact business under the laws of the Commonwealth of Puerto Rico, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.

(b) The execution and performance of this Agreement by the Owner (i) will not violate or, as applicable, have not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Owner will, at the time of execution and delivery of this Agreement, have good and marketable title to the Land constituting the Project free and clear on any lien or encumbrance (subject of encumbrances created pursuant to this Agreement, any Loan Documents relating to the Project or other permitted encumbrances).

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

(e) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in Section 42 of the Code and the Regulations.

(f) Each unit in the Project contains complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless), which are to be used on other than a transient basis.

(g) During the term of this Agreement, all units subject to the Tax Credit will be leased and rented, or made available to members of the general public who qualify as Low-Income Tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in Section 42(g) of the Code.

(h) The Owner agrees to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended.

(i) During the term of this Agreement, the Owner covenants, agrees and warrants that each low-income unit is and will remain suitable for occupancy.

(j) Subject to the requirements of Section 42 of the Code and this Agreement, the Owner may sell, transfer or exchange the entire Project at any time, but the Owner will notify in writing and obtain the agreement in writing of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Agreement and to the requirements of Section 42 of the Code and the Regulations. This provision will not act to waive any other restriction on sale, transfer or exchange of the Project or any low-income portion of the Project. The Owner agrees that the Authority may void any sale, transfer or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Agreement and the requirements of Section 42 of the Code.

(k) The Owner agrees to notify the Authority in writing of any sale, transfer or exchange of the entire Project or any low-income portion of the Project.

(l) The Owner will not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Agreement unless required by law.

(m) The Owner represents, warrants and agrees that if the Project, or any part thereof, will be damaged or destroyed or will be condemned or acquired for public use, the Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Agreement.

(n) The Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(o) The Owner agrees that it will not refuse to lease any low-income unit in the Project to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, as amended, because of the status of the prospective tenant as such a holder.

SECTION 4 - INCOME RESTRICTION; RENTAL RESTRICTIONS

The Owner represents, warrants and covenants throughout the term of this Agreement and in order to satisfy the requirements of Section 42 of the Code ("Section 42 Occupancy Restrictions") that:

(a) 1 At least 20% or more of the residential units in the Project are both rent-restricted and occupied by individuals whose income is 50% or less of area median income; or

2 At least 40% or more of the residential units in the Project are both rent-restricted and occupied by individuals whose income is 60% or less of area median income.

(b) The determination of whether a tenant meets the low-income requirement will be made by the Owner at least annually on the basis of the current income of such Low-Income Tenant.

(c) The applicable fraction (as defined in Section 42(c)(1)(B) of the Code for each taxable year during the term of this Agreement will be not less than 1 %.

(d) Throughout the term of this Agreement the low-income units will rent for at least 1 % lower than the maximum gross rent allowed under Section 42 of the Code.

SECTION 5 - TERM OF THE AGREEMENT

(a) Except as hereinafter provided, this Agreement herein will commence with on first day in the Project period on which any building which is part of the Project is placed in service and will end on the date which is 1 years after the close of the compliance period (the "Extended Use Period").

(b) Notwithstanding subsection (a) above, the Owner will comply with the requirements of Section 42 of the Code relating to the Extended Use Period; provided, however, the Extended Use Period for any building which is part of this Project will terminate on the date the building is acquired by foreclosure or instrument in lieu of foreclosure unless the Secretary of the United States Treasury Department determines

that such acquisition is part of an arrangement with Owner a purpose of which is to terminate such period.

(c) Notwithstanding subsection (b) above, the Owner will not evict or terminate the tenancy (other than for good cause) of an existing tenant of any low-income unit and will not increase the gross rent above the maximum allowed under the Code with respect to such low-income unit for the entire term of the Extended Use Period, regardless of whether such Extended Use Period is terminated by foreclosure or instrument in lieu of foreclosure relating to such building (such restrictions collectively referred to as the "Vacancy Controls").

SECTION 6 - ENFORCEMENT OF THE OCCUPANCY RESTRICTIONS

(a) The Owner will permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Authority, to inspect any books and records of the Owner regarding the Project with respect to the incomes of Low-Income Tenants which pertain to compliance with the Section 42 Occupancy Restrictions and the Vacancy Controls specified in this Agreement.

(b) The Owner will submit any other information, documents or certifications requested by the Authority, which the Authority will deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the Occupancy Restrictions and the Vacancy Controls specified in this Agreement.

