



**GDB**

# PUERTO RICO HOUSING FINANCE AUTHORITY

Subsidiary of the Government Development Bank For Puerto Rico

COMMONWEALTH OF PUERTO RICO

P.O. Box 71361 San Juan, Puerto Rico 00936-8461

## LOW-INCOME HOUSING TAX CREDIT PROGRAM

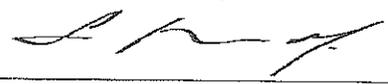
### QUALIFIED ALLOCATION PLAN

DEPARTMENT OF STATE  
**2009**

No. 7701

Date: June 3, 2009 -----

Approved: Hon. Kenneth D. McClintock  
Secretary of State

By:   
Lcdo. Eduardo Arosemena Muñoz  
Assistant Secretary for Services

JUAN C. CORDERO BUILDING  
606 BARBOSA AVENUE - 3RD FLOOR  
RD PIEDRAS, PUERTO RICO 00919-0345

PHONE: (787) 765-7577 FAX: (787) 620-3523

REV  
MAY 2009

# 2009 LOW INCOME HOUSING TAX CREDIT ALLOCATION PLAN

## TABLE OF CONTENTS

Contents	Page
Foreword.....	V
I. Legislative Requirements for the State Allocation Plan.....	1
II. Internal Revenue Code Requirements .....	1
III. Housing Needs Assessment.....	5
A. Priorities Identified in the State Consolidated Plan (2005-2010) and in the State Action Plan (2006-2007).....	5
B. Housing Needs.....	6
C. Eight Goals of the Commonwealth’s Affordable Housing Policy .....	7
IV. Housing Priorities.....	8
V. Set Asides .....	9
VI. Tax Credit Allocation Methodology and Criteria.....	9
A. Initial Submission - Basic Threshold Qualifications .....	9
B. Development Budget and Pro Forma Assumptions Review .....	12
1. Description .....	12
2. Allowable Costs and Expenses .....	13
a. Intermediary Costs .....	13
b. Developer Fees.....	13
c. General Contractor Maximum Charges .....	13
d. Per Unit Maximums .....	13
e. Per Unit Cost Review .....	14
f. Acquisition Costs .....	14
g. Operating Expenses .....	14
3. Underwriting Parameters .....	14
a. Vacancy Rate .....	14
b. Income and Reserve for Replacement .....	15
c. Operating Expenses .....	15
d. Debt Service Coverage Ratio .....	15
e. Required Reserves.....	15
f. Section 8 Project Based Rental Assistance .....	15
g. Tax Credit Percentage .....	15
h. Equity Pricing .....	16
4. Record and Notification .....	16

---

C.	Underwriting and Financial Feasibility Analysis.....	16
1.	Description .....	16
2.	Pro Forma Statements .....	17
D.	Project Evaluation and Selection (Point Ranking System) .....	17
1.	Description .....	17
2.	Section 42 Mandatory Legislative Criteria .....	17
3.	Other Criteria: Overview .....	18
a.	Preferred Project Location.....	18
b.	Preferred Project Characteristics.....	18
c.	Preferred Housing Needs Characteritics .....	19
d.	Sponsor/Owner Characteristics .....	19
e.	Preferred Financing Characteristics .....	19
f.	Tenant Population with Special Housing Needs .....	19
g.	Community Revitalization Master Plan.....	20
h.	Public Housing Modernization.....	20
4.	Point Scoring .....	20
a.	Project Location .....	20
b.	Project Characteristics .....	20
c.	Housing Needs Characteristics .....	22
d.	Sponsor/Project Owner Characteristics.....	22
e.	Financing Characteristics .....	23
f.	Special Housing Needs Projects .....	24
g.	Community Revitalization Master Plan.....	24
h.	Public Housing Modernization or Development .....	25
E.	Tax Credit Allocation.....	25
1.	Description .....	25
2.	Allocation of other Authority Administered Funds.....	26
F.	Notification of Tax Credit Allocation.....	26
VII.	Issuance of Tax Credits.....	26
A.	Reservation of Tax Credits Beyond Actual Allocation Year .....	26
B.	Tax Credit Dollar Amount.....	28
1.	Initial /Reservation of Tax Credits .....	28
2.	Carryover Allocation.....	28
3.	Additional Tax Credits .....	28
4.	Placed-In-Service.....	28
C.	Decrease of Actual Development Costs.....	29
D.	Calendar Requirements.....	29

---

1. Carryover Allocation Requirements.....	29
2. Placed In Service Date.....	30
E. Other Procedural Requirements.....	30
VIII. Time Frame .....	30
IX. Tax Exempt Financed Projects not Subject to Annual Tax Credit Volume Cap .....	31
X. Compliance, Fees and Penalties .....	31
A. Procedure for Notification to IRS of Noncompliance.....	31
B. Fees .....	32
1. Application Fee.....	32
2. Allocating Fee .....	32
3. Monitoring Fee .....	32
C. Penalties.....	32
XI. Scope and Future Amendments .....	33

## LIST OF ANNEXES

- A. Internal Revenue Code §42 - Low-Income Housing Credit
  - A-1 Legislation for the Tax Credit Assistance Program & Tax Credit Exchange Program (TCAP & TCEP)
- B. Rental Market Study Prepared by Advantage Business Consultants January 2007 (Excerpt)
- C. Rent Restrictions and Income Limits for 2009
- D. List of Qualified Census Tract and Difficult to Develop Areas
- E. Form for Binding Agreement for Credits in Subsequent Year
- F. Fair Housing Act Accessibility Requirements
- G. Form for Owner's Certification
- H. Form for Accountant's Opinion
- I. Form for Attorney's Opinion
- J. Form for Preliminary Designer's Opinion
- K. Form for Declaration of Land Use Restrictive Covenants
- L. Form for 10% Cost Certification
- M. Form for Final Cost Certification
- N. Form of Completion of Construction-Designer's Opinion
- O. Compliance Monitoring Plan
- P. Glossary
- Q. Tax Credit Assistance Program & Tax Credit Exchange Program-Regulations
- R. Tax Credit Assistance Program & Tax Credit Exchange Program-Implementation Plans

## FOREWORD

Congress adopted the Low-Income Housing Tax Credit Program (**Tax Credits**)<sup>1</sup> as part of the Tax Reform Act of 1986 (see Annex A). The Tax Credits provide a financial incentive to construct, rehabilitate, and operate rental housing for low-income tenants. A 10-year Tax Credit is available for each unit set-aside for low-income use as long as eligible households occupy a specific proportion of units in a building or project. The rents charged on the set-aside units are restricted and eligible households must occupy them or such units becoming vacant must be held open for eligible households for at least 15 years, plus a minimum of 15 additional years that Puerto Rico Housing Finance Authority requires.

The Housing and Economic Recovery Act of 2008 (enacted July 30) increased the annual per capita Tax Credit to **\$2.20** for 2008 and **2009**. IRS Revenue Procedure 2008-66 changed the 2009 Tax Credit to the greater of the annual per capita Tax Credit of **\$2.30** or \$2,665,000. After 2009, allocations will revert to prior amounts as though this provision had not been enacted. The population of Puerto Rico is 3,954,037 based on Internal Revenue Notice 2009-21 of March 30, 2009. The 2009 annual per capita cap multiplied by the population of Puerto Rico represents **\$9,094,285** in Tax Credits.

The American Recovery and Reinvestment Act of 2009 (February 17, 2009, Public Law 111-5) allows, through home investment partnership programs, additional amounts for capital investments in low-income housing tax credit projects, \$2,250,000,000, to remain available until September 30, 2011. Its Section 1602, Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credit Allocations for 2009, transfers to the Authority an amount equal to the Authority's low-income housing grant election amount.

---

<sup>1</sup> Tax Credits refer to the LIHTC Program as well as the amount of individual tax credits according to the text.

**PUERTO RICO HOUSING FINANCE AUTHORITY  
A SUBSIDIARY OF THE GOVERNMENT DEVELOPMENT BANK FOR PUERTO RICO  
STATE CREDIT AUTHORITY**

**2009**

**Low Income Housing Tax Credit Allocation Plan**

**I. Legislative Requirements for the State Allocation Plan (Allocation Plan)**

The Omnibus Budget Reconciliation Act of 1989 mandated that state housing credit agencies adopt plans for the allocation of the Tax Credits among qualified low-income housing projects. The Governor of Puerto Rico (**Governor**) must approve the Allocation Plan after the public has had the opportunity to comment through a public hearing.

The guidelines and requirements set forth in this Allocation Plan will be utilized in the processing of Tax Credits.

**II. Internal Revenue Code Requirements. Gap funding and credit exchange.**

The housing credit authority for the Commonwealth of Puerto Rico is Puerto Rico Housing Finance Authority (**Authority**). Section 42(m)(1)(B) of the Internal Revenue Code of 1986, as amended (**Code**), requires the Allocation Plan to:

- A.** Set forth the selection criteria to determine housing priorities appropriate to local conditions.
- B.** Prefer allocating Tax Credits to projects:
  - 1.** serving the lowest income tenants;
  - 2.** obligated to serve qualified tenants for the longest periods; and
  - 3.** located in qualified census tracts the development of which contributes to a concerted community revitalization plan.
- C.** Create a procedure that the Authority will follow in monitoring noncompliance, notifying the Internal Revenue Service (**IRS**) of such noncompliance, and monitoring for noncompliance with the provisions of the Tax Credits.

Section 42(m)(1)(C) of the Code requires the Allocation Plan to include certain selection criteria:

- 1.** project location;
- 2.** housing needs characteristics;
- 3.** project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan;
- 4.** sponsor characteristics;
- 5.** tenant populations with special housing needs;
- 6.** public housing waiting lists;

7. tenant populations of individuals with children;
8. projects intended for eventual tenant ownership;
9. energy efficiency of the project; and
10. historic nature of the project.

Every project, including any financed with tax-exempt bonds issued after December 31, 1989, must satisfy the requirements for allocation of Tax Credits.

The Authority may use, at its discretion, the priorities and point rankings set forth to allocate certain other funding sources that it is entrusted to administer by state law or Board of Directors Resolutions, including, without limitation, state tax credits under Act 140 of October 4, 2001 (**Act 140**), as amended, and, other funds as its Board of Directors authorizes.

The American Recovery and Reinvestment Act of 2009 (**ARRA**; February 17, 2009, Public Law 111-5) allows, through home investment partnership programs, additional amounts for capital investments in low-income housing tax credit projects, \$2,250,000,000, to remain available until September 30, 2011. Such funds shall be made available to State housing credit agencies, as defined in section 42(h) of the Code, and shall be apportioned among the States based on the percentage of HOME funds apportioned to each State and the participating jurisdictions therein for Fiscal Year 2008 (see Annexes A-1, Q&R).

In Puerto Rico, the Authority will distribute these funds competitively pursuant to the Allocation Plan to owners of projects who have received or receive simultaneously an award of low-income housing tax credits under section 42(h) of the Code.

The Authority shall commit not less than 75 percent of such funds within one year of the date of enactment of ARRA, and shall demonstrate that the project owners shall have expended 75 percent of the funds made available under ARRA within two years of the date of enactment of ARRA, and shall have expended 100 percent of the funds within 3 years of the date of enactment of ARRA.

Failure by an owner to expend funds within the parameters required within the previous proviso shall result in a redistribution of these funds by the Authority to a more deserving project in Puerto Rico, except any funds not expended after 3 years from enactment shall be redistributed by the Secretary of the Treasury of the United States (**Secretary**) to other States that have fully utilized the funds made available to them.

Projects awarded low income housing tax credits under section 42(h) of the Code in fiscal years 2007, 2008, or 2009 shall be eligible for this funding.

The Authority shall give priority to projects that are expected to be completed within 3 years of enactment of ARRA.

Any assistance provided to an eligible low income housing tax credit project shall be made in the same manner and be subject to the same limitations (including rent, income, and use restrictions, in lieu of corresponding limitations

under the HOME program) as required by the Authority with respect to an award of low income housing credits under section 42 of the Code.

The Authority shall perform asset management functions, or shall contract for the performance of such services, in either case, at the owner's expense, to ensure compliance with section 42 of the Code, and the long term viability of buildings funded by assistance under this funding.

The eligible basis (as such term is defined in such section 42) of a qualified low-income housing tax credit building receiving assistance under this program shall not be reduced by the amount of any grant described under this allotment.

The Secretary shall be given access upon reasonable notice to the Authority to information related to the award of federal funds from the Authority pursuant to this program and shall establish an Internet site that shall identify all projects selected for an award, including the amount of the award and such site shall provide linkage to the Authority's Allocation Plan which describes the process that was used to make the award decision.

In administering these funds, the Secretary may waive any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds except for requirements established in Section 1602 and requirements related to fair housing, non-discrimination, labor standards and the environment, upon a finding that such waiver is required to expedite the use of such funds.

For purposes of environmental compliance review, funds made available to the Authority for distribution to projects awarded low income housing tax credits shall be treated as funds under the HOME program and shall be subject to Section 288 of the HOME Investment Partnership Act.

In addition, under Section 1602 of ARRA, Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credit Allocations for 2009, the Secretary shall make a grant to the Authority in an amount equal to Puerto Rico's low-income housing grant election amount.

The low-income housing grant election amount means such amount as the Authority may elect which does not exceed 85 percent of the product of:

The sum of:

- a. 100% of the Authority's credit ceiling for 2009 which is attributable to amounts described in clauses (i) and (iii) of section 42(h)(3)(C) of the Code, and
- b. 40% of the Authority's credit ceiling for 2009 which is attributable to amounts described in clauses (ii) and (iv) of such section,
- c. multiplied by 10.

The Authority shall use such grant to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income buildings. A subaward under this section may be made to finance a qualified low-income building with or without an allocation under Section 42 of the Code, except that the Authority may make subawards to finance qualified low-income buildings without an allocation only if it makes a determination that such use will increase the total funds available to Puerto Rico to build and rehabilitate affordable housing. The Authority shall establish a process in which applicants that are allocated credits are required to demonstrate good faith efforts to obtain investment commitments for such credits before the Authority makes such subawards.

Any such subaward with respect to any qualified low-income building shall be made in the same manner and shall be subject to the same limitations (including rent, income, and use restrictions on such building) as an allocation of housing credit dollar amount allocated by the Authority under Section 42 of the Code, except that such subawards shall not be limited by, or otherwise affect the Authority's credit ceiling.

The Authority shall perform asset management functions to ensure compliance with Section 42 of the Code and the long-term viability of buildings funded by any subaward. The Authority may collect reasonable fees from a subaward recipient to cover expenses associated with the performance of its duties. The Authority may retain an agent or other private contractor to satisfy these requirements.

The Authority shall impose conditions or restrictions, including a requirement providing for recapture, on any subaward under this section so as to assure that the building with respect to which such subaward is made remains a qualified low-income building during the compliance period. Any such recapture shall be payable to the Secretary for deposit in the general fund of the Treasury and may be enforced by means of liens or such other methods as the Secretary determines appropriate.

Any grant funds not used to make subawards under this section before January 1, 2011, shall be returned to the Secretary on such date. Any subawards returned to the Authority on or after such date shall be promptly returned to the Secretary. Any such amounts returned to the Secretary shall be deposited in the general fund of the Treasury.

The amounts described in clauses (i) through (iv) (unused State housing Tax Credits for preceding calendar year, per capita Tax Credit, returned Tax Credits in the calendar year, and the national pool) of subsection (h)(3)(C) of Section 42

of the Code with respect to any State for 2009 shall each be reduced by so much of such amount as is taken into account in determining the amount of any grant to such State under Section 1602 of ARRA.

The basis of a qualified low-income building shall not be reduced by the amount of any grant described above.

### III. Housing Needs Assessment

#### A. **Priorities identified in the State Consolidated Plan 2005-2010 (Consolidated Plan) and in the 2008 State Action Plan for the CDBG, HOME, ESG, and HOPWA Programs (Action Plan)**

In reviewing the Allocation Plan, the Authority used information from the United States 2000 Census, the needs assessment on housing and homeless included in the most recent Five Years Consolidated Plan 2005-2010, and the information on the most recent State Action Plan 2008 that the Commonwealth of Puerto Rico presented to the U.S. Department of Housing and Urban Development (**HUD**) on May 15, 2008. The affordable housing priorities of the Five Years Consolidated Plan are to:

1. strengthen public and private partnerships;
2. expand the supply of decent, safe, sanitary and affordable housing, with primary attention for the construction of new homeownership and rental housing, for low-income and very low-income families;
3. establish minimum non-federal matching investments to complement federal funding in the provision of affordable housing;
4. support and encourage viable strategies to expand housing as well as economic opportunities for low and moderate-income persons;
5. assist units of local government and their communities in the development of plans and strategies to address the priority need of low and moderate income persons through outreach and education;
6. continue offering and expanding technical assistance by staff of the Puerto Rico Office of the Commissioner for Municipal Affairs (**OCMA**) based on the needs of the municipalities.

The Action Plan's main priorities (**Priorities of State Action Plan**) for the benefit of low and very low income tenants are to:

1. respond to the municipal needs for a sound, safe, decent and appropriate affordable housing as part of a balanced sustainable economic development in the non-entitlement municipalities of Puerto Rico;
2. strengthen non-entitlement communities through community development improvements and public service, which provides a stable platform for economic development;
3. foster the sustainability of the business and industrial sector-and as a result-assist in the economic development of the non-entitlement communities and people;

4. increase the funds for the rental activity to accomplish the housing needs of the low and moderate income people in Puerto Rico, revising the percentage established in the method of distribution;
5. increase the number and quality of transitional facilities for homeless individuals and families in order to help prevent homelessness.

## **B. Housing Needs**

The Puerto Rico Consolidated Plan 2005-2010 and the 2008 Action Plan analyzed the Island's housing needs based on the 2000 US Census data, the Comprehensive Housing Affordability Strategy (CHAS) Data Book (from HUD), local studies, and other reliable information sources.

According to the U.S. Census, out of 3,769,782 individuals in Puerto Rico 1,818,687 are below poverty level (48.2%). It represents almost four times the U.S.A. poverty level. Of the total population, 417,218 are 65 years old and over (11%). Of those 65 years old and over, 183,500 (44%) live below the poverty level in Puerto Rico. The vast majority of the older persons that live below the poverty level reside in rural municipalities that have limited job opportunities and limited resources. There are 1,261,325 occupied housing units in Puerto Rico out of 1,418,476 total housing units (88.92%).

The Government of Puerto Rico has identified the following **Housing Needs**:<sup>2</sup>

1. Safe, decent and affordable residential units for very low, low and moderate-income families. In 2000 there were 1,261,268 occupied housing units in Puerto Rico of which 46.6% had a housing problem, 28.9% had cost burden problems higher than 30% of their earned income, and 15.75% had cost burden problems higher than 50% of their earned income.<sup>3</sup>
2. Below poverty level for individuals in Puerto Rico is almost four times that in U.S.A. This single factor compels a comprehensive approach in order to alleviate the disadvantaged living conditions in this sector. The number of 65 years and over below poverty level is 43.16% of the total 65 years and over population in Puerto Rico and 10% of the total below the poverty level population.
3. The demand for housing in Puerto Rico during the five-year period is estimated at 19,960 units annually, of which 52% is for low-income housing or some government assistance.
  
4. Although the demand for low-income housing is also concentrated in large regions like San Juan and Bayamón, regions like Aguadilla,

---

<sup>2</sup> Consolidated Plan 2005-2010

<sup>3</sup> Housing problems are defined as cost burden greater than 30% of income, overcrowding and without complete kitchen or plumbing facilities. Cost burden is the fraction of a household's total gross income spent on housing costs.

Guayama, Ponce, Mayagüez and Fajardo also have large percentage shares of assisted living demand.

5. Municipalities with the highest percentage of rental units were either densely urbanized or metropolitan. Those with the lowest proportions were located in coastal sectors.
6. Urgency to employ the older population to supplement its income, allow economic self-sufficiency, and contribute to solve its inadequate housing.
7. Housing units, especially those dedicated to special needs population, must be located near transportation hubs, commercial zones, pharmacies and medical facilities.

**C. Goals of the Commonwealth's Affordable Housing Policy (Goals of Housing Policy)**

1. Strengthen public and private partnerships.
2. Expand the supply of affordable housing for low and very low-income families.
3. Establish minimum non-federal matching investments to complement federal funding in providing affordable housing.
4. Support and encourage viable strategies to expand housing and economic opportunities for low and moderate-income families.
5. Assist units of local government and its communities to develop plans and strategies to address the main needs of low and moderate income persons.
6. Continue offer and expansion of technical assistance to non-profit organizations based on the needs of the municipalities.
7. Promote the construction, development, reconstruction, rehabilitation, improvement and equipping of low-income public housing projects as described in the United States Housing Act of 1937, as amended.

Likewise, the Secretary of the Department of Housing has adopted as a priority of public policy the modernization of public housing projects using Tax Credits with the approval of the U.S. Department of Housing and Urban Development (HUD). Tax Credits will be used to provide funds for capital modernization improvements to public housing projects that Puerto Rico Public Housing Administration operates.

To support those efforts, the Authority will facilitate the use of volume-cap tax exempt financing and 4% Tax Credits for public housing modernization. It will facilitate the eight goals with a more efficient use of a historically under-utilized federal resource.

The Authority's mission is to finance and administer programs to create and preserve housing for low and moderate-income families. It is framed within the public policy of the Department of Housing to provide and preserve over 50,000 housing units during 2009-2010. The role is to facilitate financing and other housing services to families and developers in collaboration with the Department's public policy. The Authority will cooperate with the Department's initiatives by furnishing needed support that state and federal programs under its administration may supply to attaining the Department's goals.

#### IV. Housing Priorities

In recognition of the Code requirements, priorities identified in the Consolidated Plan and State Action Plan, Housing Needs, and Goals of Housing Policy, the Authority favors:

- A. New housing projects that satisfy the requirements of Section 42 of the Code and are part of a larger project or plan that is reasonably expected to have a significant economic impact in the community in which the projects are located as well as surrounding communities.
- B. New projects for families with income at or below 50% of median income for the area that will positively impact a designated special community.
- C. Rehabilitation of structures with or without deteriorated housing units in an urban center revitalization program.
- D. Special needs projects which add new units to the affordable rental housing stock for low income households and supportive living services as part of the projects' management and operation. Special needs projects include those helping:
  - 1. elderly;
  - 2. disabled;
  - 3. homeless; and
  - 4. victims of domestic violence.
- E. Projects with a large proportion of 3-bedroom units (50% or more of the total units of the project).
- F. Projects in areas with the greatest forecasted demand, as defined in Annex B, Study of the Rental Market in Puerto Rico: 2006-2010.
- G. Participation of tax exempt organizations under Section 501(a) and (c) of the Code in the development of low income housing projects.
- H. Projects in which the percentage of the housing Tax Credit dollar amount for intermediaries is below 10%.
- I. Rehabilitation of properties with prior governmental ownership, sponsorship or financing.
- J. Rehabilitation of properties that will facilitate the modernization and development of public housing projects.
- K. Projects that demonstrate readiness to proceed through and have applicable regulatory approval.
- L. Projects placed in service the same calendar year in which the application for Tax Credits is submitted.
- M. Projects serving individuals with children.
- N. Projects that give residents a homeownership opportunity.
- O. Increasing housing stock in non-metropolitan areas.
- P. Preservation of Section 8-Project Based developments.
- Q. Use of energy efficient technology.
- R. Preservation of a historic property.
- S. Projects under construction.
- T. Projects without capital investors.