SECTION 7 - ENFORCEMENT OF SECTION 42 OF THE CODE OCCUPANCY RESTRICTIONS

(a) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code and the Regulations. Moreover, Owner covenants to take any lawful action (including amendment of this Agreement as may be necessary, in the opinion of the Authority) to comply fully with the Code and with the Regulations.

(b) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Agreement is to assure compliance of the Project and the Owner with Section 42 of the Code and Regulations, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING TAX CREDITS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE AUTHORITY AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER SECTION 42 OF THE CODE (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) WILL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN A COURT OF COMPETENT JURISDICTION. The Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations

hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

(c) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the Authority and all persons interested in Project compliance under Section 42 of the Code and Regulations.

(d) The Owner agrees that if at any point following execution of this Agreement, Section 42 of the Code or the Regulations require the Authority to monitor the Section 42 Occupancy Restrictions, or, alternatively, the Authority chooses to monitor Section 42 Occupancy Restrictions or the Occupancy Restrictions, the Owner will take any and all actions reasonably necessary and required by the Authority to substantiate the Owner’s compliance with the Section 42 Occupancy Restrictions or Occupancy Restrictions and will pay the fee established by the Authority in its Allocation Plan for such monitoring activities performed by the Authority.

SECTION 8 - MISCELLANEOUS

(a) Severability. The invalidity of any clause, part or provision of this Agreement will not affect the validity of the remaining portion thereof.

(b) Notices. All notices to be given pursuant to this Agreement will be in writing and will be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

To the Authority
Puerto Rico Housing Finance Authority
P O Box 71361
San Juan, PR 00936-8461

ATTENTION: Low-income Housing
Tax Credit Program

To the Owner:
[]

ATTENTION: []

The Authority, and the Owner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications will be sent.

(c) Amendment. The Owner agrees that it will take all actions necessary to effect amendment of this Agreement as may be necessary to comply with the Code and the Regulations.

(d) Subordination of Agreement. This Agreement and the restrictions hereunder are subordinate to the loan and loan documents, if any, on the Project except for the

Vacancy Controls specified herein and insofar Section 42 of the Code and the Regulations require otherwise.

(e) Governing Law. This Agreement will be governed by the laws of the Commonwealth of Puerto Rico and, where applicable, the laws of the United States of America.

(f) Survival of Obligation. The obligations of the Owner as set forth herein and in the Application will survive the allocation of the Tax Credit and will not be deemed to terminate or merge with the awarding of the allocation.

IN WITNESS WHEREOF, the Owner has caused this Agreement to be signed by its duly authorized representatives, as of the day and year first written above.

[]

BY: [] , [General Partner or Managing Member]

BY: _____

[]
[Title]

PUERTO RICO HOUSING FINANCE AUTHORITY

BY: _____

Executive Director

**ANNEX L: INDEPENDENT AUDITOR'S REPORT
10% PERCENT TEST CERTIFICATION**

(To be submitted on Auditor Firm's letterhead)

Date:

To: PUERTO RICO HOUSING FINANCE AUTHORITY
P.O. Box 71361
San Juan, PR 00936-8461

and

Owner: _____
Address _____
Owner Tax ID: _____

Re: Project: _____
Application Number _____

We have audited the accompanying Certification of Costs Incurred ("Exhibit A") of the Owner for (The Project) as of ____,20__. Exhibit A is the responsibility of the Owner and the Owner's management. Our responsibility is to express an opinion on Exhibit A based on our examination.

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

The accompanying Exhibit A was prepared in conformity with the accounting practices prescribed by the Internal Revenue Service under the accrual method of accounting and by the Puerto Rico Housing Finance Authority (PRHFA), which is a comprehensive basis of accounting other than generally accepted accounting principles.

In our opinion, Exhibit A referred to above presents fairly, in all material respects, costs incurred for the Project as of ____,20__, on the basis of accounting described above.

In addition to auditing Exhibit A, we have, at your request, performed certain agreed-upon procedures, as enumerated below, with respect to the Project. These procedures, which were agreed to by the Owner and PRHFA, were performed to assist you in determining whether the Project met the 10% test in accordance with Internal Revenue Code Section 42(h)(1)(E) and Treasury Regulation Section 1.42-6. These agreed-upon procedures were performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely responsibility of the specified users of the report. Consequently, we make no representations regarding the sufficiency of the procedures below either for the purpose for which this report has been requested or for any other purpose.