## V. Set Asides

**Non Profit Set Aside:** 10% of the Authority's annual Tax Credit ceiling

Unrequested Tax Credits under the set-asides following the close of applications for the cycle shall convert to the general pool. If Tax Credits are exhausted in a designated set-aside pool, all projects submitted for such set-aside pool will compete in the general pool or, if eligible, in another available set-aside pool. The Authority may designate additional set-aside Tax Credits.

## VI. Tax Credit Allocation Methodology and Criteria

### A. Initial Submission - Basic Threshold Qualifications

To be considered for a reservation of Tax Credits, an applicant must first submit a complete application, include full payment of fees and demonstrate that the owner and the project meet these initial qualifications:

1. The project is or will be a **qualified residential rental project** with the basic income and rent restrictions of Section 42 of the Code (See Annex C, Low Income Housing Tax Credits Program Maximum Rents), evidenced through the Owners' Certification, the Accountant's Opinion, the Attorney's Opinion, and the Designer's Preliminary Certification (see proposed models on Annexes G, H, I, and J, respectively).
2. The owner, developer and their shareholders, directors, officers and partners, as applicable, must demonstrate that they have not been involved in any way (either personally or as shareholders, directors, officers or partners of a corporation, partnership or other form of business organization or joint venture) in any other project for which the Authority has provided any financing and in which a default under the terms and conditions of the applicable financing documents occurred that resulted in the foreclosure of the project or in the substitution of the owner or any shareholder, director, officer or partner thereof, as applicable. The developer shall determine any identity of interest with any other party of the project.
3. The owner, developer and their shareholders, directors, officers and partners, as applicable, with previous participation in the program, must demonstrate that they comply with Section 42 requirements and that, as

of the application filing date, there is no outstanding finding of noncompliance in another project that received Tax Credits and in which they have an interest.

4. Evidence of construction completion or readiness to proceed as demonstrated through the following information and documents:
  - a. Percentage of construction completion.
  - b. Evidence of site control.
  - c. Land Use Consultation (*Consulta de Ubicación*) approved by the Puerto Rico Planning Board (*Junta de Planificación*), and/or Preliminary Development (*Desarrollo Preliminar*) approved by the Regulations & Permits Administration (ARPE by its Spanish acronym) or a Municipality, as the case may be.
  - d. Letter of intent from financing source specifying terms of available financing. Development team in place: architect/designer, general contractor, management agent, their resumes and, if available, their contracts with the owner.
  - e. Schematic drawings and outline specifications.
  - f. Cost breakdown certified by the proposed general contractor or architect/designer.
  - g. Letter of intent from syndicator or direct investor evidencing available private equity. If not, evidence of good faith efforts to obtain investment commitments for Tax Credits.
  - h. Pro-forma financial statements certified by the proposed management agent.
  - i. Original of Accountant's Opinion (Annex H).
  - j. Original of Attorney's opinion (Annex I).
  - k. Original of Designer's Preliminary Certification (Annex J).
  - l. Applying firm's governing documents:
    - i. Certificate of Special Partnership;
    - ii. Certificate of Limited Partnership; and
    - iii. Certificate of Limited Liability Corporation, among others;
  - m. Referral Agreement with Public Housing Authority (PHA), if applicable.
  - n. IRS Form SS-4 (application for Employer Identification Number) or other evidence of the taxpayer identification number.
  - o. Owner must demonstrate its commitment to extend the initial 15-year period of compliance with the Tax Credit program's income and rent restriction requirements for a minimum of 15 additional years. (See Annex K).
  - p. Phase I environmental assessment report.
  - q. Comprehensive market study report, by a party unaffiliated with the developer, of the low-income housing needs in the area to be served. The market study professional should have experience with multifamily rental housing. The market study should at least include:
    - i. Statement of the competence of the market study provider.

- ii. Description of the proposed site.
- iii. Demographic analysis of the number of households in the area that are income eligible and can afford to pay the rent.
- iv. Geographic definition and analysis of the market area.
- v. Analysis of household sizes and types in the market area.
- vi. Description of comparable developments in the market area, including any rental concessions these developments offer.
- vii. Rent levels and vacancy rates of comparable properties.
- viii. Analysis of available operating expenses and turnover rates of comparable properties.
- ix. Projected operating funds and expenses, when available at the time of the study.
- x. Expected market absorption of the proposed rental housing, including capture rate analysis of target populations.
- xi. Effect on the market area, including the impact on Tax Credit and other existing affordable rental housing.

**The Authority will consider the market study, the market, marketability factors, and any additional information available to determine if an acceptable market exists for the proposed development. The Authority will not be bound by the conclusions or recommendations of the market report and reserves the right to disqualify any applicant in the competition if it determines that an acceptable market does not exist. The Authority reserves the right to waive any or all of the market study requirements for public housing modernization projects if the application can demonstrate the project's feasibility by other independent, third-party market study analyses satisfactory to the Authority.**

- r. REHABILITATION PROJECTS ONLY: Comprehensive capital needs assessment report that a competent third party professional prepares, including an opinion of proposed budget. The assessment should examine and analyze, among other things:
  - i. site;
  - ii. structural systems;
  - iii. interiors (including units and common areas); and
  - iv. mechanical systems.
- s. Appraisal report of site and property.

- 5. Projects sponsored or developed by non-profit organizations and receiving a Tax Credit reservation and allocation from the non-profit set-aside: a non-profit organization must be a **qualified nonprofit organization** under Section 42(h)(5)(C) of the Code:

- a. exempt from taxation under Section 501(a) of the Code and described in paragraph (3) or (4) of Section 501(c) of the Code;
  - b. **materially participate**<sup>4</sup> in the acquisition, development and ongoing operation of the project throughout the entire compliance period. This includes, but is not limited to, having an ownership interest in the project and being at least co-general partner; and
  - c. foster low-income housing as one of its exempt purposes.
6. Projects that Rural Housing Service of the U.S. Department of Agriculture (RHS) finances or sponsors: RHS commitment letter with available funding.
  7. Compliance with the Fair Housing Act accessibility requirements certified through the Designer's opinion letters and completion of the Fair Housing Act Accessibility Requirements Checklist. (Annex F: requirements checklist; Annexes J and N: models of certification letters).
  8. Certification from applicant as to Federal, State, or Local subsidies received or expected to be received for the development and operation of the project.

Only those applications meeting all such initial qualifications applicable to them would be further considered for the Point Ranking System. Project owners whose applications do not meet the initial basic qualifications will be so informed in writing. The applicant will have 30 days to correct deficiencies. Afterwards, the application will be eliminated from competition should the applicant fail to provide the information requested or correct the deficiencies noted.

## **B. Development Budget and Pro Forma Assumptions Review**

### **1. Description**

The Authority will evaluate the proposed development budget to ensure that the construction and other costs set forth for the project are reasonable and conform to Authority parameters. In addition, the pro-forma statements will be reviewed in order to ensure that the underwriting parameters conform to Authority parameters. The Authority will use its parameters and resulting numbers to review project feasibility, determine need, and allocate tax credits.

---

<sup>4</sup> *"Material Participation"* is defined in Section 469(h) of the Code and related Treasury Regulations as being involved on a regular continuous and substantial basis in the development and operation of the project throughout the full Tax Credit compliance period. The non-profit entity must submit a narrative statement, certified by a resolution of its boards of directors describing the non-profit plan for material participation during the Compliance Period.

## **2. Allowable costs and expenses**

### **a. Intermediary costs**

Should not exceed 25% of total development costs. The intermediary costs will include, but are not limited to:

- i. organizational costs;
- ii. developer's fees (fees to the developer, overhead, profit and consultants);
- iii. syndication fees; and
- iv. professional fees (architect/designer's, attorney's, accountant's fees)

### **b. Developer Fees**

Maximum fee of 15% of the total development costs. The developer fee includes the developer's overhead and profit. To calculate the maximum developer fee, total development costs include the cost to purchase the building, site work, construction costs, architectural and engineering fees, interim costs, financing fees and expenses, consultants' fees, real estate attorney's fees, organizational legal fees, soft costs, syndication costs, reserves and working capital. It does not include the cost of purchasing land. Notwithstanding the foregoing, the Authority reserves the right to adjust the developer's fee to achieve or maintain a project's feasibility and long-term viability.

In addition, a maximum developer's fee of 4% is allowed on the acquisition cost of buildings (excluding land value or cost, whichever is greater) purchased for substantial rehabilitation. Notwithstanding the foregoing, the Authority reserves the right to adjust the developer's fee to achieve or maintain a project's feasibility and long-term viability.

### **c. General Contractor Maximum Charges**

- i. Builder's profit: 10% of hard construction costs.
- ii. Builder's overhead: 3% of hard construction costs.
- iii. General requirements: 2% of hard construction costs.

### **d. Per Unit Maximums**

The cost of a unit, except for projects financed with volume-cap tax-exempt obligations, will not exceed, for acquisition/rehabilitation: the greater of:

- i. 20% of the adjusted basis of the building being rehabilitated,  
or
- ii. \$6,000 per low-income unit in the building.

The Authority reserves the right, at its sole discretion, to exceed these standards. Nevertheless, in order to receive a waiver to such requirements every exception must be justified and documented. Therefore, the applicant must include a formal request which documents and validates proposed project costs and tax credits higher than the per unit standards.

**e. Per Unit Cost Review**

The Authority may appoint an independent consultant to validate construction or rehabilitation costs in projects that passed the basic threshold requirements. The consultant will evaluate:

- i. site, including topography, drainage, pavement, curving, sidewalks, parking, landscaping, water sewer, storm drainage, gas and electric utilities and lines;
- ii. structural systems;
- iii. interiors, including units, common area finishes, and disabled access;
- iv. mechanical systems;
- v. elevators; and
- vi. other factors the Authority deems as necessary.

**f. Acquisition costs**

The acquisition price will be limited to the lesser of the sale price or the appraised value of the land and the property, and in the case of a public Authority seller, the costs of rehabilitation already incurred on properties not yet placed in service.

**g. Operating Expenses**

The Authority will consider the reasonableness of the development and operational costs of the project as an additional factor in determining the proper amount of Tax Credits.

**3. Underwriting Parameters**

**a. Vacancy Rate**

- i. 3% in projects with project-based rental assistance
- ii. 5% in projects with less than 50 units
- iii. 7% all other projects

**b. Income and Reserve for Replacement:** 3% annual growth in rents, other income, and reserve for replacement

**c. Operating Expenses:** 4% annual growth

d. **Debt service coverage ratio:** Minimum: 1.15 (operating income divided by debt service) for the term of the debt financing, if any.

e. **Required Reserves**

i. **Rent-up reserve** shall be reasonable based upon projected rent-up time according to market and target population, but in no event shall be less than \$200 per unit.

ii. **Operating Reserve**

Based on a six-month's debt service and operating expenses and must be maintained throughout the term of the Tax Credit compliance period. Deferring the developer's fees of the project can allow the project owner to fund the operating reserve. In that case, the developer's deferred fee can only be repaid from cash flow and after all required replacement reserve deposits are made. Such fee will be projected to be repaid within 10 years and must meet the IRS standards. A statement with the terms of the deferred fee must be included.

iii. **Reserve for Replacement**

(a) New construction: \$250 per unit per year.

(b) Rehabilitation of 50 units or less: \$250 per unit per year.

(c) Rehabilitation of more than 50 units: \$300 per unit per year.

(d) Replacement reserve must be capitalized from the project's operations at 3% annual increases.

f. **Section 8 Project Based Rental Assistance**

The Authority will underwrite the rents according to Tax Credit limits in projects that intend to use Section 8 project based rental assistance.

These limits are based on annual HUD data. If Section 8 HAP contract allows rents above those limits, the project may receive the additional revenue.

g. **Tax Credit Percentage**

The Authority will use the applicable monthly percentage rate the IRS publishes to reserve Tax Credits. The Authority, at its own discretion, could lower this percentage or use the 9% or 4% rate as applicable to the project. For buildings placed in service after July 30, 2008 and before December 31, 2013, and which are not federally subsidized for the taxable year, the applicable percentage shall not be less than 9%. At the time of the Tax Credit allocation the applicant must choose the Tax Credit percentage for either the:

- i. Carryover Allocation or Binding Commitment month; or
- ii. month the project is or will be placed in service.

#### **h. Equity Pricing**

The Authority will use the price that owners will submit through a letter of intent from the investor confirming the financial assumptions of the purchase.

#### **4. Record and Notification**

The Authority will record and issue an itemized notice, when it informs the of a Tax Credit reservation, or lack thereof, of amendments to the pro forma financial statements, changes to development costs, operating expenses, reserves, and underwriting assumptions.

### **C. Underwriting and Financial Feasibility Analysis**

#### **1. Description**

The Authority shall evaluate the amount of Tax Credits, subject to its placement in the Point Ranking System, after it has determined that a project satisfies all basic qualification requirements, that proposed costs and expenses are reasonable and within the prescribed standards, and that underwriting parameters conform to Authority guidelines.

Section 42 of the Code requires the Authority to allocate the Tax Credits necessary to make a project economically viable. Thus, no project may receive, regardless of its absolute or relative score in the Point Ranking System, more credits than the Authority's underwriting process identifies as required for financial viability. Specifically, the amount of Tax Credits will be the lesser of the:

- a. maximum allowable under the Code according to the project's eligible basis and affordability level (eligible basis analysis);
- b. project's current necessity as the Authority's underwriting determines (sources and uses or equity gap analysis); and
- c. amount of credits the applicant requested.

#### **2. Pro-forma statements**

Pro-forma statements will be prepared by the Authority based on the above-described analysis, which will include recommended sources and uses of funds, as well as projected operating income for the term of affordability. These will include the amount of tax credits that such project would be eligible to receive, subject to the Point Ranking System,

as well as the amount of permanent financing, governmental subsidies, capital contributions, and funds from Authority programs.

The Authority reserves the right, at its sole discretion, to vary the above described methodology in order to comply with Section 42 requirements, any state law requirements or to further the public policy set forth in this Qualified Allocation Plan.

## **D. Project Evaluation and Selection (Point Ranking System)**

### **1. Description**

The Authority will consider qualified applications for Tax Credits after a project satisfies all basic factors using the Point Ranking System established hereinafter.

The project can accumulate a total of **730** points on the Point Ranking System. The project must accumulate a minimum of **150** points to be entitled to a reservation or an allocation of Tax Credits. The Authority anticipates reserving Tax Credits for those projects scoring highest under the Project Selection Criteria up to the amount permitted by law and this Allocation Plan. However, the ranking under the Project Selection Criteria does not vest an application or project with any right to reservation or allocation of Tax Credits. Applications for new constructions that will be placed in service within the calendar year in which the application is submitted will receive the highest priority. Except for Exchange Credits, projects returning Tax Credits from a previous year allocation and not placed in service within the established two-year period will receive the lowest priority. The Authority also encourages applicants to request Tax Credits when the process to obtain the necessary approvals and permits for the development and construction of the project has ended or is close to end.

### **2. Section 42 mandatory legislative criteria**

Federal legislation requires the Authority to give preference in allocating Tax Credits to those projects serving the lowest income tenants and to those projects committed to serve qualified tenants for the longest period.

### **3. Other Criteria: Overview**

The Authority will use the selection criteria stated below for ranking projects eligible for the allocation of Tax Credits. The results of the evaluation and ranking will be at the sole discretion of the Authority and will not be subject to challenge or appeal. The numerical ranking does not operate to vest in an applicant or project any right to reservation or allocation of Tax Credits. The Authority will, in all instances, reserve and

allocate Tax Credits consistent with its sound and reasonable judgment, prudent business practices, and the exercise of its inherent discretion.

The applications will be evaluated according to:

**a. Preferred Project Location**

- i. Difficult Development Areas (**DDA**; HUD designation). A DDA is an area with high construction costs, land costs, and utility costs relative to the area gross median income projects (Annex D).
- ii. Qualified Census Tract (**QCT**) (HUD designation; Annex D).
- iii. Municipalities with greatest low income housing demand (Rental Housing Market Study, January 2007, by Advantage Business Consultants, Department of Housing; Annex B).

**b. Preferred Project Characteristics**

- i. Evidence of percentage of construction completion.
- ii. Evidence of good faith efforts to obtain investment commitments for Tax Credits.
- iii. Readiness to begin immediate construction.
- iv. At least 50% of the units will be rent restricted and affordable to households with incomes less than 50% of the median income adjusted for family size.
- v. Recipient of project based rental subsidies.
- vi. Proposed rehabilitation will not require relocation of existing tenants.
- vii. Owner and a PHA agreed to include the development in listings of housing opportunities where households with tenant-based subsidies or from a public housing project's waiting list are welcome.
- viii. Longest commitment to low income housing.
- ix. Placed in service in calendar year in which application for Tax Credits is submitted for the first time.
- x. It will acquire and rehabilitate a structure owned or financed by a government entity and add units to the affordable rental inventory.
- xi. Intended for eventual tenant homeownership.
- xii. It will preserve existing low-income housing.
- xiii. Municipality's Mayor endorses.

**c. Preferred Housing Needs Characteristics**

- i. Projects with larger amounts of three bedroom units that can accommodate families with children.
- ii. Projects that will rehabilitate inadequate housing or relocate families living in flash flood areas.

**d. Sponsor/Owner Characteristics**

- i. Preference will be given to projects sponsored or developed by nonprofit organizations under section 501(c) of the Code and exempt from tax under section 501(a).
- ii. Previous successful participation by sponsor(s) or the owner in developing and operating Tax Credit projects, as well as previous successful participation by proposed management agents in managing low-income housing.
- iii. Preference will be given to sponsors/owners with superior financial strength.
- iv. Penalized projects: Sponsors, developers or owners of other projects for which the Authority has provided financing or awarded Tax Credits and in which a default has occurred that resulted in the foreclosure of the mortgaged property or in the assignment of the mortgage to the Authority or the substitution of the owner has occurred or the project found to be with uncorrected significant noncompliance over six months old.
- v. The Authority will evaluate and approve the qualifications of every appointed management agent without previous experience in the administration of LIHTC project.
- vi. Preference will be given to projects sponsored/developed by a public authority.

**e. Preferred Financing Characteristics**

- i. New developments in rural areas that RHS sponsors.
- ii. New constructions with a firm financing commitment from the Authority.
- iii. Minimum underwriting requirements herein described.

**f. Tenant Population with Special Housing Needs**

Preference will be given to projects that provide supportive services to families where members are victims of domestic violence, HIV-patients, elderly, homeless or disabled.

**g. Community Revitalization Master Plan**

Preference will be give to projects that are part of a Community Revitalization Master Plan.

**h. Public Housing Modernization**

Preference will be given to housing developments that modernize a public housing project.

#### 4. Point Scoring

##### a. Project Location (up to 50 points)

- i. 10 points: DDA (HUD designation; Annex D; include evidence of location)
- ii. 20 points: QCT (Annex D; include evidence of location)
- iii. Up to 20 points: region that for 2009 reflected greatest housing demand as per the Rental Housing Study in Puerto Rico (Advantage Business Consultants, January 2007, Annex B). The points will be awarded as follows:
  - 20 points: Region which needs over 100,000 units.
  - 10 points: Region which needs over 50,000 units.
  - 5 points: Region which needs over 30,000 units.

##### b. Project Characteristics (up to 280 points)

- i. Evidence of percentage of construction completion:
  - 75 points more than 75%
  - 60 points less than 75% to 50%
  - 45 points less than 50%
- ii. Up to 40 points: construction of the project will commence as soon as an allocation or reservation of Tax Credits is made. Readiness to begin construction will be evidenced with:
  - 40 points: Construction Permit or Notification of Approval of the Construction Permit, issued and approved by ARPE or an Autonomous Municipality, as the case may be
  - 25 points: Urbanization Permit issued and approved by ARPE or an Autonomous Municipality, as the case may be
  - 15 points: Preliminary Development, issued and approved by ARPE or an Autonomous Municipality, as the case may be
  - 10 points: Land Use Consultation, issued and approved by Puerto Rico Planning Board
- iii. 20 points: At least 50% of units in project are targeted for households with incomes at 50% or less

- of the median income adjusted for family size.
- iv. 35 points: Executed rental subsidy agreement, such as:
- (a) Agreement to enter into a Housing Assistance Payments Contract, between PHA and Owner.
  - (b) Housing Assistance Payment Contract under Act Number 173 of August 31, 1973; or
  - (c) HUD annual contribution contract for public housing operations subsidy.
- v. 10 points: Proposed rehabilitation does not require relocation of current tenants.
- vi. 5 points: Written agreement with PHA, submitted with application, that PHA will include the project in any listing of housing opportunities where households with tenant-based subsidies or in a public housing project's waiting list are welcomed and where the project's owner or management agent agrees to actively seek referrals from the PHA to apply for units at the project.
- vii. Up to 10 points: Project provides guarantees for longer terms of affordability beyond the extended compliance period:
- 10 points: At least 10 more years beyond the required 30-year period.
  - 5 points: At least 5 more years beyond the required 30-year period.
- viii. 25 points: Project will be placed in service within the calendar year in which an application for low-income housing Tax Credits is submitted for the first time.
- ix. 25 points: Project will acquire and rehabilitate existing vacant structure (government authority owned or financed) to add units to the affordable rental housing inventory.
- x. 10 points: Owner will offer the tenants a first option to buy after the initial compliance period of 15 years.

- xi. 15 points: Project will acquire, rehabilitate and preserve low-income rental housing which might otherwise be converted from low-income tenancy, including Section 8 projects with expiring contracts.
- xii. 5 points: includes a letter of endorsement from the mayor of the municipality where the project is located.
- xiii. 5 points: Project emphasizes its energy efficiency.

**c. Housing Needs Characteristics (up to 20 points)**

- i. 10 points: Project bedroom's distribution is 50% or more 3-bedroom units.
- ii. 10 points: Projects that rehabilitate inadequate housing or that relocate housing in flash flood areas.

**d. Sponsor/Project Owner Characteristics (up to 155 points)**

- i. 20 points: Owner, federal partner, sponsor, is:
  - (a) a federal qualified non-profit organization tax exempt under Section 501(c) 3 of the Code and exempt from tax under section 501 (a);
  - (b) such organization is not affiliated with or controlled by a for profit organization, except for certain subsidiaries, as defined on section 42(h)(5)(D);
  - (c) domiciled in Puerto Rico for at least 12 months prior to submitting the ;
  - (d) Materially Participates (as defined on page 12) in the acquisition, development, ownership and on-going operation of the property for the entire compliance period; and
  - (e) has as one of its exempt purposes the fostering of low-income housing.
- ii. 20 points: Sponsor/Project owner can demonstrate successful past experience in the development of low income housing Tax Credit projects in Puerto Rico.