We performed the following procedures:

1. We calculated, based on estimates of total development costs provided by the Owner, the Project's total reasonably expected basis, as defined in Treasury Regulation Section 1.42-6, to be \$____ as of _____, 20__.
2. We calculated the reasonably expected basis incurred by the Owner as of _____, 20__ to be \$_____.
3. We calculated the percentage of the development fee incurred by the Owner as of _____, 20__ to be _____% of the total development fee.
4. We compared the reasonably expected basis incurred as of _____, 20__ to the total reasonably expected basis of the Project and calculated that _____% had been incurred as of _____, 20__.
5. We determined that Owner uses the accrual method of accounting, and has not included any construction costs in carryover allocation basis that have not been properly accrued.
6. Based on the amount of total reasonably expected basis listed above, for the Owner to meet the 10% test in accordance with Internal Revenue Code Section 42(h)(1)(E) and Treasury Regulation Section 1.42-6, we calculated that the Project needed to incur at least \$____ of costs prior to December 31, 20__. As of 20__ costs of at least \$____ had been incurred, which is approximately _____% of the total reasonably expected basis of the Project.

We were not engaged to, and did not perform an audit of the Owner's financial statements or of the Project's total reasonably expected basis. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Owner and the Owner's management and for filing with PRHFA and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes.

/s/Independent Auditors

City, State

Date

**EXHIBIT A TO INDEPENDENT AUDITOR'S REPORT FOR CARRYOVER ALLOCATION
ITEMIZED EXPENDITURES AS OF _____**

	TOTAL PROJECT COSTS	PROJECT'S EXPECTED BASIS	ELIGIBLE 10% TEST EXPENDITURE	EXPENDITURES AS % OF EXPECTED BASIS
LAND AND BUILDING*				
Land Costs	\$ _____	\$ _____	\$ _____	_____ %
Existing Structures	\$ _____	\$ _____	\$ _____	_____ %
On-site Work	\$ _____	\$ _____	\$ _____	_____ %
Off-site Work	\$ _____	_____	_____	
Impact Fees	\$ _____	\$ _____	\$ _____	_____ %
Other**	\$ _____	\$ _____	\$ _____	_____ %
TOTAL	\$ _____	\$ _____	\$ _____	_____ %
REHABILITATION OR CONSTRUCTION COSTS				
New Building	\$ _____	\$ _____	\$ _____	_____ %
Rehabilitation	\$ _____	\$ _____	\$ _____	_____ %
Accessory Buildings	\$ _____	\$ _____	\$ _____	_____ %
Contractor Overhead	\$ _____	\$ _____	\$ _____	_____ %
Contractor Profit	\$ _____	\$ _____	\$ _____	_____ %
General Requirements	\$ _____	\$ _____	\$ _____	_____ %
Construction Contingency	\$ _____	\$ _____	\$ _____	_____ %
Other	\$ _____	\$ _____	\$ _____	_____ %
TOTAL	\$ _____	\$ _____	\$ _____	_____ %
PROFESSIONAL FEES				
Architect - Design	\$ _____	\$ _____	\$ _____	_____ %
Architect - Supervision	\$ _____	\$ _____	\$ _____	_____ %
Engineer/Surveyor	\$ _____	\$ _____	\$ _____	_____ %
Construction Manager	\$ _____	\$ _____	\$ _____	_____ %
Other	\$ _____	\$ _____	\$ _____	_____ %
TOTAL	\$ _____	\$ _____	\$ _____	_____ %
CONSTRUCTION PERIOD COSTS				
Insurance	\$ _____	\$ _____	\$ _____	_____ %
Title Insurance-Constr. Loan	\$ _____	\$ _____	\$ _____	_____ %
Construction Loan Interest	\$ _____	\$ _____	\$ _____	_____ %
Title & Recording	\$ _____	\$ _____	\$ _____	_____ %
Constr. Loan Origination Fee	\$ _____	\$ _____	\$ _____	_____ %
Legal Fees-Construction Loan	\$ _____	\$ _____	\$ _____	_____ %
Taxes and Fees	\$ _____	\$ _____	\$ _____	_____ %
Other	\$ _____	\$ _____	\$ _____	_____ %
TOTAL	\$ _____	\$ _____	\$ _____	_____ %
PERMANENT FINANCING				
Perm. Loan Origination Fee	\$ _____	_____	_____	
Perm. Loan Title and Recording	\$ _____	_____	_____	
Perm. Loan Title Insurance	\$ _____	_____	_____	
Legal Fees-Perm. Loan	\$ _____	_____	_____	
Credit Enhancement	\$ _____	_____	_____	
TOTAL	\$ _____	_____	_____	