- iii. 20 points: Management agent can demonstrate successful prior experience in the management of low income housing Tax Credit projects. Points will be awarded for projects based on the experience of the management agent maintaining compliance of low-income housing Tax Credits units in Puerto Rico during the past 10 years.
- iv. 20 points: Sponsor/developer is a public Authority.
- v. LESS 20 points: Sponsor, owner, developer, management agent, or consultant to the applicant has defaulted in a financing that the Authority provided in another project and such default resulted in foreclosure, assignment of mortgage or substitution of mortgagor.
- vi. 75 points: Sponsor/owner evidences strong financial strength under commercial financing scrutiny.

**e. Financing Characteristics (up to 75 points)**

- i. 15 points: New construction in rural areas that will receive funds from RHS.
- ii. Up to 15 points: New construction with a financing firm commitment from the Authority.
  - 15 points: Interim and Permanent
  - 7 points: Interim or Permanent
- iii. Up to 45 points: Project meets the following underwriting requirements:
  - 30 points: 7% vacancy rate (5% for projects with <50 units or 3% for projects with project based rental assistance); rent and replacement reserve increase at 3%; operating expenses increase at 4% annually; project pro-forma financial statements reflect  $\geq 1.15$  debt coverage ratio (DCR) during financing term.
  - 15 points: Operating Expenses:
    - Projects over 50 units:
      - New Construction: Per-unit per annum (PUPA) operating expenses, as management agent certifies, do not exceed \$2,850 (or \$3,000 in a Community Revitalization Master Plan Project) on the first year of operations.

Substantial  
Rehabilitation  
Projects:

PUPA operating expenses, as management agent certifies, do not exceed \$3,000 (or \$3,200 in a Community Revitalization Master Plan Project) on the first year of operations.

Projects with less  
than 50 units:

PUPA operating expenses, as certified by the management agent, do not exceed \$3,200 on the first year of operations.

**f. Special Housing Needs Projects (up to 25 points)**

25 points:

Tenant Population with Special Housing Needs Projects developed to give priority and to assist special needs families through a written plan included in the application to provide supportive services to heads of family victims of domestic violence, elderly, disabled or HIV patients (an endorsement letter from the authority that provides supportive services to the targeted special population must be included).

**g. Community Revitalization Master Plan (up to 50 points)**

i. 25 points:

Project is an integral part of a Community Revitalization Master Plan that provides a unique opportunity to economically and socially improve, stimulate, develop and transform the community in which it is located, serves as an overall improvement to quality of life, and benefits other adjacent communities consistent with new urban policies of the Commonwealth or of a municipality. Applicant must provide an economic plan with financial projections to demonstrate the project's impact in the community in all mentioned categories; or

ii. 25 points:

Development of the project contributes to a concerted community revitalization plan in a QCT (proper documentation must be provided with the application).

**h. Public Housing Modernization or Development (up to 75 points)**

75 points:

Proposed development will facilitate the modernization of public housing projects.

## **E. Tax Credit Allocation**

### **1. Description**

Following the Point Ranking calculation, projects will be ranked in descending order, most points to least points. The Authority anticipates reserving Tax Credits for those projects scoring highest under the Project Selection Criteria up to the amount law and this Allocation Plan allow. The Authority anticipates reserving Tax Credits for each project in the list, starting with the highest scoring project, and continuing down the rankings, reserving Tax Credits and subtracting them from the cumulative balance of available Tax Credit for that year, until that balance reaches zero. Except that tax credit allocations for projects that receive binding commitments in prior years will be honored per the terms of such commitments, and projects competing under set asides will initially be ranked and compete only against other projects competing under such set asides, until the Tax Credit balance of such set asides reaches zero, whereupon such projects will be ranked and compete against all projects outside such set asides.

However, the credit allocation process may vary in order to further the public policy set forth in this Allocation Plan. The ranking under the Project Selection Criteria does not vest an applicant or project with any right to reservation or allocation of Tax Credits. Applications for new constructions that will be placed in service within the calendar year in which the application is submitted will receive the highest priority. Except for projects returning Tax Credits related to the Tax Credit Exchange Program, projects returning Tax Credits from a previous year allocation and not placed in service within the established two-year period will receive the lowest priority. The Authority encourages applicants to apply for Tax Credits when the process to obtain the necessary approvals and permits for the development and construction of the project has ended or is about to end.

Funds available under ARRA will be allocated subject to evaluation per this document and any future regulation that HUD, IRS and/or the U.S. Treasury may promulgate, as:

- a. 2009: two rounds of 50% of 75% of exchange credits (TCEP or Tax Credit Exchange Program) plus 50% of 75% of gap financing (TCAP or Tax Credit Assistance Program) plus available per capita credits.
- b. 2010: TCAP plus TCEP plus available per capita credits.
- c. Any remaining gap per round will be covered with an interim loan repaid with future sale of credits (nominal interest rate) and or a mortgage payable at end of compliance and extended use period.

## **2. Allocation of Other Authority Administered Funds**

It is possible that other programs and sources of funds the Authority manages may choose to rely on the Point Ranking System set forth in this Allocation Plan, as amended from time to time, to select projects to receive fund allocations.

It is also possible that such other sources of funds may be included as part of a particular project's pro forma statements calculated as described in Section VI(C)(3); that the Point Ranking of such project is sufficient to receive Tax Credits; yet that there are not sufficient funds in one or more of such other programs to meet the recommended amounts for such other program. In such situation, the Authority may, at its sole discretion and based on the criterion of necessity, adjust upwards the recommended Tax Credits up to the maximum limits prescribed in Section 42 of the Code.

### **F. Notification of Tax Credit Allocation**

The Authority will notify, in writing, to each successful applicant of an initial reservation of Tax Credits (**Initial Reservation Letter**). The Executive Director of the Authority will sign the Initial Reservation Letter and specify required additional information and documentation. It will determine a date by which to submit to the Authority such information and documentation and receive the final allocation. The Initial Reservation Letter will also include:

1. Itemization of adjustments to costs, income, expenses and underwriting assumptions made to the application.
2. Allocation, recommendation, reservation or offer of any other programs or sources of funds the Authority manage.

## **VII. ISSUANCE OF TAX CREDITS**

### **A. Reservation of Tax Credits Beyond Actual Allocation Year**

The Authority recognizes that the process to construct or rehabilitate housing projects in Puerto Rico may become a burdensome one. Moreover, construction or rehabilitation of housing projects that are part of a community revitalization master plan may occur over a longer period of time than they otherwise might have, had they not been a part of a major venture. The Authority also acknowledges that some projects, especially those participating in an extensive community undertaking might require a larger allocation of credits and placed-in-service dates may occur in different years. The Authority recognizes, as well, that investors require a level of comfort that such type of projects will be completed and placed in service in the scheduled timeframes.

In order to take into account the unique facts and circumstances and concerns described above, and in order to assist with meeting the Housing Needs, Goals

of the State Action Plan, and Goals of the Housing Policy, while balancing the Authority's position with respect to any single large allocation of Tax Credits, the Authority may award a binding commitment in one year to make a Carryover Allocation for certain percentages of Tax Credits in following years in limited circumstances (**Binding Commitment**).

Applicants may apply to reserve Tax Credits and sign a Binding Commitment with the Authority to allocate Tax Credits at a future date. To such end, the Authority may reserve Tax Credits or bind itself to allocate Tax Credits to a project during the taxable years following the year in which the application is made. Section 42(h)(1)(C) of the Code determines that a reservation or Binding Commitment to allocate Tax Credits in a future year has no effect on the state housing Tax Credit ceiling until the year in which the Authority actually makes the allocation. (Annex E).

To be considered for a reservation of Tax Credits from future year cap or for a Binding Commitment to allocate Tax Credits at a future date, the must demonstrate that the project falls within one of the following categories:

1. Tax Credit is deemed necessary to facilitate the restructuring of financing provided to a project confronting economic difficulties.
2. Tax 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.
3. Tax Credit is requested in connection with the acquisition of a project from the federal, state or local governments, or any department, Authority, entity or political subdivision thereof.
4. Tax Credit is requested in connection with a project using the Tax Credits as its only subsidy.
5. Project is part of a Community Revitalization Master Plan.
6. Unforeseen circumstances that the Authority, at its sole discretion, might consider valid.

The Authority might also consider entering into a Binding Commitment with an owner of a project, even if the project fails to meet one of the above categories, if the circumstances of the project, per the Authority's sole discretion are deemed so necessary.

Projects with Binding Commitments must file an application in the year the Tax Credits are committed and go through the Basic Threshold Qualification Process and comply with at least the Minimum Requirement of the Point Ranking System. In addition, the owner will not pay the Application Fee but rather a Processing Fee of .50% of the annual Tax Credit requested will be included with the application.

In order for the applicant to receive a Binding Commitment for an allocation of Tax Credits, the applicant must provide an updated memorandum every six months after receiving the Binding Commitment, to confirm that any information provided in the application remains true, correct and complete in all

material respects, or provide specific details for any exceptions, as well as any other information that the Authority may reasonably request. If there are any material exceptions, the Authority reserves the right to revoke the Binding Commitment.

**B. Tax Credit dollar amount will be determined at:**

**1. Initial/Reservation of Tax Credits**

**2. Carryover Allocation**

A development with a reservation or a Binding Commitment (Section VI.B below), but which will not be placed in service by December 31, may be eligible for a carryover allocation (**Carryover Allocation**).

To sign the Carryover Allocation, the owner must provide:

- a. Final Drawings of the project; and
- b. Owner's Certification, disclosing any Federal, State, or local subsidies that the applicant has received, or expects to receive, for the development and operation of the project.

**The Authority reserves the right to disqualify any applicant if it determines that the construction will not be ready to begin within six months after the signing of the Carryover Allocation Agreement.**

**3. Additional Tax Credits**

The Tax Credits amounts will not automatically be increased above the initial reservation request or allocation amount. If the owner of a project that received a Carryover Allocation of Tax Credits determines that additional credits are necessary to make the project financially feasible, the owner must apply for additional Tax Credits in a subsequent year or cycle. The owner will need to submit a complete package and a full fee.

For projects financed with volume-cap tax-exempt obligations the Authority reserves the right, based upon pertinent circumstances, to reduce or waive the required fee for additional Tax Credits or the requirement of a complete package.

All restrictions and requirements of the original Carryover Allocation shall remain in full force and effect for the additional Tax Credits.

**4. Placed-in-Service**

The Authority will issue IRS Form 8609-Low-Income Housing Credit Allocation and Certification (**Form 8609**) after placed-in-service date, and receipt and review of:

- a. Certificate of Occupancy (*Permiso de Uso*).
- b. Independent CPA Final Cost Certification of project development (Annex M).
- c. Designer's Certification of Completion of Construction (Annex N).
- d. Updated operating budget and 30-year pro forma cashflow.
- e. Owner's Certification of any federal, state, or local subsidies received, or expected to be received, to develop and operate the project.
- f. Authority's independent consultant physical inspection and cost certification review (randomly, at the sole discretion of the Authority).
- g. Any other document the Authority may determine as necessary.

The amount of Tax Credits allocated as set forth in Form 8609 may be different from the amount requested in the application, the amount specified in the Initial Reservation Letter, Binding Commitment, or the amount in a Carryover Allocation. If there are changes in resources and/or uses of funds or other material changes, the Authority will adjust the tax credit amount to reflect them, and the tax credit may be reduced.

#### **C. Decrease of Actual Development Costs**

The Authority reserves the right, in its sole discretion, to reserve or allocate less Tax Credits than the amount requested in the application based on the information the applicant or any independent consultant submitted and Section 42 requirements.

#### **D. Calendar Requirements**

##### **1. Carryover Allocation Requirements**

The Code requires more than 10% of the project's reasonably expected basis be incurred by the close of:

- a. the carryover allocation calendar year, if Carryover Allocation is made before July 1; or
- b. 1 year after the date of the Carryover Allocation Agreement, if made after June 30.

After the reservation process is final, the owner and the Authority must sign a Carryover Agreement allowing the carryover of Tax Credits. At the time of the execution of the Carryover Agreement, Owners must have title of the property, or acquire such title within the next six months, and approval from all the corresponding governmental agencies for the development of the project. The Authority requires expenditure of and cost certification of 10% of the costs to be submitted to the Authority

within 1 year of the date of the Carryover Allocation (Annex L). All fees due to the Authority must be paid by that date.

**2. Placed in Service Date**

With respect to Carryover Allocations the building must be placed in service within 24 months after the end of the carryover allocation calendar year.

- a. For new construction and existing buildings, placed in service usually means the date the building receives a Certificate of Occupancy (*Permiso de Uso*).
- b. For substantial rehabilitation, placed in service means the last day of the 24-month period (or shorter period if the rehabilitation is complete, if elected by the owner) for aggregating rehabilitation costs.

**E. Other Procedural Requirements**

The Authority will notify the Mayor of the Municipality where the project will be located of the proposal at the time of the Tax Credits’ reservation and will have a reasonable opportunity to comment on the project.

Projects with private permanent financing will need a letter of intent from the financial institution. The letter should detail:

- 1. amount and term of the loan;
- 2. fixed or variable interest rate;
- 3. if variable interest rate, specify index, spread and rate at the time of the letter;
- 4. amortization period; and
- 5. prepayment penalties.

Applicant must submit a letter of firm commitment for financing within 60 days of receiving a reservation of Tax Credits. All projects applying for Tax Credits and financing from the Authority must submit the loan to the Authority at the same time as the Tax Credit .

**VIII. Time Frame**

Tax Credit applications will abide by the following reservation/allocation cycles. Additional cycles may be available if there are Tax Credits after the Authority exhausted its reservation/allocation process. The interested party may contact the Authority to ask for additional cycles, if any.

2009 Cycles	1 <sup>ST</sup> CYCLE	2 <sup>ND</sup> CYCLE
Applications Opening Date	June 2, 2009	Sept. 14, 2009
	July 3, 2009	Oct. 16, 2009

<b>Applications Closing Date</b>		
<b>Ranking &amp; Reservation</b>	<b>August 3, 2009</b>	<b>Nov. 16, 2009</b>
<b>Closing of Carryover Agreement</b>	<b>Thru Sep. 4, 2009</b>	<b>Thru Dec. 31, 2009</b>
<b>10% Cost Certification</b>	<b>Thru Sep. 3, 2010</b>	<b>Thru Dec. 31, 2010</b>

Any changes to this schedule will be notified to the public through an advertisement in a newspaper of general circulation. If any of the due dates for application or reservation falls on a non-working day or on an official holiday, it will be moved to the previous working day.

Cost Certifications for projects receiving allocations to be placed in service are due during the same calendar year of the application and 10% certification for projects receiving a carryover allocation. (Annexes L and M)

**IX. Tax-Exempt Financed Projects not Subject to Annual Tax Credit Volume Cap**

Projects financed with tax-exempt obligations issued after December 31, 1989 [Section 42(h)(4)], are not subject to the Tax Credit annual volume cap, but are subject to the state private activity bond volume cap. These applications do not have to comply with the time frames set out in Section VIII and may be filed, and Tax Credits awarded, any time.

Nonetheless, these projects must satisfy the Basic Threshold Qualification Requirements and other requirements for allocation under this Plan pursuant to Section 42(h)(4). Therefore, the projects will be subject to the evaluation of housing priorities, minimum thresholds discussed above, and the fees determined in Section X. They will not be subject to the Tax Credit allocation process, but must fulfill the Point Ranking System minimum requirement of **150** points. Applicants must include a letter from the lender stating the tax-exempt status of the obligations issued to finance the project and a certification from its tax attorney or CPA certifying that this requirement is met. If the Authority is the Lender, the letter will not be required.

Entities the Commonwealth of Puerto Rico authorizes to allocate private activity bond volume cap may allocate its bond volume cap to any of these projects based on the Tax Credit and other information such allocating authority requests.

**X. Compliance, Fees and Penalties**

**A. Procedure for Notification to IRS of Noncompliance**

Federal legislation requires that each Allocation Plan include a procedure that the Authority will follow in notifying the IRS of noncompliance with the program. The Authority will require owners to furnish annual certifications of qualified low income tenants, including tenant income and rents charged, the number of qualifying low income units, as well as any other information pertinent to determine compliance.

The specific requirements of the Authority to implement this mandate are covered in the Compliance Monitoring Plan, which is hereby incorporated and made a part of this Plan (Annex O).

In making the application for Tax Credits, the owner agrees that the Authority and its designees will have access to any project information. This includes physical access to the project, to financial records and tenant information for any monitoring that may be deemed necessary to determine compliance with the Code.

Owners are advised that the Authority is required to do compliance monitoring and to notify the IRS and the owner of any discovered noncompliance with Tax Credit law and regulations, whether corrected or uncorrected.

## **B. Fees**

The application package costs **\$100** and includes the Allocation Plan, Compliance Monitoring Plan, Procedural Steps, and Instructions. The Authority will also charge the following fees:

### **1. Application Fee**

One and a half percent (1.5%) of annual amount requested. This is a non-refundable and non-transferable deposit, which shall be submitted along with the application. Projects with Binding Commitments will be charged a processing fee of .5% of the annual Tax Credit requested.

### **2. Allocating Fee**

One percent (1%) of the total ten years allocated amount. The allocating fee will be paid at the time the allocation is made through certified or manager's check. In case of Carryover Allocations under Section 42, the fee will be paid at the time of signing the agreement through certified or manager's check. Allocation fees are neither refundable nor transferable.

### **3. Monitoring Fee**

If a credit allocation is made, the Authority will charge \$20 per each low income housing tax credit (LIHTC) unit during the compliance period (first 15 years) and the extended use period (after the first 15 years). This amount will be due and payable by January 31 of each year.

The Authority may revise the fees as necessary to insure they cover the Authority's processing expenses and compliance monitoring.

## **C. Penalties**

2. **Allocating Fee**

One percent (1%) of the total ten years allocated amount. The allocating fee will be paid at the time the allocation is made through certified or manager's check. In case of Carryover Allocations under Section 42, the fee will be paid at the time of signing the agreement through certified or manager's check. Allocation fees are neither refundable nor transferable.

3. **Monitoring Fee**

If a credit allocation is made, the Authority will charge \$20 per each low income housing tax credit (LIHTC) unit during the compliance period (first 15 years) and the extended use period (after the first 15 years). This amount will be due and payable by January 31 of each year.

The Authority may revise the fees as necessary to insure they cover the Authority's processing expenses and compliance monitoring.

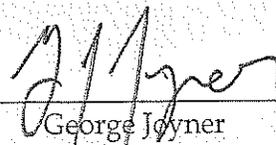
C. **Penalties**

If a sponsor, owner, developer or consultant has a past due allocation fee in a previous project, the Authority will not sign an allocation for the new project until the account is paid in full.

XI. **Scope and Future Amendments**

Federal legislation directs the Authority to allocate only that amount of Tax Credits required to make the project economically feasible. The Authority's determination is discretionary and in no way constitutes a representation or warranty, express or implied, to any sponsor, lender, investor, or third party as to the feasibility of a given project, or to the project owner, investors, lender, or third party that its allocation determines that the project adheres to Code, Treasury regulations, or any other applicable laws or regulations.

The Authority reserves the power to administer, operate and manage tax credits allocation in all situations and circumstances, both foreseen and unforeseen in the Plan. No member, employee, or agent of the Authority shall be personally liable respecting any matter or matters arising out of, or in relation to, the Tax Credits.

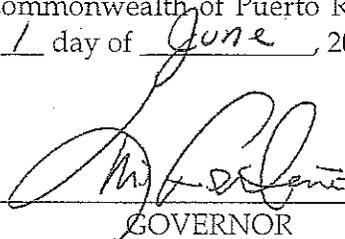


George Joyner  
Executive Director

PUERTO RICO HOUSING FINANCE AUTHORITY

I, Luis G. Fortuño, Governor of the Commonwealth of Puerto Rico, hereby approve the Low Income Housing Tax Credit Allocation Plan for the Commonwealth of Puerto Rico adopted by Puerto Rico Housing Finance Authority, a subsidiary of the Government Development Bank for Puerto Rico, as the State Housing Credit Authority under the provisions of Section 42 of the Internal Revenue Code of 1986, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Commonwealth of Puerto Rico, in San Juan, Puerto Rico, this 1 day of June, 2009.



GOVERNOR

**Internal Revenue Code § 42 Low-income housing credit.****(a) In general.**

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

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

**(b) Applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings.****(1) Determination of applicable percentage.**

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

- (i) the month in which such building is placed in service, or
- (ii) at the election of the taxpayer—
  - (I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or
  - (II) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax exempt obligations are issued.

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

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

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

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

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

- (i) as of the last day of the 1st year of the 10-year period referred to in subparagraph (B) ,
- (ii) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month applicable under clause (i) or (ii) of subparagraph (A) and compounded annually, and
- (iii) by assuming that the credit allowable under this section for any year is received on the last day of such year.

**(2) Temporary minimum credit rate for non-federally subsidized new buildings.**

In the case of any new building—

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

(B) which is not federally subsidized for the taxable year, the applicable percentage shall not be less than 9 percent.

**(3) Cross references.**

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

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

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

**(c) Qualified basis; qualified low-income building.**

For purposes of this section —

**(1) Qualified basis.**

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

- (i) the applicable fraction (determined as of the close of such taxable year) of
- (ii) the eligible basis of such building (determined under subsection (d)(5) ).

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

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

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

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

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

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

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

**(2) Qualified low-income building.**

The term “qualified low-income building” means any building—

- (A) which is part of a qualified low-income housing project at all times during the period—
  - (i) beginning on the 1st day in the compliance period on which such building is part of such a project, and
  - (ii) ending on the last day of the compliance period with respect to such building, and
- (B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

**(d) Eligible basis.**

For purposes of this section —

**(1) New buildings.**

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

**(2) Existing buildings.**

- (A) In general. The eligible basis of an existing building is—
  - (i) in the case of a building which meets the requirements of subparagraph (B) , its adjusted basis as of the close of the 1st taxable year of the credit period, and
  - (ii) zero in any other case.
- (B) Requirements. A building meets the requirements of this subparagraph if—
  - (i) the building is acquired by purchase (as defined in section 179(d)(2) ),
  - (ii) there is a period of at least 10 years between the date of its acquisition by the taxpayer and the date the building was last placed in service,
  - (iii) the building was not previously placed in service by the taxpayer or by any person who was a related person with respect to the taxpayer as of the time previously placed in service, and

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

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

(D) Special rules for subparagraph (B) .

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

- (I) in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom acquired,
- (II) by a person whose basis in such building is determined under section 1014(a) (relating to property acquired from a decedent),
- (III) by any governmental unit or qualified nonprofit organization (as defined in subsection (h)(5) ) if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such unit or organization and all the income from such property is exempt from Federal income taxation,
- (IV) by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such person and such building is resold within 12 months after the date such

building is placed in service by such person after such foreclosure, or

- (V) of a single-family residence by any individual who owned and used such residence for no other purpose than as his principal residence.
- (ii) Related person. For purposes of subparagraph (B)(iii), a person (hereinafter in this subclause referred to as the “related person”) is related to any person if the related person bears a relationship to such person specified in section 267(b) or 707(b)(1), or the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52).

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

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

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

- (i) In general. Subparagraph (A) shall not apply with respect to a residential rental unit in a building which is not a low-income unit if—
  - (I) the excess described in clause (ii) with respect to such unit is not greater than 15 percent of the cost described in clause (ii)(II), and
  - (II) the taxpayer elects to exclude from the eligible basis of such building the excess described in clause (ii) with respect to such unit.
- (ii) Excess. The excess described in this clause with respect to any unit is the excess of—
  - (I) the cost of such unit, over

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

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

**(4) Special rules relating to determination of adjusted basis.**

For purposes of this subsection —

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

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

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

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

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

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

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

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

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

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

**(5) Special rules for determining eligible basis.**

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

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

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

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

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

(ii) Qualified census tract.

(I) In general. The term “qualified census tract” means any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in

which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.

- (II) Limit on MSA's designated. The portion of a metropolitan statistical area which may be designated for purposes of this subparagraph shall not exceed an area having 20 percent of the population of such metropolitan statistical area.
  - (III) Determination of areas. For purposes of this clause , each metropolitan statistical area shall be treated as a separate area and all nonmetropolitan areas in a State shall be treated as 1 area.
- (iii) Difficult development areas.
- (I) In general. The term “difficult development areas” means any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income.
  - (II) Limit on areas designated. The portions of metropolitan statistical areas which may be designated for purposes of this subparagraph shall not exceed an aggregate area having 20 percent of the population of such metropolitan statistical areas. A comparable rule shall apply to nonmetropolitan areas.
- (iv) Special rules and definitions. For purposes of this subparagraph —

- (I) population shall be determined on the basis of the most recent decennial census for which data are available,
  - (II) area median gross income shall be determined in accordance with subsection (g)(4) ,
  - (III) the term “metropolitan statistical area” has the same meaning as when used in section 143(k)(2)(B) , and
  - (IV) the term “nonmetropolitan area” means any county (or portion thereof) which is not within a metropolitan statistical area.
- (v) Buildings designated by State housing credit agency. Any building which is designated by the State housing credit agency as requiring the increase in credit under this subparagraph in order for such building to be financially feasible as part of a qualified low-income housing project shall be treated for purposes of this subparagraph as located in a difficult development area which is designated for purposes of this subparagraph. The preceding sentence shall not apply to any building if paragraph (1) of subsection (h) does not apply to any portion of the eligible basis of such building by reason of paragraph (4) of such subsection.

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

- (A) In general. Paragraph (2)(B)(ii) shall not apply to any federally- or State-assisted building.
- (B) Buildings acquired from insured depository institutions in default. On application by the taxpayer, the Secretary may waive paragraph (2)(B)(ii) with respect to any building acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.
- (C) Federally- or State-assisted building. For purposes of this paragraph —
  - (i) Federally-assisted building. The term “federally-assisted building” means any building which is substantially

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

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

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

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

- (i) paragraph (2)(B) shall not apply, but
- (ii) the credit allowable by reason of subsection (a) to the taxpayer for any period after such acquisition shall be equal to the amount of credit which would have been allowable under subsection (a) for such period to the prior owner referred to in subparagraph (B) had such owner not disposed of the building.

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

- (i) a credit was allowed by reason of subsection (a) to any prior owner of such building, and
- (ii) the taxpayer acquired such building before the end of the compliance period for such building with respect to such prior owner (determined without regard to any disposition by such prior owner).

**(e) Rehabilitation expenditures treated as separate new building.**

**(1) In general.**

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

**(2) Rehabilitation expenditures.**

For purposes of paragraph (1) —

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

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

**(3) Minimum expenditures to qualify.**

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

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

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

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

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

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

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

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

- (i) such dollar amount, multiplied by
- (ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting “calendar year 2008” for “calendar year 1992” in subparagraph (B) thereof

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

**(4) Special rules.**

For purposes of applying this section with respect to expenditures which are treated as a separate building by reason of this subsection —

- (A) such expenditures shall be treated as placed in service at the close of the 24-month period referred to in paragraph (3)(A) , and
- (B) the applicable fraction under subsection (c)(1) shall be the applicable fraction for the building (without regard to paragraph (1) ) with respect to which the expenditures were incurred.

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

**(5) No double counting.**

Rehabilitation expenditures may, at the election of the taxpayer, be taken into account under this subsection or subsection (d)(2)(A)(i) but not under both such subsections.

**(6) Regulations to apply subsection with respect to group of units in building.**

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

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

**(1) Credit period defined.**

For purposes of this section, the term “credit period” means, with respect to any building, the period of 10 taxable years beginning with—

- (A) the taxable year in which the building is placed in service, or
- (B) at the election of the taxpayer, the succeeding taxable year, but only if the building is a qualified low-income building as of the close of the 1st year of such period. The election under subparagraph (B) , once made, shall be irrevocable.

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

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

- (i) the numerator of which is the sum of the applicable fractions determined under subsection (c)(1) as of the close of each full month of such year during which such building was in service, and
- (ii) the denominator of which is 12.

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

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

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

- (i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of such building exceeds
- (ii) the qualified basis of such building as of the close of the 1st year of the credit period, the applicable percentage which shall apply under subsection (a) for the taxable year to such excess shall be the percentage equal to  $\frac{2}{3}$  of the applicable percentage which (after the application of subsection (h) ) would but for this paragraph apply to such basis.

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

**(4) Dispositions of property.**

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

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

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

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

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

—

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

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

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

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

(II) a credit would be allowed for rehabilitation expenditures with respect to such building if subsection (e)(3)(A)(ii)(I) did not apply and if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.

**(g) Qualified low-income housing project.**

For purposes of this section —

**(1) In general.**

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

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

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

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

**(2) Rent-restricted units.**

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

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

- (i) does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof),
- (ii) includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937,

- (iii) does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a) ) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and
- (iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949.

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

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

- (i) In the case of a unit which does not have a separate bedroom, 1 individual.
- (ii) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

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

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

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

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

- (i) a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and
- (ii) the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if—
  - (I) the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1) , and

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

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

**(3) Date for meeting requirements.**

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

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

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

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

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

(C) Special rule. A building—

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

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

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

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

**(4) Certain rules made applicable.**

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

**(5) Election to treat building after compliance period as not part of a project.**

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

**(6) Special rule where de minimis equity contribution.**

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

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

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

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

**(7) Scattered site projects.**

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

**(8) Waiver of certain de minimis errors and recertifications.**

On application by the taxpayer, the Secretary may waive—

- (A) any recapture under subsection (j) in the case of any de minimis error in complying with paragraph (1) , or
- (B) any annual recertification of tenant income for purposes of this subsection , if the entire building is occupied by low-income tenants.

**(9) Clarification of general public use requirement.**

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

- (A) with special needs,
- (B) who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group, or
- (C) who are involved in artistic or literary activities.

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

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

- (A) In general. The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under this subsection.
- (B) Time for making allocation. Except in the case of an allocation which meets the requirements of subparagraph (C) , (D) , (E) , or (F) an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.

- (C) Exception where binding commitment. An allocation meets the requirements of this subparagraph if there is a binding commitment (not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing credit dollar amount to such building beginning in a specified later taxable year.
- (D) Exception where increase in qualified basis.
- (i) In general. An allocation meets the requirements of this subparagraph if such allocation is made not later than the close of the calendar year in which ends the taxable year to which it will 1st apply but only to the extent the amount of such allocation does not exceed the limitation under clause (ii) .
- (ii) Limitation. The limitation under this clause is the amount of credit allowable under this section (without regard to this subsection ) for a taxable year with respect to an increase in the qualified basis of the building equal to the excess of—
- (I) the qualified basis of such building as of the close of the 1st taxable year to which such allocation will apply, over
- (II) the qualified basis of such building as of the close of the 1st taxable year to which the most recent prior housing credit allocation with respect to such building applied.
- (iii) Housing credit dollar amount reduced by full allocation. Notwithstanding clause (i) , the full amount of the allocation shall be taken into account under paragraph (2) .
- (E) Exception where 10 percent of cost incurred.
- (i) In general. An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.
- (ii) Qualified building. For purposes of clause (i) , the term “qualified building” means any building which is part of a project if the taxpayer's basis in such project (as of the date which is 1 year after the date that the allocation was made)

is more than 10 percent of the taxpayer's reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i) ). Such term does not include any existing building unless a credit is allowable under subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year.

- (F) Allocation of credit on a project basis.
- (i) In general. In the case of a project which includes (or will include) more than 1 building, an allocation meets the requirements of this subparagraph if—
- (I) the allocation is made to the project for a calendar year during the project period,
  - (II) the allocation only applies to buildings placed in service during or after the calendar year for which the allocation is made, and
  - (III) the portion of such allocation which is allocated to any building in such project is specified not later than the close of the calendar year in which the building is placed in service.
- (ii) Project period. For purposes of clause (i) , the term “project period” means the period—
- (I) beginning with the 1st calendar year for which an allocation may be made for the 1st building placed in service as part of such project, and
  - (II) ending with the calendar year the last building is placed in service as part of such project.

**(2) Allocated credit amount to apply to all taxable years ending during or after credit allocation year.**

Any housing credit dollar amount allocated to any building for any calendar year—

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

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

**(3) Housing credit dollar amount for agencies.**

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

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

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

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

For purposes of clause (i), the unused State housing credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (ii) through (iv) over the aggregate housing credit dollar amount allocated for such year. For purposes of clause (iii), the amount of State housing credit ceiling returned in the calendar year equals the housing credit dollar amount previously allocated within the State to any project which fails to meet the 10 percent test under paragraph (1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or

which does not become a qualified low-income housing project within the period required by this section or the terms of the allocation or to any project with respect to which an allocation is cancelled by mutual consent of the housing credit agency and the allocation recipient.

- (D) Unused housing credit carryovers allocated among certain states.
- (i) In general. The unused housing credit carryover of a State for any calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.
  - (ii) Unused housing credit carryover. For purposes of this subparagraph , the unused housing credit carryover of a State for any calendar year is the excess (if any) of—
    - (I) the unused State housing credit ceiling for the year preceding such year, over
    - (II) the aggregate housing credit dollar amount allocated for such year.
  - (iii) Formula for allocation of unused housing credit carryovers among qualified states. The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused housing credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146(j).
  - (iv) Qualified State. For purposes of this subparagraph , the term “qualified State” means, with respect to a calendar year, any State—
    - (I) which allocated its entire State housing credit ceiling for the preceding calendar year, and
    - (II) for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii) .

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

- (i) In general. The aggregate housing credit dollar amount for any constitutional home rule city for any calendar year shall be an amount which bears the same ratio to the State housing credit ceiling for such calendar year as—
  - (I) the population of such city, bears to
  - (II) the population of the entire State.
- (ii) Coordination with other allocations. In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying this paragraph with respect to housing credit agencies in such State other than constitutional home rule cities, the State housing credit ceiling for any calendar year shall be reduced by the aggregate housing credit dollar amounts determined for such year for all constitutional home rule cities in such State.
- (iii) Constitutional home rule city. For purposes of this paragraph , the term “constitutional home rule city” has the meaning given such term by section 146(d)(3)(C) .

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

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

(H) Cost-of-living adjustment.

- (i) In general. In the case of a calendar year after 2002, the \$2,000,000 and \$1.75 amounts in subparagraph (C) shall each be increased by an amount equal to—
  - (I) such dollar amount, multiplied by
  - (II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting “calendar year 2001” for “calendar year 1992” in subparagraph (B) thereof.

## (ii) Rounding.

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

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

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

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

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

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

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

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

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

(B) Special rule where 50 percent or more of building is financed with tax-exempt bonds subject to volume cap. For purposes of subparagraph (A), if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation

described in subparagraph (A) , paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building.

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

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

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

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

- (i) such organization is described in paragraph (3) or (4) of section 501(c) and is exempt from tax under section 501(a),
- (ii) such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; and
- (iii) 1 of the exempt purposes of such organization includes the fostering of low-income housing.

(D) Treatment of certain subsidiaries.

- (i) In general. For purposes of this paragraph , a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.
- (ii) Qualified corporation. For purposes of clause (i) , the term “qualified corporation” means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

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

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

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

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

- (i) which requires that the applicable fraction (as defined in subsection (c)(1) ) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in such agreement and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii) ,
- (ii) which allows individuals who meet the income limitation applicable to the building under subsection (g) (whether prospective, present, or former occupants of the building) the right to enforce in any State court the requirement and prohibitions of clause (i) ,
- (iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person,
- (iv) which prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder,
- (v) which is binding on all successors of the taxpayer, and
- (vi) which, with respect to the property, is recorded pursuant to State law as a restrictive covenant.

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

- (i) In general. The housing credit dollar amount allocated to any building may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building, including any increase in such fraction pursuant to the application of subsection (f)(3) if such increase is reflected in an amended low-income housing commitment.
  - (ii) Buildings financed by tax-exempt bonds. If paragraph (4) applies to any building the amount of credit allowed in any taxable year may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building. Such commitment may be amended to increase such fraction.
- (D) Extended use period. For purposes of this paragraph, the term “extended use period” means the period—
- (i) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and
  - (ii) ending on the later of—
    - (I) the date specified by such agency in such agreement, or
    - (II) the date which is 15 years after the close of the compliance period.
- (E) Exceptions if foreclosure or if no buyer willing to maintain low-income status.
- (i) In general. The extended use period for any building shall terminate—
    - (I) on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period, or
    - (II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a

qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building.

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

- (ii) Eviction, etc. of existing low-income tenants not permitted. The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination—
  - (I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or
  - (II) any increase in the gross rent with respect to such unit not otherwise permitted under this section

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

- (i) the sum of—
  - (I) the outstanding indebtedness secured by, or with respect to, the building,
  - (II) the adjusted investor equity in the building, plus
  - (III) other capital contributions not reflected in the amounts described in subclause (I) or (II) , reduced by
- (ii) cash distributions from (or available for distribution from) the project.

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

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

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

- (ii) Cost-of-living increases in excess of 5 percent not taken into account. Under regulations prescribed by the Secretary, if the CPI for any calendar year (as defined in section 1(f)(4) ) exceeds the CPI for the preceding calendar year by more than 5 percent, the CPI for the base calendar year shall be increased such that such excess shall never be taken into account under clause (i)
- (iii) Base calendar year. For purposes of this subparagraph , the term “base calendar year” means the calendar year with or within which the 1st taxable year of the credit period ends.

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

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

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

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

**(7) Special rules.**

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

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

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

- (i) In general. The amount of the credit determined under this section with respect to any building shall not exceed the clause (ii) percentage of the amount of the credit which would (but for this subparagraph ) be determined under this section with respect to such building.
- (ii) Determination of percentage. For purposes of clause (i), the clause (ii) percentage with respect to any building is the percentage which—
  - (I) the housing credit dollar amount allocated to such building bears to
  - (II) the credit amount determined in accordance with clause (iii) .

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

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

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

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

**(8) Other definitions.**

For purposes of this subsection —

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

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

**(i) Definitions and special rules.**

For purposes of this section —

**(1) Compliance period.**

The term “compliance period” means, with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

**(2) Determination of whether building is federally subsidized.**

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

which are or were used (directly or indirectly) with respect to such building or the operation thereof.

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

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

- (i) such obligation (when issued) identified the building for which the proceeds of such obligation would be used, and
- (ii) such obligation is redeemed before such building is placed in service.

**(3) Low-income unit.**

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

- (i) such unit is rent-restricted (as defined in subsection (g)(2) ), and
- (ii) the individuals occupying such unit meet the income limitation applicable under subsection (g)(1) to the project of which such building is a part.

(B) Exceptions.

- (i) In general. A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis.
- (ii) Suitability for occupancy. For purposes of clause (i), the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes.
- (iii) Transitional housing for homeless. For purposes of clause (i) , a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building—

- (I) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the Stewart B. McKinney Homeless Assistance Act ( 42 U.S.C. 11302 ), as in effect on the date of the enactment of this clause ) to independent living within 24 months, and
  - (II) in which a governmental entity or qualified nonprofit organization (as defined in subsection (h)(5) ) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.
- (iv) Single-room occupancy units. For purposes of clause (i) , a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.
- (C) Special rule for buildings having 4 or fewer units. In the case of any building which has 4 or fewer residential rental units, no unit in such building shall be treated as a low-income unit if the units in such building are owned by—
- (i) any individual who occupies a residential unit in such building, or
  - (ii) any person who is related (as defined in subsection (d)(2)(D)(iii) ) to such individual.
- (D) Certain students not to disqualify unit. A unit shall not fail to be treated as a low-income unit merely because it is occupied—
- (i) by an individual who is—
    - (I) a student and receiving assistance under title IV of the Social Security Act,
    - (II) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act, or

- (III) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or
  - (ii) entirely by full-time students if such students are—
    - (I) single parents and their children and such parents are not dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children, or. [sic ,]
    - (II) married and file a joint return.
- (E) Owner-occupied buildings having 4 or fewer units eligible for credit where development plans.

- (i) In general. Subparagraph (C) shall not apply to the acquisition or rehabilitation of a building pursuant to a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in subsection (h)(5)(C)).
- (ii) Limitation on credit. In the case of a building to which clause (i) applies, the applicable fraction shall not exceed 80 percent of the unit fraction.
- (iii) Certain unrented units treated as owner-occupied. In the case of a building to which clause (i) applies, any unit which is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

**(4) New building.**

The term “new building” means a building the original use of which begins with the taxpayer.

**(5) Existing building.**

The term “existing building” means any building which is not a new building.

**(6) Application to estates and trusts.**

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

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

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

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

- (i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and
- (ii) all Federal, State, and local taxes attributable to such sale.

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

**(8) Treatment of rural projects.**

For purposes of this section , in the case of any project for residential rental property located in a rural area (as defined in section 520 of the Housing Act of 1949), any income limitation measured by reference to area median gross income shall be measured by reference to the greater of area median gross income or national non-metropolitan median income. The preceding sentence shall not apply with respect to any building if paragraph (1) of section 42(h) does not apply by reason of paragraph (4) thereof to any portion of the credit determined under this section with respect to such building.

**(j) Recapture of credit.**

**(1) In general.**

If—

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

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

**(2) Credit recapture amount.**

For purposes of paragraph (1) , the credit recapture amount is an amount equal to the sum of—

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

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

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

**(3) Accelerated portion of credit.**

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

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

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

**(4) Special rules.**

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

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

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

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

(E) No recapture by reason of casualty loss. The increase in tax under this subsection shall not apply to a reduction in qualified basis by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

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

- (i) such increase results from a de minimis change in the floor space fraction under subsection (c)(1), and
- (ii) the building is a qualified low-income building after such change.

**(5) Certain partnerships treated as the taxpayer.**

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

- (i) such partnership shall be treated as the taxpayer to which the credit allowable under subsection (a) was allowed,
- (ii) the amount of such credit allowed shall be treated as the amount which would have been allowed to the partnership were such credit allowable to such partnership,
- (iii) paragraph (4)(A) shall not apply, and (iv) the amount of the increase in tax under this subsection for any taxable year shall be allocated among the partners of such partnership in

the same manner as such partnership's taxable income for such year is allocated among such partners.

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

(C) Special rules.

- (i) Husband and wife treated as 1 partner. For purposes of subparagraph (B)(i), a husband and wife (and their estates) shall be treated as 1 partner.
- (ii) Election irrevocable. Any election under subparagraph (B), once made, shall be irrevocable.

**(6) No recapture on disposition of building which continues in qualified use.**

(A) In general. The increase in tax under this subsection shall not apply solely by reason of the disposition of a building (or an interest therein) if it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

(B) Statute of limitations. If a building (or an interest therein) is disposed of during any taxable year and there is any reduction in the qualified basis of such building which results in an increase in tax under this subsection for such taxable or any subsequent taxable year, then—

- (i) the statutory period for the assessment of any deficiency with respect to such increase in tax shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of such reduction in qualified basis, and
- (ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

**(k) Application of at-risk rules.**

For purposes of this section —

**(1) In general.**

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

section 49(a)(2) , and section 49(b)(1) shall apply in determining the qualified basis of any building in the same manner as such sections apply in determining the credit base of property.

**(2) Special rules for determining qualified person.**

For purposes of paragraph (1) —

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

- (i) is actively and regularly engaged in the business of lending money, or
- (ii) is a person described in section 49(a)(1)(D)(iv)(II) .

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

- (i) a security interest in such building is not permitted by a Federal agency holding or insuring the mortgage secured by such building, and
- (ii) the proceeds from the financing (if any) are applied to acquire or improve such building.

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

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

- (i) the date on which such financing matures,

- (ii) the 90th day after the close of the compliance period with respect to the qualified low-income building, or
- (iii) the date of its refinancing or the sale of the building to which such financing relates.

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

### **(3) Present value of financing.**

If the rate of interest on any financing described in paragraph (2)(A) is less than the rate which is 1 percentage point below the applicable Federal rate as of the time such financing is incurred, then the qualified basis (to which such financing relates) of the qualified low-income building shall be the present value of the amount of such financing, using as the discount rate such applicable Federal rate. For purposes of the preceding sentence, the rate of interest on any financing shall be determined by treating interest to the extent of government subsidies as not payable.

### **(4) Failure to fully repay.**

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

- (i) beginning with the due date for the filing of the return of tax imposed by chapter 1 for the 1st taxable year for which such credit was allowable, and
- (ii) ending with the due date for the taxable year in which such failure occurs, determined by using the underpayment rate and method under section 6621 .

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

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

**(l) Certifications and other reports to secretary.**

**(1) Certification with respect to 1st year of credit period.**

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

- (A) the taxable year, and calendar year, in which such building was placed in service,
- (B) the adjusted basis and eligible basis of such building as of the close of the 1st year of the credit period,
- (C) the maximum applicable percentage and qualified basis permitted to be taken into account by the appropriate housing credit agency under subsection (h) ,
- (D) the election made under subsection (g) with respect to the qualified low-income housing project of which such building is a part, and
- (E) such other information as the Secretary may require.

In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefore, 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 lowincome 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 therefore.

**(3) Annual reports from housing credit agencies.**

Each agency which allocates any housing credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying—

- (A) the amount of housing credit amount allocated to each building for such year,
- (B) sufficient information to identify each such building and the taxpayer with respect thereto, and
- (C) such other information as the Secretary may require.