	TOTAL PROJECT COSTS	PROJECT'S EXPECTED BASIS	ELIGIBLE 10% TEST EXPENDITURE	EXPENDITURES AS % OF EXPECTED BASIS
SOFT COSTS				
Market Study	\$ _____			
Environmental Study	\$ _____	\$ _____	\$ _____	_____ %
Appraisal	\$ _____			
Tax Credit Fees	\$ _____			
Cost Certification	\$ _____	\$ _____	\$ _____	_____ %
Accounting	\$ _____	\$ _____	\$ _____	_____ %
Other	\$ _____	\$ _____	\$ _____	_____ %
TOTAL	\$ _____	\$ _____	\$ _____	_____ %
SYNDICATION COSTS**				
Organization	\$ _____			
Tax Opinion	\$ _____			
Other	\$ _____			
TOTAL	\$ _____			
DEVELOPER FEES ***				
Developer Overhead	\$ _____	\$ _____	\$ _____	_____ %
Developer Profit	\$ _____	\$ _____	\$ _____	_____ %
Consultant	\$ _____	\$ _____	\$ _____	_____ %
Real Estate Attorney	\$ _____	\$ _____	\$ _____	_____ %
Other	\$ _____	\$ _____	\$ _____	_____ %
TOTAL	\$ _____	\$ _____	\$ _____	_____ %
PROJECT RESERVES				
Rent-Up Reserve	\$ _____			
Operating Reserve	\$ _____			
Escrow Reserves	\$ _____			
Other Reserves	\$ _____			
TOTAL	\$ _____			
TOTAL DEVELOPMENT COSTS****	\$ _____	\$ _____	\$ _____	_____ %
FEES PAID TO RELATED ENTITIES***				
Related Entity	\$ _____	\$ _____	\$ _____	_____ %
Related Entity	\$ _____	\$ _____	\$ _____	_____ %
Related Entity	\$ _____	\$ _____	\$ _____	_____ %
TOTAL	\$ _____	\$ _____	\$ _____	_____ %

* Legal fees and interest expense related to the land must be broken out and entered in this category.

** All Syndication costs must be separated from other project costs and included on this line.

*** If any portion of the developer fee is deferred, supporting documentation must be submitted (e.g. promissory note).

**** All fees, including the developer fees, which are paid to the developer or to any entity with an identity of interest with the developer, must be clearly identified in the section, entitled Fees Paid to Related Entities.

ANNEX M: FINAL COST CERTIFICATION

Independent Auditor’s Report
(Must be submitted with Final Cost Certification)
(To be submitted under Accounting’s Firm Letterhead)

Date: _____

To: Puerto Rico Housing Finance Authority
P.O. Box 71361
San Juan, PR 00936-8461

Re: Name of Project
Address of Project
Project Owner
Project Building Identification Number (BIN)

We have audited the costs included in the accompanying Puerto Rico Housing Finance Authority (PRHFA) Final Cost Certification of insert Owner's name (the “Owner”) for (insert Project's Name) (Project) as of _____, 20____. The Final Cost Certification is responsibility of the Owner and the Owner’s management. Our responsibility is to express an opinion on the Final Cost Certification based on our audit.

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

The accompanying Final Cost Certification was prepared in conformity with the accounting practices prescribed by the Internal Revenue Service, under the accrual method of accounting, and in conformity with the format and qualified allocation plan rules set by PRHFA, which is a comprehensive basis of accounting other than generally accepted accounting principles.

In our opinion the Final Cost Certification presents fairly, in all material respects, the actual costs of \$_____ and eligible basis of \$_____ of the Owner for the Project, as of _____, 20____, on the basis of accounting described above.

This report is intended solely for the information and use of Project Owner and Owner’s management and for filing with PRHFA and should not be used for any other purpose.

We have no financial interest in the Project other than in the practice of our profession.