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

**(m) Responsibilities of housing credit agencies.**

**(1) Plans for allocation of credit among projects.**

- (A) In general. Notwithstanding any other provision of this section , the housing credit dollar amount with respect to any building shall be zero unless—
  - (i) such amount was allocated pursuant to a qualified allocation plan of the housing credit agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof )) of which such agency is a part,
  - (ii) such agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project,
  - (iii) a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project is conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by such agency, and

- (iv) a written explanation is available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the housing credit agency.
- (B) Qualified allocation plan. For purposes of this paragraph , the term “qualified allocation plan” means any plan—
- (i) which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions,
  - (ii) which also gives preference in allocating housing credit dollar amounts among selected projects to—
    - (I) projects serving the lowest income tenants,
    - (II) projects obligated to serve qualified tenants for the longest periods, and
    - (III) projects which are located in qualified census tracts (as defined in subsection (d)(5)(C) ) and the development of which contributes to a concerted community revitalization plan, and
  - (iii) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.
- (C) Certain selection criteria must be used. The selection criteria set forth in a qualified allocation plan must include—
- (i) project location,
  - (ii) housing needs characteristics,
  - (iii) project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan,

- (iv) sponsor characteristics,
- (v) tenant populations with special housing needs,
- (vi) public housing waiting lists,

**Caution:** Clauses (m)(1)(C)(vii)-(viii), following, are effective for allocations made before 1/1/2009. For clauses (m)(1)(C)(vii)-(x), effective for allocations made after 12/31/2008, see below.

- (vii) tenant populations of individuals with children, and
- (viii) projects intended for eventual tenant ownership.

**Caution:** Clauses (m)(1)(C)(vii)-(ix), following, are effective for allocations made after 12/31/2008. For clauses (m)(1)(C)(vii)-(viii), effective for allocations made before 1/1/2009, see above.

- (vii) tenant populations of individuals with children,
- (viii) projects intended for eventual tenant ownership,
- (ix) the energy efficiency of the project, and
- (x) the historic nature of the project.

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

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

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

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

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

- (ii) any proceeds or receipts expected to be generated by reason of tax benefits,
- (iii) the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries, and
- (iv) the reasonableness of the developmental and operational costs of the project.

Clause (iii) shall not be applied so as to impede the development of projects in hard-to-develop areas. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

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

- (i) In general. A determination under subparagraph (A) shall be made as of each of the following times:
  - (I) The application for the housing credit dollar amount.
  - (II) The allocation of the housing credit dollar amount.
  - (III) The date the building is placed in service.
- (ii) Certification as to amount of other subsidies. Prior to each determination under clause (i) , the taxpayer shall certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.

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

**(n) Regulations.**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section , including regulations—

- (1) dealing with—

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

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

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

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

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

## AMERICAN RECOVERY & REINVESTMENT ACT OF 2009 (H.R. 1, P.L. 111-5, February 17)

### DIVISION A: APPROPRIATIONS PROVISIONS

#### TITLE XII: TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT, & RELATED AGENCIES

#### HOME INVESTMENT PARTNERSHIPS PROGRAM (TAX CREDIT ASSISTANCE PROGRAM - TCAP)

For an additional amount for capital investments in low-income housing tax credit projects, \$2,250,000,000, to remain available **until September 30, 2011**:

**Provided**, That such funds shall be made available to State housing credit agencies, as defined in section 42(h) of the Internal Revenue Code of 1986, and shall be apportioned among the States based on the percentage of HOME funds apportioned to each State and the participating jurisdictions therein for Fiscal Year 2008:

**Provided further**, That the housing credit agencies in each State shall **distribute these funds competitively** under this heading and **pursuant to their qualified allocation plan** (as defined in section 42(m) of the Internal Revenue Code of 1986) to owners of projects **who have received or receive** simultaneously an award of low-income housing tax credits under section 42(h) of the Internal Revenue Code of 1986:

**Provided further**, That **housing credit agencies** in each State shall **commit not less than 75 percent of such funds within one year** of the date of enactment of this Act, and shall **demonstrate that the project owners shall have expended 75 percent** of the funds made available under this heading **within two years** of the date of enactment of this Act, and shall have **expended 100 percent of the funds within 3 years** of the date of enactment of this Act:

**Provided further**, That failure by an owner to expend funds within the parameters required within the previous proviso shall result in a redistribution of these funds by a housing credit agency to a more deserving project in such State, except any **funds not expended after 3 years** from enactment shall be **redistributed by the Secretary to other States** that have fully utilized the funds made available to them:

**Provided further**, That projects awarded low income housing tax credits under section 42(h) of the IRC of 1986 in fiscal years **2007, 2008, or 2009** shall be eligible for funding under this heading:

**Provided further,** That housing credit agencies shall give **priority** to projects that are **expected to be completed within 3 years** of enactment:

**Provided further,** That any assistance provided to an eligible low income housing tax credit project under this heading shall be made in the **same manner** and be subject to the **same limitations (including rent, income, and use restrictions, in lieu of corresponding limitations under the HOME program)** as required by the state housing credit agency with respect to an award of low income housing credits under section 42 of the IRC of 1986:

**Provided further,** That the housing credit agency shall perform **asset management functions**, or shall **contract for the performance of such services**, in either case, at the **owner's expense**, to ensure compliance with section 42 of the IRC of 1986, and the long term viability of buildings funded by assistance under this heading:

**Provided further,** That the term **eligible basis** (as such term is defined in such section 42) of a qualified low-income housing tax credit building receiving assistance under this heading shall **not be reduced** by the amount of any grant described under this heading:

**Provided further,** That the Secretary shall be given access upon reasonable notice to a State housing credit agency to information related to the award of Federal funds from such housing credit agency pursuant to this heading and shall **establish an Internet site** that shall identify all projects selected for an award, including the amount of the award and such site shall provide linkage to the housing credit agency allocation plan which describes the process that was used to make the award decision:

**Provided further,** That in administering funds under this heading, the Secretary may **waive any provision** of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds **except** for requirements imposed by this heading and requirements related to **fair housing, non-discrimination, labor standards and the environment, upon a finding that such waiver is required to expedite the use of such funds:**

**Provided further,** That for purposes of **environmental compliance review**, funds under this heading that are made available to State housing credit agencies for distribution to projects awarded low income housing tax credits shall be **treated as funds under the HOME program and shall be subject to Section 288 of the HOME Investment Partnership Act.**

---

**DIVISION B: TAX, UNEMPLOYMENT, HEALTH, STATE FISCAL RELIEF, & OTHER PROVISIONS**

**TITLE I: TAX PROVISIONS**

**Subtitle E - Economic Recovery Tools****Sec. 1404: Coordination of low-income housing credit and low-income housing grants.**

Subsection (i) of section 42 is amended by adding at the end the following new paragraph:

“(9) **Coordination with low-income housing grants.**

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

“(B) **Special rule for basis.** Basis of a qualified low-income building shall not be reduced by the amount of any grant described in subparagraph (A).”

**Subtitle G - Other Provisions****Sec. 1602: Grants to States for low-income housing projects in lieu of low-income housing credit allocations for 2009**

(a) **In General.** The Secretary of the Treasury shall make a grant to the housing credit agency of each State in an amount equal to such State's low-income housing grant election amount.

(b) **Low-Income Housing Grant Election Amount.** For purposes of this section, the term “**low-income housing grant election amount**” means, with respect to any State, such amount as the State may elect which does not exceed 85 percent of the product of:

(1) the **sum of:**

(A) 100 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (i) and (iii) of section 42(h)(3)(C) of the Internal Revenue Code of 1986, and

(B) 40 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (ii) and (iv) of such section, **multiplied by**

(2) 10.

(c) **Subawards for Low-Income Buildings.**

- (1) **In general.** A State housing credit agency receiving a grant under this section shall use such grant to make **subawards to finance the construction or acquisition and rehabilitation** of qualified low-income buildings. A subaward under this section may be made to finance a qualified low-income building with or without an allocation under section 42 of the Internal Revenue Code of 1986, except that a State housing credit agency may make subawards to finance qualified low-income buildings without an allocation only if it makes a determination that such use will increase the total funds available to the State to build and rehabilitate affordable housing. In complying with such determination requirement, a State housing credit agency shall establish a process in which applicants that are allocated credits are required to demonstrate good faith efforts to obtain investment commitments for such credits before the agency makes such subawards.
  - (2) **Subawards subject to same requirements as low-income housing credit allocations.** Any such subaward with respect to any qualified low-income building shall be made in the **same manner** and shall be subject to the **same limitations (including rent, income, and use restrictions on such building)** as an allocation of housing credit dollar amount allocated by such State housing credit agency under section 42 of the Internal Revenue Code of 1986, except that such subawards shall not be limited by, or otherwise affect (except as provided in subsection (h)(3)(J) of such section), the State housing credit ceiling applicable to such agency.
  - (3) **Compliance and asset management.** The State housing credit agency shall **perform asset management functions** to ensure compliance with section 42 of the Internal Revenue Code of 1986 and the long-term viability of buildings funded by any subaward under this section. The State housing credit agency may **collect reasonable fees** from a subaward recipient to cover expenses associated with the performance of its duties under this paragraph. The State housing credit agency may **retain an agent or other private contractor** to satisfy the requirements of this paragraph.
  - (4) **Recapture.** The State housing credit agency shall **impose conditions or restrictions**, including a requirement providing for recapture, on any subaward under this section so as to assure that the building with respect to which such subaward is made remains a qualified low-income building during the compliance period. Any such **recapture shall be payable to the Secretary of the Treasury** for deposit in the general fund of the Treasury and may be enforced by means of liens or such other methods as the Secretary of the Treasury determines appropriate.
- (d) **Return of Unused Grant Funds.** Any grant funds **not used** to make subawards under this section before **January 1, 2011**, shall be **returned to the Secretary of the Treasury** on such date. Any subawards returned to the State housing credit agency on or after such date shall be promptly returned to the Secretary of the Treasury. Any amounts returned to the Secretary of the Treasury under this subsection shall be deposited in the general fund of the Treasury.

- (e) **Definitions.** Any term used in this section which is also used in section 42 of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this section as when used in such section 42. Any reference in this section to the Secretary of the Treasury shall be treated as including the Secretary's delegate.
  
- (f) **Appropriations.** There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this section.

**Proyecciones de demanda: 2006-2010**

Determinado el mercado de demanda de vivienda y los precios de alquiler se procedió a estimar el mercado de alquiler de vivienda de Puerto Rico para las categorías de interés social, ingreso medio e ingreso alto. El tamaño del mercado de alquiler se estimó en 28% del mercado de vivienda total.

La demanda total de vivienda para alquiler para el 2006 se estimó en 394 mil unidades y ascenderá a 423 mil unidades para el año 2010. La mayor parte de la demanda se concentra en la región metropolitana, el 46%. La Región con la menor concentración de la demanda de alquiler lo es la central con el 10%.

<b>Demanda de vivienda de alquiler 2006-2010</b>					
Región	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Metropolitana	185,810	188,702	191,645	194,640	197,689
Oeste	80,021	81,646	83,299	84,982	86,695
Este	31,824	32,491	33,171	33,862	34,566
Sur	56,157	57,077	58,013	58,966	59,935
Centro	40,434	41,291	42,162	43,050	43,953
Total	394,247	401,207	408,290	415,499	422,838
Diferencia		6,959	7,083	7,210	7,338

**Rental Housing Needs Projection: 2006-2010**

After establishing the housing need market and rent prices, the rental housing market for low, medium and high income categories was estimated. Housing rental market size was estimated in 28% of the total housing market.

Total rental housing demand for 2006 was estimated in 394,000 units and it will rise to 423,000 units in 2010. The greatest demand is concentrated in the metropolitan area, 46%. The Region with the lowest concentration of the rental demand is the central area with 10%.

<b>Rental Housing Demand 2006-2010</b>					
Region	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Metropolitan	185,810	188,702	191,645	194,640	197,689
West	80,021	81,646	83,299	84,982	86,695
East	31,824	32,491	33,171	33,862	34,566
South	56,157	57,077	58,013	58,966	59,935
Central	40,434	41,291	42,162	43,050	43,953
Total	394,247	401,207	408,290	415,499	422,838
Difference		6,959	7,083	7,210	7,338

**División de Municipios por Regiones**  
(Municipalities per Region)

	<b>Región (region)</b>				
	<b>Metro</b> (metropolitan)	<b>Oeste</b> (west)	<b>Este</b> (East)	<b>Sur</b> (South)	<b>Centro</b> (Central)
<b>Municipios</b> (municipalities)	Bayamón	Aguada	Ceiba	Aibonito	Adjuntas
	Caguas	Aguadilla	Culebra	Arroyo	Aguas Buenas
	Canóvanas	Añasco	Fajardo	Cayey	Barranquitas
	Carolina	Arecibo	Humacao	Coamo	Ciales
	Cataño	Barceloneta	Juncos	Guayama	Cidra
	Dorado	Cabo Rojo	Las Piedras	Guayanilla	Comerio
	Guaynabo	Camuy	Loíza	Juana Díaz	Corozal
	Gurabo	Guánica	Luquillo	Patillas	Florida
	Río Grande	Hatillo	Maunabo	Peñuelas	Jayuya
	San Juan	Hormigueros	Naguabo	Ponce	Lares
	Toa Alta	Isabela	San Lorenzo	Salinas	Las Marías
	Toa Baja	Lajas	Vieques	Santa Isabel	Maricao
	Trujillo Alto	Manatí	Yabucoa	Villalba	Morovis
	Vega Alta	Mayaguez		Yauco	Naranjito
	Vega Baja	Moca			Orocovis
		Quebradillas			San Sebastián
		Rincón			Utuaado
	Sabana Grande				
	San Germán				



PUERTO RICO HOUSING FINANCE AUTHORITY			Effective Date:			19-Mar-09
LOW INCOME HOUSING TAX CREDIT PROGRAM						
Rent Restrictions						
Region *		Studios	1 Br	2 Brs	3 Brs	4 Brs
<b>Aguadilla-Isabela-San Sebastian</b>						
50% of Median Income	Rent	\$ 207	\$ 222	\$ 266	\$ 308	\$ 343
60% of Median Income	Rent	\$ 249	\$ 267	\$ 319	\$ 369	\$ 412
<b>Arecibo</b>						
50% of Median Income	Rent	\$ 240	\$ 256	\$ 308	\$ 356	\$ 397
60% of Median Income	Rent	\$ 288	\$ 308	\$ 370	\$ 427	\$ 477
<b>Barranquitas-Aibonito-Quebradillas</b>						
50% of Median Income	Rent	\$ 215	\$ 230	\$ 276	\$ 320	\$ 356
60% of Median Income	Rent	\$ 258	\$ 276	\$ 331	\$ 384	\$ 427
<b>Caguas</b>						
50% of Median Income	Rent	\$ 241	\$ 258	\$ 310	\$ 357	\$ 398
60% of Median Income	Rent	\$ 289	\$ 309	\$ 372	\$ 429	\$ 478
<b>Fajardo</b>						
50% of Median Income	Rent	\$ 265	\$ 283	\$ 341	\$ 393	\$ 438
60% of Median Income	Rent	\$ 318	\$ 340	\$ 409	\$ 472	\$ 526
<b>Guayama</b>						
50% of Median Income	Rent	\$ 218	\$ 234	\$ 281	\$ 325	\$ 362
60% of Median Income	Rent	\$ 262	\$ 281	\$ 337	\$ 390	\$ 435
<b>Mayaguez</b>						
50% of Median Income	Rent	\$ 235	\$ 251	\$ 302	\$ 350	\$ 390
60% of Median Income	Rent	\$ 282	\$ 302	\$ 363	\$ 420	\$ 468
<b>Ponce</b>						
50% of Median Income	Rent	\$ 253	\$ 271	\$ 326	\$ 376	\$ 420
60% of Median Income	Rent	\$ 304	\$ 326	\$ 391	\$ 452	\$ 504
<b>San German-Cabo Rojo</b>						
50% of Median Income	Rent	\$ 205	\$ 219	\$ 263	\$ 304	\$ 338
60% of Median Income	Rent	\$ 246	\$ 263	\$ 316	\$ 365	\$ 406
<b>San Juan-Guaynabo</b>						
50% of Median Income	Rent	\$ 265	\$ 283	\$ 341	\$ 393	\$ 438
60% of Median Income	Rent	\$ 318	\$ 340	\$ 409	\$ 472	\$ 526
<b>Yauco</b>						
50% of Median Income	Rent	\$ 235	\$ 251	\$ 302	\$ 349	\$ 390
60% of Median Income	Rent	\$ 282	\$ 302	\$ 363	\$ 419	\$ 468
<b>All Other (Nonmetropolitan)</b>						
50% of Median Income	Rent	\$ 202	\$ 216	\$ 260	\$ 300	\$ 335
60% of Median Income	Rent	\$ 243	\$ 260	\$ 312	\$ 360	\$ 402

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

PUERTO RICO HOUSING FINANCE AUTHORITY		Effective Date: 19-Mar-09				
LOW INCOME HOUSING TAX CREDIT PROGRAM						
Income Limits						
Persons per Family		1	2	3	4	5
Region *						
<b>Aguadilla-Isabela-San Sebastian</b>						
50% of Median Income	Income	\$8,300	\$ 9,500	\$ 10,650	\$ 11,850	\$12,800
60% of Median Income	Income	\$9,960	\$11,400	\$12,780	\$14,220	\$15,360
<b>Arecibo</b>						
50% of Median Income	Income	\$9,600	\$10,950	\$12,350	\$13,700	\$14,800
60% of Median Income	Income	\$11,520	\$13,140	\$14,820	\$16,440	\$17,760
<b>Barranquitas-Aibonito-Quebradillas</b>						
50% of Median Income	Income	\$8,600	\$9,850	\$11,050	\$12,300	\$13,300
60% of Median Income	Income	\$10,320	\$11,820	\$13,260	\$14,760	\$15,960
<b>Caguas</b>						
50% of Median Income	Income	\$9,650	\$11,000	\$12,400	\$13,750	\$14,850
60% of Median Income	Income	\$11,580	\$13,200	\$14,880	\$16,500	\$17,820
<b>Fajardo</b>						
50% of Median Income	Income	\$10,600	\$12,100	\$13,650	\$15,150	\$16,350
60% of Median Income	Income	\$12,720	\$14,520	\$16,380	\$18,180	\$19,620
<b>Guayama</b>						
50% of Median Income	Income	\$ 8,750	\$10,000	\$11,250	\$12,500	\$13,500
60% of Median Income	Income	\$10,500	\$12,000	\$13,500	\$15,000	\$16,200
<b>Mayaguez</b>						
50% of Median Income	Income	\$9,400	\$10,750	\$12,100	\$13,450	\$14,550
60% of Median Income	Income	\$11,280	\$12,900	\$14,520	\$16,140	\$17,460
<b>Ponce</b>						
50% of Median Income	Income	\$10,150	\$11,600	\$13,050	\$14,500	\$15,650
60% of Median Income	Income	\$12,180	\$13,920	\$15,660	\$17,400	\$18,780
<b>San German-Cabo Rojo</b>						
50% of Median Income	Income	\$8,200	\$9,350	\$10,550	\$11,700	\$12,650
60% of Median Income	Income	\$ 9,840	\$11,220	\$12,660	\$14,040	\$15,180
<b>San Juan-Guaynabo</b>						
50% of Median Income	Income	\$10,600	\$12,100	\$13,650	\$15,150	\$16,350
60% of Median Income	Income	\$12,720	\$14,520	\$16,380	\$18,180	\$19,620
<b>Yauco</b>						
50% of Median Income	Income	\$9,400	\$10,750	\$12,100	\$13,400	\$14,550
60% of Median Income	Income	\$11,280	\$12,900	\$14,520	\$16,080	\$17,460
<b>All Other (Nonmetropolitan)</b>						
50% of Median Income	Income	\$ 8,100	\$9,250	\$10,400	\$11,550	\$12,450
60% of Median Income	Income	\$9,720	\$11,100	\$12,480	\$13,860	\$14,940

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

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

**Municipalities within Regions**

(as defined by HUD)

<b>REGION</b>	<b>MUNICIPALITIES</b>
<b>Aguadilla-Isabela-San Sebastian</b>	Aguada, Aguadilla, Añasco, Isabela, Lares, Moca, Rincón, San Sebastián
<b>Arecibo</b>	Arecibo, Camuy, Hatillo
<b>Barranquitas-Aibonito-Quebradillas</b>	Aibonito, Barranquitas, Ciales, Maunabo, Orocovis, Quebradillas
<b>Caguas</b>	Caguas, Cayey, Cidra, Gurabo, San Lorenzo
<b>Fajardo</b>	Ceiba, Fajardo, Luquillo
<b>Guayama</b>	Arroyo, Guayama, Patillas
<b>Mayagüez</b>	Hormigueros, Mayagüez
<b>Ponce</b>	Juana Díaz, Ponce, Villalba
<b>San German-Cabo Rojo</b>	Cabo Rojo, Lajas, Sabana Grande, San Germán
<b>San Juan-Guaynabo</b>	Aguas 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
<b>Yauco</b>	Guanica, Guayanilla, Peñuelas, Yauco
<b>All Other (Nonmetropolitan Area)</b>	Adjuntas, Coamo, Culebra, Jayuya, Las Marías, Maricao, Salinas, Santa Isabel, Utuado, Vieques

































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

Internal Revenue Code, 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: August 12, 2008.  
Darlene F. Williams,  
*Assistant Secretary for Policy Development  
and Research.*  
BILLING CODE 4210-67-P













































## ANNEX E: BINDING COMMITMENT FOR SUBSEQUENT YEAR

### BINDING COMMITMENT FOR A CERTIFICATE OF RESERVATION FOR A LOW INCOME HOUSING TAX CREDIT ALLOCATION IN 20XX

The Puerto Rico Housing Finance Authority (**PRHFA**) hereby commits to reserving Low-Income Housing Tax Credits pursuant to Section 42 (h)(1)(C) of the Internal Revenue Code of 1986, as amended (**Code**), by the issuance of this Binding Commitment as follows:

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, Address and Taxpayer Identification Number of Allocating Agency:
- Name: **PUERTO RICO HOUSING FINANCE AUTHORITY**  
 Address: P.O. Box 71361  
 San Juan, P.R. 00936-8461
- Identification Number: **66-0433752**
9. Date of this Binding Commitment: \_\_\_\_\_, 20XX.
10. Building Identification Numbers: **To Be Assigned**
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 within 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. Tax Credit is requested in connection with a project utilizing the Tax Credit Program as their only subsidy.
- e. The Project is part of a Community Revitalization Master Plan.
- f. Due to unforeseen circumstances that the PRHFA at its sole discretion, believe are valid.
12. PRHFA commits itself to enter into a Carryover Allocation Agreement with the Project Owner in the year 20XX
13. The Owner commits to achieve the Basic Threshold and Minimum Ranking Points as required in the 20XX Qualified Allocation Plan. The Owner also commits to pay the Processing Fee equal to a .25% of the annual tax credit requested.

PRHFA represents and warrants that this Binding Commitment binds PRHFA and its successors and assigns and that PRHFA is the housing credit agency for the Commonwealth of Puerto Rico. The Binding Commitment is 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)(1)(F) of the Code]

shall be reduced in 20XX to reflect this commitment. Pursuant to Section 42(h)(1)(F) of the Code, the portion of Tax Credits 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 Form 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.

**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.

\*\*\*\*\*

FAIR HOUSING ACT ACCESSIBILITY CHECKLIST

**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](http://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](http://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

**Re: Low Income Housing Tax Credit Program**

Name of Development: \_\_\_\_\_

\_\_\_\_\_

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 (the "Code"), and the regulations promulgated pursuant thereto (the "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,

## 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: 2009 Low Income Housing Tax Credit Program  
Name of Project: \_\_\_\_\_  
Name of 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 (the "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 (the "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 23 of the Application and (b) of the Estimated Qualified Basis of each building in the Development in Page 16 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 33 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 26 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: 2009 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      %.

(d) Throughout the term of this Agreement the low-income units will rent for at least      % 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      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.



(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% COST 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 \_\_\_\_\_  
\_\_\_\_\_

Re: Project Name: \_\_\_\_\_  
Application Number \_\_\_\_\_  
Owner Tax ID: \_\_\_\_\_

We have audited the accompanying Certification of Costs Incurred ("Exhibit A") of the Owner for (The Project) as of \_\_\_\_\_. 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 audit.

We have 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 misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures included 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 \_\_\_\_\_, 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 has 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 the 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 \_\_\_\_\_, 200\_\_.
2. We calculated the reasonably expected basis incurred by the Owner as of \_\_\_\_\_, 200\_\_ to be \$\_\_\_\_\_.
3. We calculated the percentage of the development fee incurred by the Owner as of \_\_\_\_\_, 200\_\_ to be \_\_\_\_\_% of the total development fee.
4. We compared the reasonably expected basis incurred as of \_\_\_\_\_, 200\_\_ to the total reasonably expected basis of the Project and calculated that \_\_\_\_\_% had been incurred as of \_\_\_\_\_, 200\_\_.
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 June 30, 200\_\_\_. As of 200\_\_ 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.

\_\_\_\_\_  
Name of Professional's Firm

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Professional

\_\_\_\_\_  
Title of Signatory

\_\_\_\_\_  
Printed Name of Signatory

**EXHIBIT A TO INDEPENDENT AUDITOR'S REPORT FOR CARRYOVER  
ALLOCATION  
ITEMIZED EXPENDITURES  
AS OF**

	PROJECT'S EXPECTED BASIS	ELIGIBLE 10% TEST EXPENDITUR	EXPENDITURES AS % OF EXPECTED BASIS
<b>LAND AND BUILDING*</b>			
Land Costs	\$ _____	\$ _____	_____ %
Existing Structures	\$ _____	\$ _____	_____ %
On-site Work	\$ _____	\$ _____	_____ %
Off-site Work	\$ _____	\$ _____	_____ %
Garages	\$ _____	\$ _____	_____ %
Other**	\$ _____	\$ _____	_____ %
<b>TOTAL</b>	<b>\$ _____</b>	<b>\$ _____</b>	<b>_____ %</b>
<b>REHABILITATION OR CONSTRUCTION COSTS</b>			
New Building	\$ _____	\$ _____	_____ %
Rehabilitation	\$ _____	\$ _____	_____ %
Accessory Buildings	\$ _____	\$ _____	_____ %
Contractor Overhead	\$ _____	\$ _____	_____ %
Contractor Profit	\$ _____	\$ _____	_____ %
General Requirements	\$ _____	\$ _____	_____ %
Construction	\$ _____	\$ _____	_____ %
Contingency	\$ _____	\$ _____	_____ %
Fees	\$ _____	\$ _____	_____ %
Other	\$ _____	\$ _____	_____ %
<b>TOTAL</b>	<b>\$ _____</b>	<b>\$ _____</b>	<b>_____ %</b>
<b>PROFESSIONAL FEES</b>			
Architect	\$ _____	\$ _____	_____ %
Architect - Supervision	\$ _____	\$ _____	_____ %
Engineer/Surveyor	\$ _____	\$ _____	_____ %
Attorney	\$ _____	\$ _____	_____ %
Accountant	\$ _____	\$ _____	_____ %
Consultant Fees	\$ _____	\$ _____	_____ %
Other	\$ _____	\$ _____	_____ %
<b>TOTAL</b>	<b>\$ _____</b>	<b>\$ _____</b>	<b>_____ %</b>

**CONSTRUCTION PERIOD COSTS**

Insurance	\$ _____	\$ _____	_____ %
Bond Premium	\$ _____	\$ _____	_____ %
Construction Loan Interest	\$ _____	\$ _____	_____ %
Loan Origination Fee	\$ _____	\$ _____	_____ %
Taxes and Fees	\$ _____	\$ _____	_____ %
Title and Recording	\$ _____	\$ _____	_____ %
Other	\$ _____	\$ _____	_____ %
<b>TOTAL</b>	<b>\$ _____</b>	<b>\$ _____</b>	<b>_____ %</b>

**PERMANENT FINANCING**

\$ _____	<b>PROJECT'S EXPECTED BASIS</b>	<b>ELIGIBLE 10% TEST EXPENDITUR</b>	<b>EXPENDITURES AS % OF EXPECTED BASIS</b>
----------	---------------------------------	-------------------------------------	--

**SOFT COSTS**

Market Study	\$ _____	\$ _____	_____ %
Environmental Study	\$ _____	\$ _____	_____ %
Appraisal	\$ _____	\$ _____	_____ %
Tax Credit Fees	\$ _____	\$ _____	_____ %
Cost Certification	\$ _____	\$ _____	_____ %
Other	\$ _____	\$ _____	_____ %
<b>TOTAL</b>	<b>\$ _____</b>	<b>\$ _____</b>	<b>_____ %</b>

**SYNDICATION COSTS\*\***

\$ \_\_\_\_\_

**DEVELOPER FEES \*\*\***

Developer Fees	\$ _____	\$ _____	_____ %
Consultant	\$ _____	\$ _____	_____ %
Other	\$ _____	\$ _____	_____ %
<b>TOTAL</b>	<b>\$ _____</b>	<b>\$ _____</b>	<b>_____ %</b>

**PROJECT RESERVES**

\$ \_\_\_\_\_

**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 fee, 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 Auditors' 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 (the "Final Cost Certification") of **(insert Owner's Name)** (the "Owner") for **(insert Project's Name)** (the "Project") as of \_\_\_\_\_, 200\_\_\_\_. The Final Cost Certification is responsibility of the Project 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 also includes assessing the accounting principles used and significant estimates made by 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 \$\_\_\_\_\_ for the Project as of \_\_\_\_\_, 200\_\_\_\_, 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

**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
<b>LAND AND BUILDING *</b>			
1 Land Costs	\$	\$	\$
2 Existing Structures	\$	\$	\$
3 Acquisition Fees	\$	\$	\$
4 Other: _____	\$	\$	\$
<b>5 TOTAL</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

<b>SITE WORK</b>			
6 On-site Work	\$	\$	\$
7 Off-site Work	\$	\$	\$
8 Other: _____	\$	\$	\$
<b>9 TOTAL</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

<b>REHABILITATION OR CONSTRUCTION COSTS</b>			
10 New Building	\$	\$	\$
11 Rehabilitation	\$	\$	\$
12 Accessory Buildings	\$	\$	\$
13 Contractor Overhead	\$	\$	\$
14 Contractor Profit	\$	\$	\$
15 General Requirements	\$	\$	\$
16 Construction Contingency	\$	\$	\$
17 Fees	\$	\$	\$
18 Other: _____	\$	\$	\$
<b>19 TOTAL</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

<b>PROFESSIONAL FEES</b>			
20 Design	\$	\$	\$
21 Supervision	\$	\$	\$
22 Engineer/Surveyor	\$	\$	\$
23 Real Estate Attorney	\$	\$	\$
24 Consultant Fees	\$	\$	\$

ITEMIZED COSTS	Final Costs	Eligible Basis by Credit Type	
25 Other: _____	\$	\$	\$
<b>26 TOTAL</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

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: _____	\$	\$	\$
<b>34 TOTAL</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

PERMANENT FINANCING			
35 Bond Premium	\$	\$	\$
36 Credit Report	\$	\$	\$
37 Loan Origination Fee	\$	\$	\$
38 Legal Fees	\$	\$	\$
39 Title and Recording	\$	\$	\$
40 Other: _____	\$	\$	\$
<b>41 TOTAL</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

SOFT COSTS			
42 Market Study	\$	\$	\$
43 Environmental Study	\$	\$	\$
44 Appraisal	\$	\$	\$
45 Tax Credit Fees	\$	\$	\$
46 Cost Certification	\$	\$	\$
47 Rent Up	\$	\$	\$
48 Other: _____	\$	\$	\$
<b>49 TOTAL</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

SYNDICATION COSTS **			
50 Organizational	\$	\$	\$
51 Tax Opinion and Title Policy	\$	\$	\$
52 Other: _____	\$	\$	\$
<b>53 TOTAL</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

ITEMIZED COSTS	Final Costs	Eligible Basis by Credit Type	
<b>DEVELOPER FEES</b>			
54 Developer Fees	\$	\$	\$
55 Consultant	\$	\$	\$
56 Other: _____	\$	\$	\$
<b>57 TOTAL</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>PROJECT RESERVES</b>			
58 Rent Up	\$	\$	\$
59 Operating Reserve	\$	\$	\$
60 Other: _____	\$	\$	\$
<b>61 TOTAL</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>OTHERS</b>			
62 Working Capital	\$	\$	\$
63 Bridge Loan	\$	\$	\$
64 Other: _____	\$	\$	\$
<b>65 TOTAL</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>66 TOTAL DEVELOPMENT COSTS</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

\* 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**

<b>1. Total Development Costs</b> (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>	
<b>2. Eligible Basis</b>		<u>\$</u>
Total Number of Units	_____	
Total Number of Low Income Units	_____	
<b>3. Applicable Fraction</b> ***		<u>    %</u>
<b>4. Qualified Basis</b> (Applicable Fraction x Eligible Basis)		<u>\$</u>
Difficult to Develop Area Adjustment, <u>if applicable</u>		130 %
<b>5. Total Eligible Basis</b>		<u>\$</u>
(Qualified Basis x 130%)		
Tax Credit Rate (as stated in Carryover Allocation Agreement)		<u>    %</u>
<b>6. Annual Tax Credit - Qualified Basis Test</b>		<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)		\$
2. Permanent Financing Sources*		
First Mortgage:	\$	
Second Mortgage		
Grants		
Owner Equity		
Other: _____		
TOTAL		\$
3. <b>Equity Gap</b> (Line 1 less Line 2 Total)		\$
4. Syndication Rate (net cent per credit \$)		
5. Investor Ownership Percentage		
6. 10 year Credit Allocation [Line 3/(Line 4 multiplied by Line 5)]		\$
7. <b>Annual Credit - Equity Gap Test</b> (Line 6 divided by 10)		\$

\* 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. <b>Tax Credit Allocation</b> (From Carryover Allocation Agreement)	<u>\$</u>
B. <b>Annual Tax Credit - Qualified Basis Test</b> (Schedule B - Line 6)	<u>\$</u>
C. <b>Annual Tax Credit - Equity Gap Test</b> (Schedule C - Line 7)	<u>\$</u>
D. <b>Final Tax Credit Determination **</b> (the lowest amount between lines A, B or C)	<u>\$</u>
E. <b>Returned Credits (Line A less Line D)</b> (If zero or less, enter 0)	<u>\$</u>

\*\* The actual allocation may be less than this amount.

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 Basis	Square Feet	Applicable Fraction	Qualified Basis	Eligible Basis	Square Feet	Applicable Fraction	Qualified Basis	
1)		\$			\$			\$		
2)		\$			\$			\$		
3)		\$			\$			\$		
4)		\$			\$			\$		
5)		\$			\$			\$		
6)		\$			\$			\$		
7)		\$			\$			\$		
8)		\$			\$			\$		
9)		\$			\$			\$		
10)		\$			\$			\$		
<b>TOTALS</b>		\$			\$			\$		

**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:

- 3. 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).
- 4. 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)



**PUERTO RICO HOUSING FINANCE AUTHORITY**  
subsidiary of the Government Development Bank for Puerto Rico

---

# **COMPLIANCE MONITORING PLAN**

**LOW INCOME HOUSING TAX CREDIT PROGRAM**

**January 2008**

**COMPLIANCE MONITORING PLAN  
TABLE OF CONTENTS**

---

<b>Introduction</b>	1
<b>Federal Laws and Regulations Governing the LIHTC Program</b>	3
<b>I. Program Summary</b>	
A. Minimum Set-Aside Requirements	4
B. Income Limits & Calculations	5
C. Maximum Rent Requirements	6
D. Establishing Maximum Rents	6
E. Applicable Fraction	8
F. Full Time Resident Manager's Unit	8
G. Calculating the First Year Applicable Fraction	10
H. Qualified Basis	11
I. Claiming Credits	11
J. Compliance Period	11
<b>II. Owner's Responsibilities</b>	
A. Source of Program Requirements	13
B. Proper Administration	13
C. Progress Report, Notice of Project Changes and Semi-Annual Reports	14
D. Recordkeeping Provisions	14
E. Record Retention	16
F. Certification and Review Provision	16
G. Compliance Fees	19
H. Noncompliance	19
<b>III. PRHFA Responsibilities</b>	
A. Conducting Compliance Monitoring Briefings	20
B. Compliance Inspections	21
C. Notification to the Owner	24
D. Notification to IRS of Noncompliance	24
E. PRHFA Records Retention	25
F. PRHFA Circular Letters	25
G. Liability	25

**COMPLIANCE MONITORING PLAN  
TABLE OF CONTENTS**

---

**IV. Project Rental Requirements**

A. Initial Interview	26
B. Residency Application	26
C. Minimum Lease Requirement	26
D. Household Size	27
E. Utility Allowance	29
F. Income Certification	30
G. Tenant Income Certification	31
H. Income Certifications where Owners Acquires or Rehabilitates Existing Building	31
I. Available Unit Rule	32
J. Vacant Unit Rule	33
K. Physical Requirements of Qualified Units, Suitable for Occupancy	33
L. Discrimination Prohibited in Project	33
M. General Public Use	34
N. Students	34
O. Loss of Eligibility Upon Becoming a Full-Time Student	36
P. Section 8 and Rural Development Rents	36
Q. Annual Recertification	37
R. Tenant Transfers	37
S. Multifamily Tax-Exempt Bonds Projects	37

**V. Compliance and Monitoring during the Extended Use Period**

Extended Use Period	39
Tenant Eligibility Criteria During Extended Use Period	41
Monitoring Compliance During the Extended Use Period	42
Consequences of Noncompliance During the Extended Use Period	44

**APPENDIXES**

- A - Income Verification Requirements and Procedures
- B - Annual Recertification

**COMPLIANCE MONITORING PLAN  
TABLE OF CONTENTS**

---

**FORMS AND INSTRUCTIONS**

PRHFA-01	Owner's Certificate of Continuing Program Compliance Form
PRHFA-02	Tenant Income Certification and Instructions Form
PRHFA-03	Employment Verification Form
PRHFA-04	Student Verification Form
PRHFA-05	Certification of Zero Income Form
PRHFA-06	Under \$5,000 Asset Certification Form
PRHFA-07	Section 8 Tenants Income Verification Form

## INTRODUCTION

The Internal Revenue Code (IRC) in its Section 42, and the applicable Treasury Department regulations govern the administration of the Low Income Housing Tax Credit Program (LIHTC). The federal law requires that the state allocating agencies monitor the Tax Credit projects for compliance with the provisions of Section 42 of the IRC. Furthermore, the state credit agency will notify the Internal Revenue Service (IRS) of any noncompliance with the program.

As the State Credit Agency, Puerto Rico Housing Finance Authority (PRHFA) is responsible for monitoring the Low Income Housing Tax Credit projects. The PRHFA has administered the LIHTC Program for the Commonwealth of Puerto Rico since December 30, 1987. As of December 31, 2007 the PRHFA monitors the compliance of Section 42 requirements for 113 projects with 8,957 tax credit units occupied by low-income families throughout the island.

This guide describes the rules and responsibilities of each one of the parties involved in the compliance process and provide a practical reference to owners and managers of projects participating in the LIHTC Program. It was prepared and reviewed in compliance with the final regulations published on September 2, 1992 by the IRS in 26 CFR Parts 1 and 602, "Procedure for Monitoring Compliance with Low Income Housing Credit Requirements", final regulations published on January 14, 2000 by the IRS in 26 CFR Parts 1 and 602, "Compliance Monitoring and Miscellaneous Issues Relating to the Low-Income Housing Credit", IRS notices and other regulations.

In January 2007 the Internal Revenue Service (IRS) released its Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition (8823 Guide). This guide was not intended to change any Section 42 rules or policies, but to provide definitions of what IRS considers "In compliance" and for consistency in reporting "out of compliance", and "back in compliance," on IRS Form 8823.

Most of PRHFA compliance, monitoring, and reporting policy and procedure are already reflective of instructions in the 8823 Guide. However, some adjustments needed to be made and this manual is reflective of those adjustments. Owners are required to comply with the new policy and procedure by January 1, 2008.

This manual has not been reviewed or approved by the Internal Revenue Service (IRS) and should not be relied upon for the interpretation of federal income tax legislation or regulations. This manual is to be used only as a complement to compliance with the Code and all other applicable laws, rules and regulations. The responsibility for the compliance with the Code relies in the owner of the building(s) for which the credit was allocated. PRHFA obligation to monitor for compliance with the requirements of the Code does not make PRHFA liable for an owner's noncompliance (Treas. Reg. §1.42-5(g)(1994)).

## FEDERAL LAWS AND REGULATIONS GOVERNING THE LIHTC PROGRAM

The Low Income Housing Tax Credit was introduced with the Tax Reform Act of 1986. Congress intended to create a subsidy that would provide incentives to increase the low income housing occupancy level while imposing limitations on the amount rent owners could charge tenants.

During 1988 Congress passed the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), which affected the tax credit provisions under the 1986 statute. The major change was the liberalization of the rules regarding the project's placed-in-service date. Under TAMRA a building could be placed in service up for two years following the year during which the credit was allocated to the project, if certain tests were satisfied.

Afterwards, Congress passed the Omnibus Budget Reconciliation Act of 1989 and the Omnibus Budget Reconciliation Act of 1990, extending the credit through December 31, 1990 and December 31, 1991, respectively.

On December 11, 1991 President Bush signed the Tax Extension Act of 1991, extending the program through June 30, 1992; however, the Authority received authorization to use the 1991 remaining tax credit balance through December 31, 1992.

On October 10, 1993, President Clinton signed the Omnibus Reconciliation Act of 1993 (OBRA 93) which permanently extended the credit through July 1, 1993. The act clarified some of the technical language of previous legislation, including some minor changes to the program.

On December 15, 2000 both houses passed the credit reform bill which includes changes to Section 42. The effective date of those provisions was January 1, 2001. The bill requires regular site inspections by the Housing Credit Agencies to monitor compliance with habitability standards applicable to the project. IRS regulations, effective January 2001, mandate site visits at least once every three years.

Puerto Rico Housing Finance Authority incorporates those changes and further IRS changes into its Compliance Monitoring Plan.

## I. PROGRAM SUMMARY

### A. Minimum Set-Aside Requirements

When applying for an allocation of tax credits, the developer must choose one of two minimum set-aside requirements that must be followed during the compliance period. Set-asides obligate the property owner to rent a certain percentage of the dwelling units to households of a specified income level. Once the developer chooses which of the Internal Revenue Code set-asides to use, his choice is irrevocable. The minimum set-asides are as follows:

- 20/50** - No less than 20 percent or more of the residential units in such developments are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income, or;
- 40/60** - No less than 40 percent or more of the residential units in such developments are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

Each building is considered a separate project under IRC Section 42(g)(3)(D), and the minimum set-aside applies separately to each building, unless the owner elects to treat buildings as a multiple-building project, in which case the minimum set-aside applies on a project-wide basis. Owner identifies the building(s) in a multiple-building project by attaching a statement to the owner's first-year tax return. See instruction for Form 8609, line 8b for details.

Management Company or manager should confirm the set-aside that was established by the building owner at the time the set-aside option was made (the election is made on Form 8609 for the first year of the credit period), to ensure continued compliance. Once selected, the option cannot be changed. Note that this is only the minimum set-aside income and rent election. For example, for 20/50 minimum set-aside, if building applicable fraction is 100%, all tax credit units must have an income and rent restriction of 50% AMI.

To earn more ranking points in the competitive process of applying for tax credits, owners may select additional set-asides that are more stringent than the 40/60 and 20/50 set-asides. If chosen, these optional set-asides will be described in the project's Agreement as to Restrictive Covenants.

## 1. Deep Rent Skewed Election

In addition to the basic minimum set-aside, a developer can also choose to follow a set-aside for “deep rent skewed” developments. This set-aside provides that, in addition to the 40/60 or 20/50 set-aside, the owner will also reserve 15 percent or more of the residential units as rent-restricted and occupied by individuals whose income is 40 percent or less of area median gross income. In exchange for making this election, tenant household incomes can increase to 170% of the limit before they become over-income tenants.

## 2. Deadline for Meeting Set-Asides

The selected set-aside must be met by the end of the first year of the credit period (the end of the first tax year for which the owner chooses to claim tax credits). If management fails to meet the minimum set-aside by this time, the development can only receive a substantially reduced amount of credits for the entire compliance period.

A unit must be rented to a low-income household before it can be considered a low-income unit and counted toward meeting the minimum set-aside. Units that are vacant and have never been rented to a low-income household have “no character” and do not count toward the set-aside.

Management should not attempt to move existing low-income residents to previously unrented units in order to make those units count toward the minimum set-aside. This “unit swapping” practice is monitored and will not benefit the development because first year credits are calculated based on monthly occupancy rates.

## B. Income Limits & Calculations

Every year, the Department of Housing & Urban Development (HUD) publishes median income of the metropolitan and non metropolitan area in which the project resides, adjusted to family size. HUD's Low Income level is 80% of the median income based on family size.

**DO NOT USE the Low Income (80%) numbers for tax credit purposes.** The **Very Low Income** figures are 50% of the median income based on family size. These figures may be used as tax credit income limits for properties using the 20/50 set-aside. Multiply the very low income figures by 1.2 to compute the 60% income limits for properties using the 40/60 set-aside.

The PRHFA will provide annually an update Tax Credit Income and Rent limits to development sponsors and managers. However, it is the owner’s

responsibility to obtain these limits when they are published by HUD and to implement the new limits within 45 days of the effective date.

### **C. Maximum Rent Requirements**

Gross rent must include an allowance for utilities if they are paid **by the tenant**. Gross rent **does not** include utility allowances paid under Section 8 of the U.S. Housing Act of 1937 or any comparable rental assistance program.

Gross rent does not include any fees 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) of the Internal Revenue Code and exempt from tax under Section 501 (a) of the Internal Revenue Code) 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. All other fees for supportive services must be included in the gross rent.

### **D. Establishing Maximum Rent**

#### **1. Family Size Rent Calculations (1987-1989)**

Properties which received tax credit allocations between January 1, 1987 and December 31, 1989 whose owners did NOT elect to use the "number of bedrooms" method of calculating maximum rent may charge tenants a maximum gross rent of thirty percent (30%) of the annual median income limit adjusted for family size for the county in which the development is located.