/s/Independent Auditors

City, State

Date

INDEPENDENT AUDITOR'S REPORT
FINAL COST CERTIFICATION

SCHEDULE A: ITEMIZED COSTS & ELIGIBLE BASIS

ITEMIZED COSTS		Final Costs	Eligible Basis by Credit Type	
			4% Credit	9% Credit
LAND AND BUILDING *				
1	Land Costs	\$	\$	\$
2	Existing Structures	\$	\$	\$
3	Acquisition Fees	\$	\$	\$
4	Other: _____	\$	\$	\$
5	TOTAL	\$	\$	\$

SITE WORK				
6	On-site Work	\$	\$	\$
7	Off-site Work	\$	\$	\$
8	Other: _____	\$	\$	\$
9	TOTAL	\$	\$	\$

REHABILITATION OR CONSTRUCTION COSTS				
10	New Building	\$	\$	\$
11	Rehabilitation	\$	\$	\$
12	Accessory Buildings	\$	\$	\$
13	Contractor Overhead	\$	\$	\$
14	Contractor Profit	\$	\$	\$
15	General Requirements	\$	\$	\$
16	Construction Contingency	\$	\$	\$
17	Fees	\$	\$	\$
18	Other: _____	\$	\$	\$
19	TOTAL	\$	\$	\$

PROFESSIONAL FEES				
20	Design	\$	\$	\$
21	Supervision	\$	\$	\$
22	Engineer/Surveyor	\$	\$	\$
23	Real Estate Attorney	\$	\$	\$
24	Consultant Fees	\$	\$	\$
25	Other: _____	\$	\$	\$
26	TOTAL	\$	\$	\$

INTERIM COSTS				
27	Insurance	\$	\$	\$
28	Bond Premium	\$	\$	\$
29	Construction Loan Interest	\$	\$	\$
30	Loan Origination Fee	\$	\$	\$
31	Taxes and Fees	\$	\$	\$
32	Title and Recording	\$	\$	\$
33	Other: _____	\$	\$	\$
34	TOTAL	\$	\$	\$

PERMANENT FINANCING			
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ITEMIZED COSTS	Final Costs	Eligible Basis by Credit Type	
35 Bond Premium	\$	\$	\$
36 Credit Report	\$	\$	\$
37 Loan Origination Fee	\$	\$	\$
38 Legal Fees	\$	\$	\$
39 Title and Recording	\$	\$	\$
40 Other: _____	\$	\$	\$
41 TOTAL	\$	\$	\$

SOFT COSTS			
42 Market Study	\$	\$	\$
43 Environmental Study	\$	\$	\$
44 Appraisal	\$	\$	\$
45 Tax Credit Fees	\$	\$	\$
46 Cost Certification	\$	\$	\$
47 Rent Up	\$	\$	\$
48 Other: _____	\$	\$	\$
49 TOTAL	\$	\$	\$

SYNDICATION COSTS **			
50 Organizational	\$	\$	\$
51 Tax Opinion and Title Policy	\$	\$	\$
52 Other: _____	\$	\$	\$
53 TOTAL	\$	\$	\$

DEVELOPER FEES			
54 Developer Fees	\$	\$	\$
55 Consultant	\$	\$	\$
56 Other: _____	\$	\$	\$
57 TOTAL	\$	\$	\$

PROJECT RESERVES			
58 Rent Up	\$	\$	\$
59 Operating Reserve	\$	\$	\$
60 Other: _____	\$	\$	\$
61 TOTAL	\$	\$	\$

OTHERS			
62 Working Capital	\$	\$	\$
63 Bridge Loan	\$	\$	\$
64 Other: _____	\$	\$	\$
65 TOTAL	\$	\$	\$

66 TOTAL DEVELOPMENT COSTS	\$	\$	\$
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* Legal fees and interest expense related to the land must be broken out and entered in this category.

** All Syndication costs must be separated from other project costs and included on this line.

SCHEDULE B: QUALIFIED BASIS TEST

1. Total Development Costs (Line 66 from Schedule A):		<u>\$</u>
Less Costs Ineligible for Tax Credit Basis (from Schedule A):		
Land (Line 5)	<u>\$</u>	
Market Study (Line 42)	<u>\$</u>	
Permanent Financing Fees (Line 41)	<u>\$</u>	
Syndication Costs (Line 53)	<u>\$</u>	
Project Reserves (Line 61)	<u>\$</u>	
Other: _____	<u>\$</u>	
Other: _____	<u>\$</u>	
 2. Eligible Basis		 <u>\$</u>
Total Number of Units	_____	
Total Number of Low Income Units	_____	
 3. Applicable Fraction ***		 _____%
 4. Qualified Basis (Applicable Fraction x Eligible Basis)		 <u>\$</u>
Difficult to Develop Area Adjustment, <u>if applicable</u>		130 %
 5. Total Eligible Basis		 <u>\$</u>
(Qualified Basis x 130%)		
Tax Credit Rate (as stated in Carryover Allocation Agreement)		_____%
 6. Annual Tax Credit - Qualified Basis Test		 <u>\$</u>
(Total Eligible Basis x Tax Credit Rate)		