#### **2. Bedroom Size Rent Calculations (1990 - Forward)**

For developments receiving an allocation of Low Income Tax Credits from January 1, 1990 forward, the maximum gross rents are computed based on the number of bedrooms in the unit. Units with no separate bedroom are treated as being occupied by one (1) person; larger units are treated as being occupied by 1.5 persons per each separate bedroom (see chart below). Between 1987 through 1989 LIHTC owners who **DID ELECT** to use the "number of bedrooms formula and filed a Notice of Election form (NOE-1) with the IRS and the PRHFA by February 7, 1994 calculate their maximum rent this way also.

0 Bedroom Unit = 1.0 person income  
1 Bedroom Unit = 1.5 person income  
2 Bedroom Unit = 3.0 person income

3 Bedroom Unit = 4.5 person income  
 4 Bedroom Unit = 6.0 person income

Example:

To calculate the Maximum Gross Rent by bedroom size for projects that received an allocation from January 1, 1990 forward the following steps must be performed:

-----Income Limits by Household Size-----							
% AMI	1	2	3	4	5	6	7
60%	12,720	14,520	16,380	18,180	19,620	21,060	22,560

- Select the unit factor that applied based on the bedroom size. For a 1 bedroom unit the factor is 1.5 person incomes.
- To obtain the 1.5 person income an average must be calculated between the Income Limit for a Household size of one person and two persons; the result must be divided by 2.

$\frac{12,720 + 14,520}{2}$	=	$\frac{27,240}{2}$	=	13,620
-----------------------------	---	--------------------	---	--------

- The income limit for 1.5 persons must be multiplied by 30% to calculate the annual rent. To obtain the monthly rent divide the annual rent by 12. The result is the Maximum Gross Rent by bedroom size.

$13,620 \times 30\% = 4,086$	Annual Rent
$\frac{4,086}{12} = 340$	Maximum Gross Rent (Monthly)

### 3. Establishing LIHTC Rents in Subsequent Years

Each year, the owner must re-compute the maximum allowable rent and the utility allowances for each project using the latest publication by HUD. If a LIHTC restricted unit is rented to an unqualified tenant or the owner charges rents in excess of the maximum allowable rent, the unit could be subject to recapture. The project should never fall below the minimum set-aside.

#### E. Applicable Fraction

The applicable fraction is the lesser of the unit fraction, which is the number of low-income units in a building divided by the total number of residential rental

units; or the floor space fraction, which is the total floor space of the low-income units in the building divided by the total floor space of the residential rental units in the building.

When determining the units to be included in the numerator (low-income units), and in the denominator (total units) of the applicable fraction, the following aspects should be taking into consideration:

- Units that have never been occupied cannot be included in the numerator, but must be included in the denominator;
- Units that are vacant at the end of the initial tax year which previously were qualified as low-income units can be considered to be low-income for determining the amount of credits claimed only if the units were occupied for a minimum of one month;
- If a qualified low-income household becomes an ineligible household prior to the end of the initial tax credit year, that unit cannot be counted in the first year toward the minimum set-aside or the determination of the qualified basis.

#### **F. Full Time Resident Manager's Unit**

The Full time resident or on-site manager's unit may or may not be included in determining the applicable fraction depending on the circumstances. According to IRS Revenue Ruling 92-61, the ways in which the on-site manager's unit may be considered are:

- For buildings that have been placed in service after September 9, 1992, the full time manager's unit must be treated as common space (i.e., it would not be included in either the numerator or denominator of the applicable fraction).
- For buildings that were place in service prior to September 9, 1992, the full time manager's unit may be treated as follows:
  - a. The full time manager's unit is considered a qualified low-income unit (the rent is restricted to a qualifying amount and the resident manager is a certified low-income tenant); or
  - b. The full time manager's unit is considered common space. As common space, the unit would not be included in either the numerator or the denominator of the applicable fraction.

A full time manager or maintenance person must occupy a resident manager's unit. The number of hours worked does not define full-time; rather it is defined

that the manager's presence on site is reasonably required for the development. Some things to consider are: what is warranted by the type, size and/or location of the development, as well as what is needed in terms of the resident population. Some developments may not need to employ a resident manager for what is normally considered full-time and other developments may need to employ more than one on-site manager or maintenance person. Full-time is considered to be whatever is reasonably required to make operations run smoothly at the development. As a general guide, a manager who performs management functions such as leasing units, preparing certification paperwork, cleaning, general maintenance, preparing turnover, collecting rent, etc., and is available to the site on an on-call basis to respond to emergencies may be considered a full-time manager under this ruling. According to Revenue Ruling 2004-82, dated August 30, 2004, a unit may also be occupied by a full-time security officer and be treated as common space, if reasonably required.

All developments, especially those that are new allocations, need to notify PRHFA of the status of common space unit(s) and which method is being used. When notifying PRHFA, it is necessary to include the project name and LIHTC number, the building address and BIN number, the unit number, the number of bedrooms in the unit, the square footage, the current resident manager, maintenance person, or security personnel's name and a description of duties and time involved. If not previously considered as part of the allocation process, PRHFA will issue a letter acknowledging such common space unit. For the most part, PRHFA will rely on the owner's determination of whether a full time unit is reasonably required by the development. However, if PRHFA becomes aware that the unit is not occupied by a full time manager, maintenance, or security personnel, as represented by the owner, it may become a noncompliance issue.

Note: If the owner is charging rent for the unit, the Internal Revenue Service may determine that the unit is not reasonably required by the project because the owner is not requiring the manager, maintenance or security personnel to occupy the unit as a condition of employment.

## **G. Calculating the First Year Applicable Fraction**

The applicable fraction for the first year is calculated as follows:

- Find the low-income portion as of the end of each full month that the building was in service during the year.

- Add these percentages together and divide by 12 (per instructions on IRS Form 8609 and Schedule A). Note that the applicable fraction must be calculated for both the unit and floor space fraction.

Example:

Assume that a low-income building of 50 units was placed in service on March 1, 2004, and has the following lease-up schedule during the first year of the credit period:

Month	Low-Income Units	Total Units	Monthly Unit Fraction	Low Income Sq Ft	Total Square Feet	Monthly Square Foot Fraction
January	3	50	*0%	2,400	50,000	*0.00%
February	10	50	*0%	8,000	50,000	*0.00%
March	15	50	30%	12,000	50,000	24%
April	30	50	60%	24,000	50,000	48%
May	40	50	80%	32,000	50,000	64%
June	50	50	100%	50,000	50,000	100%
July	50	50	100%	50,000	50,000	100%
August	50	50	100%	50,000	50,000	100%
September	50	50	100%	50,000	50,000	100%
October	50	50	100%	50,000	50,000	100%
November	50	50	100%	50,000	50,000	100%
December	50	50	100%	50,000	50,000	100%
<b>Totals</b>	<b>Sum of monthly Unit Fraction/12</b>		<b>72.50%</b>	<b>Sum of monthly Sq Ft Fraction/12</b>		<b>69.67%</b>

\*The owner may not count the unit occupied in January and February toward the first-year applicable fraction since the building was not placed in service for a full month. For all other months, even if a resident moved in to a unit on the last day of the month, that unit is considered occupied at the end of the month. The first year applicable fraction for this building would be 69.67% based on this lease-up schedule.

## H. Qualified Basis

Qualified basis is the portion of the eligible basis applicable to Housing Tax Credit units in a building. Qualified Basis is the product of a project's Eligible

Basis multiplied by the Applicable Fraction. The original qualified basis is determined as of the last day of the first year of the credit period and is reported to the IRS on Part II of Form 8609.

## **I. Claiming Credits**

The credits may be taken annually for 10 years and are based on a percentage of the qualified costs of the building. For 1987, the applicable rates were 9 percent for new construction and substantial rehabilitation and 4 percent for buildings with federal subsidies and for acquisition and rehabilitation of existing buildings. (In order for an existing building to qualify for the credit in connection with substantial rehabilitation, there must be a period of at least 10 years between the date of acquisition and the date the building was last placed in service.)

After 1987, the credit percentage is based on the Applicable Federal Rate (AFR) for the month the project is placed in service, or, at the owner's election, the month in which a carryover/commitment is entered into by the owner and PRHFA.

Owners of qualified residential rental projects must satisfy the minimum set aside and gross rent requirements for a minimum 15-year period, and in many cases, a 30-year period, depending on the deed restrictions. Developments with allocations in 1990 and each year thereafter are required to comply with these requirements for a minimum of 30 years.

## **J. Compliance Period**

### **1. All LIHTC Developments**

In order to receive the credit, all developments receiving a credit allocation since 1987 must comply with eligibility requirements for a period of 15 years beginning with the first taxable year of a building's credit period. The credit period for a building begins in either the year it is placed in service or the first year after, as declared in Part II of the IRS for 8609. This 15 year period is referred to in the Code as the "Compliance Period" [Section 42(i)(1)].

### **2. Developments that received allocations from 1987 through 1989**

These developments are only subject to a fifteen- (15) year compliance period. However, any building in such a development that received an additional allocation of credit after December 31, 1989, must comply with eligibility

requirements in effect beginning January 1, 1990, and will also be bound by the Declaration of Land Use Restrictive Covenants.

3. Developments which received LIHTC allocations after December 31, 1989

These developments must comply with eligibility requirements for a minimum compliance period of fifteen (15) years and an extended use period of an additional fifteen (15) year period stipulated by a recorded agreement as to restrictive covenants.

## **II. OWNER'S RESPONSIBILITIES**

Each property owner or developer has decided to participate in the LIHTC program to take advantage of the tax benefits it provides. In exchange for these tax benefits,

the owner must meet requirements designed to make sure the housing development will benefit a particular class of low-income tenants. A description of these program requirements follows:

#### **A. Source of Program Requirements**

Section 42 of Internal Revenue Service, IRS Regulations found in 26 CFR Section 1.42, IRS Revenue Rulings and Revenue Procedures, additional program rules prescribed by the PRHFA, representations in a development's application, and provisions included in the Agreement as to Restrictive Covenants, all regulate how low-income housing properties are to be operated. For the entire compliance period, owners are obligated to provide the PRHFA with required reporting documents and any other information requested in relation to the property, the tenants and units in the property, and documentation filed with the Service for the purpose of claiming the tax credits.

#### **B. Proper Administration**

The owner or developer is responsible to the PRHFA to insure that the project is properly administered and maintained. The owner must make certain that the on-site management team understands and complies with all appropriate rules, regulations and policies that govern LIHTC developments and he must keep the development well maintained so that units are suitable for occupancy.

If the Management Company or owner determines that a development is not in compliance with LIHTC requirements, they should notify the PRHFA immediately. Most noncompliance is correctable issues and the PRHFA will work with owners and managers to remedy them within a reasonable amount of time.

Because the owner is ultimately responsible for a development's compliance with program rules, the PRHFA will direct any correspondence about noncompliance and corrections to the owner, as well as to the management company.

#### **C. Progress Report, Notice of Project Changes and Semi-Annual Reports**

It is the responsibility of the owner or developer to keep the PRHFA informed throughout all phases of development, rent-up and operation. This includes the construction phase during which owners are responsible for sending the PRHFA progress reports, notice of the scheduled placed-in-service date, and notice of any major changes in the development's costs, financing, syndication, unit types, and completion schedule.

After all the buildings in a development are placed-in-service, the owner or company in charge of the management of a LIHTC project must submit to the PRHFA, via electronically, the following information on a semi-annual basis:

1. Building Status Report General Information for each building in each project
2. Tenant Income Information of each new move-in and annual re-certifications of income for each existing tenant.

This information must be submitted to the PRHFA by the 15th day after the end of each semester during the compliance period. The PRHFA will provide the Tax Credit Certifications Online Reporting Software for the electronic submission of this information.

The COL System is an internet based reporting system. It enables management companies to enter and submit the following information:

1. Tenant Income Information of each new move-in and annual re-certifications of income for each existing tenant.
2. Annual Owner Certifications

Each management company is responsible for the data input into COL, the accuracy of all information on COL, and associated Tenant Income Certifications Forms generated by the program. The PRHFA is not responsible for computer input discrepancies. The management company/project sponsor should review all computer generated forms for completeness and accuracy prior to the electronic submission of the data to the PRHFA.

#### **D. Recordkeeping Provisions**

**Under the record keeping provision of Reg. 1.42-5, the owner of a low income Tax Credit project must keep records for each building for each year in the compliance period showing the following information:**

- The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- The number of occupants in each Tax Credit unit and the student resident status.
- The number and percentage of residential rental units in the building that are Tax Credit units, models, offices, and management units;

- The rent charged on each residential rental unit in the building (including utility allowance) as well as any additional charges to tenants. Documentation must include rent rolls, leases, and utility allowances as required by Internal Revenue Service;
- The Tax Credit unit vacancies in the building, marketing information, and information which shows when and to whom each of the next available units were rented;
- The annual income certification of each Tax Credit tenant;
- Documentation to support each Tax Credit tenant's income certification. Anticipated income of all adult persons expecting to occupy the unit must be verified and included on a Tenant Income Certification **prior** to occupancy and **annually** re-certified for continued eligibility (i.e. Written third party verification is always preferred. Income verifications are sent directly to and returned by the source to management, not through the applicant).
- The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project); and
- The eligible basis and qualified basis of the building at the end of the first year of the credit period.
- Records demonstrating that any state established set-aside elected by the owner has been complied with for each year of the compliance period.

#### **E. Record Retention**

Owner must retain the records described above for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

The Revenue Ruling 2004-82, published on August 30, 2004 clarified that owners may comply with the record retention provisions under IRC Section 1.42-5(b) by using an electronic storage system instead of maintaining hardcopy (paper)

books and records, provided that electronic storage system satisfies the requirements of Revenue Procedure 97-22. Be advice that the owner must satisfy any additional recordkeeping and record retention requirements of the monitoring procedures adopted by our agency.

## **F. Certification and Review Provision**

The PRHFA requires the owner to certify, under penalty of perjury, at least annually during the compliance period that, for the preceding 12 months, the development met the requirements of Section 42 of the IRS. This requirement is satisfied by completing an Annual Owner's Certification (see PRHFC-01). This certification must be made under oath and subject to the penalties of perjury.

The Owner certifies that:

1. The project meets the minimum requirements of the 20-50 test or the 40-60 test, as applicable:
  - 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
  - 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.
2. There has been no change in the applicable fraction for any building in the project (as defined in Section 42(c)(1)(B) of the Code);
3. The owner has received an annual Tenant Income Certification from each low-income resident and documentation to support that certification, or the owner has a re-certification waiver letter from the IRS in good standing, has received an annual Tenant Income Certification from each low-income resident, and documentation to support the certification at their initial occupancy;
4. Each low-income unit in the project is rent-restricted as defined in Section 42(g)(2) of the Code;
5. All units in the project are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) of the Code);

6. No finding of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616a(a)(1), or an adverse judgment from a federal court;
7. Each building in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the project;
8. There has been no change in the eligible basis (as defined in Section 42(d) of the Code) of any building in the project since last certification submission;
9. All tenant facilities included in the eligible basis under the Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, and parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without a charge to all tenants in the buildings;
10. If a low-income unit in the project has been vacant during the year, reasonable attempts are made to rent that unit or next available unit of comparable or smaller size in that building was or will be rented to residents having a qualifying income;
11. If the income of tenants of low-income unit in any building increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size in that building was or will be rented to residents having a qualifying income;
12. An extended low-income housing commitment as described in Section 42(h)(6) was in effect, including the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s. Owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as

outlined in the extended low-income housing commitment ( not applicable to buildings with tax credits from years 1987-1989);

13. The owner received its credit allocation from the portion of the state ceiling set-aside for a project involving “qualified non-profit organizations” under Section 42(h)(5) of the code and its non-profit entity materially participated in the operation of the development within the meaning to Section 469(h) of the Code (if applicable).
14. The owner has complied with Section 42(h)(6)(E)(ii)(I) and not evicted or terminated the tenancy of an existing tenant of any low-income unit other than for good cause.
15. The owner has complied with Section 42(h)(6)(E)(ii)(II) and not increased the gross rent above the maximum allowed under Section 42 with respect to any low-income unit.
16. There has been no change in the ownership or management of the project.

**Filing Instructions: The Annual Owner Certification must be prepared and submitted to the PRHFA using the COL System. This document must be notarized and sent to the PRHFA by January 31 of each calendar year. Non-receipt of this notarized form by the due date will automatically trigger the submission of a notice of noncompliance to the owner.**

If the project is not yet in the first year of the credit period, submit:

- Annual Owner Certification with appropriate designation of not yet placed in service, or placed in service but elect to begin credit period in the year following placed in service. Sign, date and notarize.

If the project is in the first year of the credit period and later, submit:

- A completed, signed, dated and notarized Annual Owner Certification (PRHFC-1);
- compliance monitoring fees;

- IRS forms 8609 for each building, with Part II completed, dated and signed;
- Completed Schedule A for each building; and 8586, as filed with the IRS.

The PRHFA will review the certifications submitted for compliance with the requirements of Section 42.

### **G. Compliance Fees**

Property owners must pay to PRHFA an annual compliance monitoring fee of \$20.00 for each LIHTC unit contained in each building. The annual monitoring fees must be submitted with the Annual Owner's Certification by January 31<sup>st</sup> of each year. Owners and developers should take note that participation in PRHFA programs requires a certification of good standing with the PRHFA. Failing to pay fees will bar any further participation in the programs administered by the PRHFA.

The PRHFA reserves the right to make adjustments in the amount of the annual compliance monitoring fee as it deems necessary to defray the cost of compliance monitoring.

### **H. Noncompliance**

If the management agent and/or the owner determines that a building or entire project is not in compliance with program requirements, PRHFA must be notified immediately. The management agent and/or the owner must formulate a plan to bring the project back into compliance, and advise PRHFA in writing of such a plan.

### III. PRHFA RESPONSIBILITIES

Once a final allocation is awarded to a project, the PRHFA has the responsibility of monitoring the project to guarantee compliance with Section 42 of the Internal Revenue Code and its regulations.

This Section briefly describes the PRHFA's monitoring activity. These compliance monitoring procedures may be changed as the PRHFA deems necessary or as required by the Internal Revenue Code, IRS Regulations, Revenue Rulings, and Revenue Procedures.

#### A. Conducting Compliance Monitoring Briefings

Owners, managers, and any other personnel who are directly involved in the management of a housing development and do not have previous experience with the LIHTC program may be required to attend a basic, educational Monitoring Seminar before the PRHFA releases Forms 8609 allocating the placed-in-service tax credits. The PRHFA also reserves the right to require management personnel to attend briefings at any time during the compliance period if the property's compliance efforts are deficient or if staff changes occur. The PRHFA will offer continuing education to the owner or developer, the Management Company and on-site personnel to guarantee compliance with federal regulations and PRHFA's rules.

The purpose of the briefing is to provide instruction on the following:

- Federal regulations for determining eligibility of low-income tenants;
- PRHFA procedures for determining eligibility of low-income tenants;
- Specific information which must be obtained from a prospective tenant through the rental application;
- Income and Rent Limits;
- Income Verifications;
- Annual Income and Asset Verification ; and
- PRHFA Required Forms and or Documentation

Such other topics which the PRHFA or the representatives of the development may deem necessary to the proper management of the development as a successful LIHTC participant.

#### B. Compliance Inspections

The PRHFA will conduct an on-site inspection, at least once every three (3) years, of all buildings in each low income housing project and, for each tenant in at least 20% of the project's low-income units selected, review the low-income certification, the documentation supporting such certification, and the rent record. The Tax Credit projects to be inspected or reviewed must be chosen in a manner that will not give owners of Tax Credit projects advance notice that their records for a particular year will or will not be inspected. The first inspection for new projects will occur no later than the end of the second year of the credit period. In the event that extensive noncompliance is identified, PRHFA should consider expanding the number of units inspected/files reviewed beyond the 20 percent sample required under Treas. Reg. 1.42-5(c)(2)(ii).

The PRHFA may give an owner reasonable notice that an inspection will occur so that the owner may assemble records. This notification letter is considered the agency's announcement of an upcoming compliance review. Noncompliance that is identified and corrected by the owner *prior to notification* of an upcoming compliance review or inspection need not be reported to IRS.

During the inspection, the PRHFA will inspect the units and review the current rent record and, at minimum, verify the following from the tenant's files for at least 20 percent of the project's low-income units:

- Rental application completed, including certification of assets and disposal of assets, if applicable;
- Tenant income certification completed for move-in and current year, including all required signatures and dates;
- Calculation of move-in income eligibility
- Income verification(s) completed and documented;
- Assets documented, and verified if total assets are more than \$5,000 in value;
- Student eligibility documented;
- Lease and lease addendum completed at move-in; and
- Current year utility allowance on file.

**On-site building inspections** involve physically checking building and dwelling units for compliance with applicable housing quality standards. The Compliance Monitoring Regulations published January 14, 2000, require housing credit agencies to conduct physical inspections consistent with standards governed by

the Department of Housing and Urban Development's Uniform Physical Conditions Standards. These standards require properties to be in "decent, safe and sanitary condition and in good repair" and require agencies to inspect the following five major areas:

- (1) Site - The site includes components such as fencing and retaining walls, grounds, lighting, mailboxes, signs (such as those identifying the development or areas of the development), parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways. The site must be free of health and safety hazards and be in good repair.
- (2) Building exterior - Each building on the site must be structurally sound, secure, habitable, and in good repair. The building's exterior components such as doors, fire escapes, foundations, lighting, roofs, walls and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.
- (3) Building systems - The building's systems include components such as domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system. Each building's systems must be free of health and safety hazards, functionally adequate, operable, and in good repair.
- (4) Dwelling units - (i) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example the unit's bathroom, call-for-aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair. (ii) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water. (iii) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste. (iv) The dwelling unit must include at least one battery operated or hard wired smoke detector in proper working condition on each level of the unit.
- (5) Common areas - The common areas must be structurally sound, secure and functionally adequate for the purposes intended. The common areas include components such as basement/garage/carport, restrooms, and closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash

collection areas, if applicable. The common areas must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.

All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to: air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead based paint. For example, the buildings must have fire exits that are not blocked and have handrails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all regulations and requirements related to the ownership of pets, and the evaluation and reduction of lead-based paint hazards and have available proper certifications of such.

Notwithstanding the above inspection requirements, a low-income housing project under Section 42 must continue to satisfy local health, safety, and building codes.

The PRHFA will report on its findings and the owner and/or the management company must respond in writing within thirty (30) days to the PRHFA. The response must indicate the manner in which corrective actions have been taken.

For new buildings, the final regulations, published on January 14, 2000, extended the time limit for inspection to the end of the second calendar year of the credit period.

The PRHFA reserves the right, under the provisions of Section 42 of the Internal Revenue Code and Regulation 1.42-5, to perform on-site inspections and/or unit inspections of LIHTC developments at any time during the compliance period as it may deem necessary. The owner refusal to allow a site visitation or access to tenants' records constitutes a noncompliance reportable to the IRS.

### **C. Notification to the Owner**

The PRHFA will provide prompt written notice to the owner of a Tax Credit project if the PRHFA does not receive the required certification, semi-annual reports and other forms, or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records, or

discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of Section 42 or its Declaration of Land Use Restrictive Covenants.