*** Use the smaller of the unit fraction (LI units/residential units) or the floor space fraction (LI unit floor space/residential unit floor space)

SCHEDULE C: EQUITY GAP TEST

1. Total Development Costs (Line 66 from Schedule A)		<u>\$</u>
2. Permanent Financing Sources*		
First Mortgage:	<u>\$</u>	
Second Mortgage	<u> </u>	
Grants	<u> </u>	
Owner Equity	<u> </u>	
Other: <u> </u>	<u> </u>	
TOTAL		<u>\$</u>
3. Equity Gap (Line 1 less Line 2 Total)		<u>\$</u>
4. Syndication Rate (net cent per credit \$)		<u> </u>
5. Investor Ownership Percentage		<u> </u>
6. 10 year Credit Allocation [Line 3/(Line 4 multiplied by Line 5)]		<u>\$</u>
7. Annual Credit - Equity Gap Test (Line 6 divided by 10)		<u>\$</u>

* In general these funding sources should include only permanent financing sources of cash funding expected to be repaid out of project operations. Do not include deferred fees, such as deferred developer fees or imputed capital for which cash is not received.

Schedule D: ANNUAL TAX CREDIT DETERMINATION

A. Tax Credit Allocation (From Carryover Allocation Agreement)	<u>\$</u>
B. Annual Tax Credit - Qualified Basis Test (Schedule B - Line 6)	<u>\$</u>
C. Annual Tax Credit - Equity Gap Test (Schedule C - Line 7)	<u>\$</u>
D. Final Tax Credit Determination ** (the lowest amount between lines A, B or C)	<u>\$</u>
E. Returned Credits (Line A less Line D) (If zero or less, enter 0)	<u>\$</u>

** The actual allocation may be less than this amount.

FINAL COST CERTIFICATION

ANNEX M

Exhibit A
 Schedule E: Qualified Basis on a Building by Building Basis:

Address (must be complete)	30%PV				70% PV				Place in Service Date
	Eligible	Square	Applicable	Qualified	Eligible	Square	Applicable	Qualified	
	Basis	Feet	Fraction	Basis	Basis	Feet	Fraction	Basis	
1)	\$			\$	\$			\$	
2)	\$			\$	\$			\$	
3)	\$			\$	\$			\$	
4)	\$			\$	\$			\$	
5)	\$			\$	\$			\$	
6)	\$			\$	\$			\$	
7)	\$			\$	\$			\$	
8)	\$			\$	\$			\$	
9)	\$			\$	\$			\$	
10)	\$			\$	\$			\$	
TOTALS	\$			\$	\$			\$	

ANNEX N: Designer's Certification of Completion of Construction

[This Form Must Be Included With the Final Cost Certification]

[This Opinion Must Be Submitted Under Designer Firm's Letterhead]

Date: _____

TO: Puerto Rico Housing Finance Authority
P.O. Box 71361
San Juan, Puerto Rico 00936-8461

RE: Low Income Housing Tax Credit Program
Project: _____
Owner: _____

Gentlemen:

The undersigned, an architect/engineer duly licensed and registered in Puerto Rico, has provided full design services, including without limitation, preparing for [project's owner], final plans and specifications, pursuant to certain agreement between the undersigned and the owner dated _____ in connection with the construction/rehabilitation of a **(insert number of units in project)** units project on certain real property known as **(insert project's name)** (the Premises).

The undersigned hereby certifies that:

1. The plans and specifications comply with and conform in all respects to the requirements of law, have been duly filed with and have been approved by Regulations & Permits Administration (ARPE by its Spanish acronym); or the Autonomous Municipality of _____ (as the case may be).
2. Upon examination of the Premises, the Project, the plans and specifications after completion of the construction/rehabilitation we have concluded that the construction is in compliance with:
 - a. all government and municipal authorities having jurisdiction thereover;
 - b. all applicable zoning, building, fire and other federal, state, local laws, ordinances, rules, regulations, restrictions;
 - c. other requirements, including without limitations:
 - i. the Fair Housing Act,
 - ii. the American with Disabilities Act;
 - iii. other local and/or state access codes; and
 - iv. standards of professional practice

Respectfully,

Firm Name

By: _____

Its: _____

(Title)

(SEAL)