The owner will have ninety (90) days from the date of notice to supply the missing certification, or to correct the noncompliance. However, if the PRHFA determines that there is good cause to extend the correction period, it may extend the initial ninety (90) days period up to one hundred twenty (120) days.

The PRHFA will review the owner's response and supporting documentation, if any, to determine whether the noncompliance has been corrected.

#### **D. Notification to IRS of Noncompliance**

The PRHFA will file Form 8823, "Low Income Housing Credit Agencies Report of Non-Compliance or Building Disposition," with the IRS no later than 45 days after the end of the correction period (as described below, including extensions permitted under that paragraph) and no earlier than the end of the correction period. The PRHFA will check the appropriate box on Form 8823 indicating the nature of the non-compliance or failure to certify and indicate whether the owner has corrected the non-compliance or failure to certify. If the non-compliance or failure to certify is corrected, the PRHFA will provide a date on which the noncompliance was corrected. If the PRHFA cannot determine that an owner's actions have corrected the noncompliance, no correction date will be provided. The final regulations adopt a limit to a 3 year period after the end of the correction period the requirement that the PRHFA files form 8823 "Low Income Housing Credit Agencies Report of Noncompliance" with the IRS reporting the correction of the noncompliance or failure to certify.

Any change in either the applicable fraction or eligible basis under paragraph (c) (1) (ii) and (vii) of Reg. 1.42-5, respectively, that results in a decrease in the qualified basis of the project under Section 42 (c)(1)(A) is non-compliance that must be reported to the IRS. Changes in ownership must be reported by the PRHFA to the IRS on Form 8823. The correction period described below will not apply to notification of changes in ownership.

If the PRHFA reports on Form 8823 that a building is entirely out of compliance and will not be in compliance at any time in the future, the PRHFA need not file Form 8823 in subsequent years to report that building's non-compliance. The PRHFA will send the owner a copy of the form 8823 after it has been filed with the IRS.

PRHFA will no longer report issues of noncompliance that have been identified and corrected prior to notification of an upcoming compliance review or

inspection by PRHFA. IRS considers the date of the notification letter a “bright line” date.

#### **E. PRHFA Records Retention**

PRHFA will retain records of non-compliance or failure to certify for six years beyond the filing date of the respective Form 8823. In all other cases, PRHFA will retain the certifications and records described in Reg. 1.42-5(c) for three years from the end of the calendar year the PRHFA receives the certifications and records.

#### **F. PRHFA Circular Letters**

The PRHFA will establish, from time to time, through circular letters changes or clarification concerning IRS section 42 requirements and guidelines. The objective is to maintain the Compliance Monitoring Plan current to solve any conflict with the standards required.

#### **G. Liability**

Compliance with the requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowable. PRHFA's obligation to monitor for compliance with the requirements of Section 42 does not make the PRHFA liable for an owner's non-compliance.

## IV. PROJECT RENTAL REQUIREMENTS

### A. Initial Interview

On-site managers of a LIHTC development should tell applicants early in their initial visit that there are maximum income limits which determine who may live in these dwelling units. Managers should explain to prospective tenants that the total anticipated income of **everyone** who will occupy the unit must be disclosed on a Tenant Income Certification form (PRHFC-02) and will be verified before they can move in. Applicants should be told that this income-disclosing and verifying process will be repeated at least annually for as long as they live in the development. It may be useful to explain to applicants that all information they provide is considered confidential and will be handled accordingly.

### B. Residency Application

Before allowing anyone to move into low-income units, the management must obtain from prospective tenants an application for residency that discloses enough information to determine whether or not the applicant household qualifies under the program rules. The application for residency should include, at minimum:

- The name and age of each person who will occupy the unit (legal name should be given just as it will appear on the lease and Tenant Income Certifications); and
- All sources and amounts of current and anticipated annual income expected to be derived during the twelve (12) month certification period (including total assets and asset income); and
- The head of household's signature and that of all occupants over age 18 and the date the application was completed.
- The student status of each applicant.

### C. Minimum Lease Requirement

All tenants occupying set-aside units are required to be certified and to execute at least an initial six-month lease. (Exceptions for housing for the homeless and single room occupancy are listed below). Succeeding leases are not subject to a minimum lease period.

The lease must reflect the correct date of move-in, or the date the tenant takes possession of the unit. At a minimum, the lease should include:

1. the legal name of parties to the agreement and all other occupants,
2. a description of the unit to be rented,
3. the date the lease becomes effective,
4. the term of the lease,
5. the amount of rent
6. the use of the premises,
7. the rights and obligations of the parties, including the obligation of the household to annually recertify its income,
8. the signatures of all household members 18 years of age or older, and
9. a statement explaining that the development is participating in the Tax Credit
10. a statement requiring that each tenant immediately notifies management of any change in student status.

Program, and that tax credit units are under certain program regulations including income eligibility of the household.

Single Room Occupancy (SRO) housing must have a minimum lease term of one month. SRO housing is allowed to have tenants share bathrooms, cooking facilities, and dining areas. Federal rules allow for month-by-month leases for the following types of SRO housing for homeless individuals:

1. SRO units in projects receiving McKinney Act and Section 8 Moderate Rehabilitation assistance;
2. SRO units intended as permanent housing and not receiving McKinney Act assistance;
3. SRO units intended as transitional housing operated by a governmental or nonprofit entity and providing certain supportive services.

#### **D. Household Size**

The number of household members is needed in order to determine the maximum allowable income. It is also necessary to calculate the rent for units in pre-1990 developments, which must determine rent based on household size and not on the number of bedrooms in the unit.

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

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

- Children in joint custody arrangements who are present in the household 50% or more of the time;
- Children who are away at school but who live with the family during school recesses;
- An unborn child of pregnant women; when a pregnant woman is an applicant, the unborn child is included in the size of the household, and may be included for purposes of determining the maximum allowable income. The rental application should ask the following question: “Will there be any changes in household composition within the next 12 month period?” If an applicant answers that a child is expected, the manager should explain to the tenant that in order to count the child as an additional household member and use the corresponding income limit, a self-certification of pregnancy must be provided.
- Children who are in the process of being adopted;
- Temporarily absent family members who are still considered family members. For example, the owner may consider a family member who is working in another State on assignment to be temporarily absent. Persons on active military duty are considered temporarily absent (except if the person is not the head, co-head or spouse or has no dependents living in the unit). If the person on active military duty is the head, co-head, or spouse, or if the spouse or dependents of the person on active military duty resides in the unit, that person’s income must be counted in full;
- Family members in the hospital or rehabilitation facility for periods of limited or fixed duration. These persons are temporarily absent as defined above; and
- Persons permanently confined to a hospital or nursing home. The family decides if such persons are included when determining family size for income limits. If such persons are included, they must be listed on the Tenant Income Certification as “other adult family member”. This is true even when the confined person is the spouse of the person who is or will become the head. If the family chooses to include the permanently confined person as a member of the household, the owner must include income received by these persons in calculating family income.

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

- A live-in aide/attendant is a person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:
  - *Is determined to be essential to the care and well-being of the person(s);*

- *Is not obligated to support the person(s); and*
- *Would not be living in the unit except to provide the necessary supportive services.*

While a relative may be considered to be a live-in aide/attendant, they must meet the above requirements, especially the last. The live-in aide qualifies for occupancy only as long as the individual needing supportive services requires the aide's services and remains a tenant, and may not qualify for continued occupancy as a remaining family member. Managers must obtain verification of the need for a live-in care attendant and should not add the attendant to the lease.

Foster adults or children should be included in the size of the household, but are not included for the purpose of determining the maximum allowable income.

## **E. Utility Allowance**

A utility allowance is an estimate of the monthly cost of a tenant's utilities, other than telephone and cable, which are not included in the rent and are paid directly to the service provider by the tenant. To calculate the maximum amount of rent an LIHTC property may charge tenants, the utility allowance is subtracted from the maximum rent limit applicable to the particular household.

### **1. Where to Obtain Utility Allowances**

#### **a. Rural Development, HUD, and Section 8 Assisted Properties**

Rural Development ("RD") approved utility allowances must be used to calculate maximum net rent for any building which is RD assisted or occupied by any tenant receiving RD Assistance (even if the building is occupied by one or more tenants who receive HUD assistance).

HUD approved utility allowances must be used for any buildings whose rents and utility allowances are reviewed annually by HUD.

For **units** occupied by household receiving HUD rental assistance payments (generally Section 8 Certificates or Vouchers) the owner must use the applicable Public Housing Authority's utility allowances established for the Section 8 Existing Housing Assistance Program. This Section 8 allowance DOES NOT apply to all units in the building unless all units are occupied by Section 8 assisted tenants.

## **b. Non-assisted Properties**

For Section 42 buildings without RHS or HUD assistance, the owner must use the local public housing authority (PHA) utility allowance. However, any interested party may request the utility company estimation of utility consumption in the building's geographic area. The obtainer of such an estimate must retain the original document which has been signed and dated by the utility provider, and send copies to the building owner (where the initiating party is not the owner) and the Authority (where the initiating party is not the Authority). Copies of the utility estimate must be available for inspection on-site at the development. The owner of the building must make copies of the utility company estimate available to the tenants in the building also. New utility allowances must be used to compute rent on rent-restricted units due 90 days after the date of the estimate.

## **2. Updating Utility Allowances**

Utility allowances must be updated at least annually to ensure that the tenant's gross monthly rent does not exceed the LIHTC gross rent limits. The ability allowance regulations require that new utility allowances be used to compute rents that are due go days after the effective dates of the new allowance. The property owner or manager may choose to verify utility allowances with each initial move-in or re-certification.

## **F. Income Certification**

Tenant eligibility is determined at the time of move-in certification. Before a household takes occupancy, the owner shall verify all income, household characteristics, and any circumstances that may affect eligibility and compliance with the LIHTC requirements. The detailed procedures are included in Appendix A "Verification Requirement and Procedures".

## **G. Tenant Income Certification**

After all the income and asset information has been obtained and computed, the management personnel must prepare a Tenant Income Certification (PRHFC-02). The form is a legal document which, when fully executed, satisfies the income certification requirement of the Code. The completed form and lease agreement must be executed by all adult household members before they move in. A unit may not be counted as a set-aside unit unless the household has been properly certified. The following guidelines for certifying household income apply:

- Management should instruct all adult household members to sign the TIC exactly as the name appears on the form.
- The Tenant Income Certification should be executed on or before the date of move-in.
- **No one** may live in a designated unit in the development unless he/she is income certified and under lease. **THERE ARE NO PERMISSIBLE EXCEPTIONS TO THIS RULE.**
- Tenant Income Certification forms must also be executed (signed and dated) by the Owner or Owner's representative.

When properly executed, the RHS 1944-8 form (Tenant Certification) may also be used to document projected income for tax credit certifications; an executed Tenant Income Certification is not required. Management must be aware that various low-income housing programs define income differently so, if the RHS 1944-8 certification form is used, it should contain all information necessary to calculate household income as defined under the LIHTC rules.

#### **H. Income Certifications Where Owner Acquires or Rehabilitates Existing Building**

For households occupying a unit at the time of acquisition by the owner, the initial tenant income certification is completed within 120 days after the date of acquisition using the income limits in effect on the day of acquisition. The effective date of the tenant income certification is the date of acquisition since there is no move-in date.

In the event that the household occupies a unit at the time of acquisition, but the tenant income certification is completed more than 120 after the date of acquisition, the household is treated as a new move-in. Owners use the income limits in effect at the time of the tenant income certification and the effective date is the date the last adult member of the household signed the certification (this is an exception to the general rule for effective dates because there is no move-in date).

When the household moves into a unit after the building is acquired but before the beginning of the first year of the compliance period, the tenant income certification is completed using the income limits in effect at the time of the certification and the effective date is the date the household moves into the unit.

## **I. Available Unit Rule**

Following initial certification, an eligible household's income can increase to 140% of the maximum income level. A household whose income exceeds the maximum income level by more than 140% (an "over-income" household) will remain in compliance as long as the unit continues to be rent restricted and the next available unit or any available unit of comparable or smaller size in the same building is rented to an eligible household at the qualifying rent. The owner must continue to rent any available comparable unit to a qualified household until the percentage of low-income units in a building (excluding the over-income units) is equal to the percentage of low-income units on which the credit is based. At that point, failure to maintain the over-income units as low-income units has no immediate significance.

If any comparable unit that is available or that subsequently becomes available is rented to a nonqualified household, all over-income units for which the available unit was a comparable unit within the same building lose their status as LIHTC units; thus, comparably sized or larger over-income units would lose their status as LIHTC units.

A comparable unit must be measured by the same method the taxpayer used to determine qualified basis for the credit year in which the comparable unit became available (i.e., floor space fraction or unit fraction). A unit that is no longer available for rent due to a reservation that is binding under local law is not an "available unit" for purposes of this rule.

## **J. Vacant Unit Rule**

As part of the requirements for the annual certification, Treas. Reg. §1.42-5(c)(1)(ix) states, "If a low-income unit in the project became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income."

As long as reasonable attempts are being made to rent to qualified low income households, vacant LIHC units will continue to be included as qualified low-income units for purposes of determining the minimum set-aside (IRC §42(g)(1)) and calculating the applicable fraction (IRC §42(c)(1)(B)).

If the vacant unit rule is violated, all vacant units previously occupied by qualified households lose their low-income status and are not considered qualified units.

**K. Physical Requirements of Qualified Units, Suitable for Occupancy  
Qualified Units rented to, or reserved for, eligible tenants:**

- Must have substantially the same equipment and amenities (excluding luxury amenities) as other units in the Project;
- Must be substantially the same size as other units in the Project; and
- Cannot be geographically segregated from other units in the Project.

The low-income units must be suitable for occupancy under Uniform Physical Conditions Standards and local health, safety and building codes. In units that are not suitable for occupancy, including previously qualified low-income units being rehabilitated in the first year of the credit period, are considered “out of compliance”. The noncompliance is corrected when the unit is again suitable for occupancy, and the unit’s character will be determined based on the household that occupied the unit immediately preceding the rehabilitation. This reduction in eligible basis need not occur if an election is made to exclude such excess costs pursuant to Section 42(d)(3) of the Code.

**L. Discrimination Prohibited in Project**

The Tax Credit developments are subject to Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act. The Fair Housing Act ( 42 U.S.C. sections 3601 through 3619) prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability.

It also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities. The failure of Tax Credit properties to comply with the requirements of the Fair Housing Act will result in the denial of the Tax Credit on a per unit basis.

**M. General Public Use**

The tax credit properties are otherwise available to the general public. Under Treas. Reg. 1.42-9(b) if a residential unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for credit under Section 42. Residential rental units either designated for a single occupational group, or through a preference for an occupational group, also violate the general public use requirements.

## N. Students

A household comprised entirely of students, whether full or part-time, must complete the Student Certification Form (PRHFC-04), upon application/certification or re-certification. The PRHFA will no longer require Student Certifications for households where not all occupants are full time students.

Full-time student is defined as: “an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins

- a. is a full-time student at an educational organization described in section **170(b)(1)(A)(ii) of the IRS Code**; or
- b. is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of the educational organization described in section **170(b)(1)(A)(ii) of the IRS Code** or of a State or political subdivision of a State.” (**Reg. 1.151-3(b)**).

Part-time students are not "students" for this section and their eligibility is not subject to special restrictions. Under Section 42 Regulations, most households where **all** of the members are full-time students **are not eligible** tenants and units occupied by these households may **not** be counted as LIHTC units. (**See IRS Code Section 151(c)(4) for student definition**).

There are four exceptions to the limitation on households where all members are full-time students. Full-time student households that are income eligible and satisfy one or more of the following conditions can be considered to be eligible. Third party verifications must be obtained to support the student status and the applicable exception (s).

1. All members of the household are full-time students, and such students are married and file a joint tax return. A copy of a joint federal income tax return and a copy of a marriage license should be required for verification.
2. Single parents and their children and such parents are not dependents<sup>1</sup> (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children, or

---

<sup>11</sup> H.R. 3648: Mortgage Forgiveness Debt Relief Act of 2007 clarified that the children are not dependents of another individual (other than a parent of such children).

3. At least one member of the household receives assistance under Title IV of the Social Security Act (Aid to Families with Dependent Children - AFDC) or Temporary Aide to Needy Families (TANF); or
4. At least one member of the household is enrolled in a job training program receiving assistance under Job Training Partnership Act (Replaced by the Workforce Investment Act of 1998) or similar federal, state, or local laws.

An applicant claiming any of the exceptions must be able to provide documentation to prove that status. If any applicant (in a household consisting entirely of full-time students) **cannot** claim one of the exceptions, housing in a Section 42 apartment must be denied.

#### **O. Loss of Eligibility Upon Becoming a Full-Time Student**

If a previously qualified Tax Credit resident becomes a full-time student and intends to continue living in a Section 42 apartment, he/she **must** meet at least one of the above criteria and be able to prove such status. Under current legal interpretations of federal LIHTC regulations and requirements, the "next available unit" rule that applies to LIHTC units with tenants that are no longer income eligible does not apply to student households that qualify under one of the exceptions above and later ceases to qualify. Unlike changes in income, it appears that a unit occupied by a student household that no longer meets one of the above exceptions ceases to count as a LIHTC unit immediately.

If a building owner or rental agent has questions as to the occupancy of students, they should seek legal assistance since the IRS has not published guidance on the interpretation of this part of the LIHTC rules.

#### **P. Section 8 and Rural Development Rents**

**Section 8** - Subsidy payments to an owner under various HUD Section 8 programs or any other comparable program are excluded and not considered in determining gross rent. Only the tenant's portion of the rent payment is considered in determining if the rent exceeds the gross rent maximum for the county. Sec. 42(0)(2)(B)(i).

##### Example 1: Household Portion of Rent is Below Limit

A Section 8 household moved into a unit on February 1, 2005; the maximum LIHC gross rent is \$450 and market rate is \$650. Household pays \$200 and the assistance pays \$450; the total rent is \$650. There is no noncompliance since the household portion of rent is below the maximum LIHC rent allowed.

The portion of the rent paid by Section 8 tenants can exceed the LIHC rent ceiling as long as the owner receives a Section 8 assistance payment on behalf of the resident. If no subsidy is provided, the tenant may not pay more than the LIHC rent ceiling.

#### Example 2: Tenant's Portion of Rent Exceeds Rent Limit

A Section 8 household with an annual income of \$12,000 applies for an LIHC unit for which the rent is restricted to \$500 and for which the market rate rent is \$750. Assistance will pay a maximum of \$500, and the applicant's portion is \$600 (40 percent of income). Since the applicant is required to pay \$600, Section 8 will pay \$150. There is no noncompliance.

This example reflects HUD's requirement under the Section 8 housing choice program. The family share may not exceed 40 percent of the family's share monthly adjusted income when the family initially moves into the unit or signs the first assisted lease for a unit.

**Rural Development** - Originally, the rent restrictions for projects with Rural Development assistance were computed using the general rules for LIHC housing. Beginning in 1991, however, gross rent does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the USDA Rural Housing Service<sup>8</sup> under section 515 of the Housing Act of 1949. See IRC §42 (g)(2)(B)(iv).

In other words, as long as the owner pays Rural Development the rent amount over the limit (all of the overage) that unit is in compliance.

#### Example 1: Rent Above Limit (Owner Pays Rural Development, formerly known as FmHA)

Assume a 1991 credit allocation to a property with Rural Development assistance. The maximum gross LIHC rent is \$500 and the household's calculated rent under Rural Development regulations is \$650, which the owner charges. The owner provides documentation that the \$150 above the tax credit maximum has been remitted directly to Rural Development. There is no noncompliance.

With the passage of the Omnibus Budget Reconciliation Act of 1993, owners are prohibited from refusing to lease to a prospective tenant based solely on the fact that the applicant holds a Section 8 rental voucher or certificate.

## Q. Annual Recertification

The annual re-certification shall be complied with a procedure detailed in Appendix B. The PRHFA requires an annual re-certification of tenant income in

100 percent Tax Credit projects. An Annual Re-certification Waiver is not an option at this time.

## **R. Tenant Transfers**

When a household moves to a different unit within the **same building**, the newly occupied unit adopts the status of the vacated unit. Thus, if a current household, whose income exceeds the applicable income limitation moves from an over income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident.

A household may move to a different building in the same low-income project without initially qualifying. As long as the household is not over the 140% income limit, the transfer may take place. The household must be recertified to ensure that is not over the 140% limit.

## **S. Multifamily Tax-Exempt Bonds Projects**

PRHFA will monitor developments that received an allocation through the issuance of tax-exempt bonds. Tax-exempt bond developments must comply with the same IRS requirements and LIHTC compliance monitoring procedures as non-tax exempt bond developments.

The property must then maintain compliance with both the tax-exempt bond rules and the tax credit program. While certain rules overlap, such as the property meeting either the 40/60 or 20/50 test, the rules do not exactly match, and the Owner is responsible for being aware of and complying with both sets of requirements. Usually, there will be two separate Regulatory Agreements filed against the property, one for the bond requirements and one for the tax credit requirements. The tax-exempt bond rules and the tax credit program. While certain rules overlap, such as the property meeting either the 40/60 or 20/50 test, the rules do not exactly match, and the Owner is responsible for being aware of and complying with both sets of requirements.

Tax-exempt bond financed residential properties must meet the same 40/60 or 20/50 income requirement as is required for tax credit properties. However, the bond financing does not require rent restrictions – it only requires that the affordable Households be income-certified. However, rents must be restricted for all units on which tax credits are claimed. The rules for determining income are the same for both programs. The primary difference is that compliance with tax-exempt bond requirements is determined property-wide, while federal tax credit requirements are determined building by-building. Owners must comply with both sets of requirements, which may result in maintaining more affordable units than originally planned in order to maintain compliance with both programs. In addition, the Available Unit Rule is applied property-wide for bond compliance

whereas it is applied on a building-by-building basis for tax credit compliance. Bond-financed properties with tax credits must maintain compliance with both Available Unit Rules.

## V. COMPLIANCE AND MONITORING DURING THE EXTENDED USE PERIOD

After the 15-year Compliance Period has expired, there may be no tax impact in the event of noncompliance. IRC Section 1.42-5 contains the regulations for agencies' compliance monitoring during the Compliance Period; however, the regulations do not require agencies to monitor according to these regulations in the Extended Use Period. IRS officials and other experts have indicated verbally that agencies may not report noncompliance to IRS after the Compliance Period is over. The tax benefit to the owner is exhausted and IRS can no longer recapture or disallow credits. Therefore, PRHFA must establish policy regarding how properties are to be monitored and consequences for noncompliance during the Extended Use Period.

In addition, based on the requirements of the Extended Use Period specified in IRC Section 42 regulations and in Declaration of Land Use Restrictive Covenants referenced below, the agency has the authority to establish different criteria for eligible/ineligible student households, available unit rule, unit transfers, and the process for performing annual recertifications during the Extended Use Period, as long as income and rent restrictions, general use requirements (fair housing), Section 8 acceptance, minimum set-aside, applicable fraction, and initial and annual recertifications are required.

### A. Extended Use Period

IRC Section 42(h)(6) establishes that buildings are eligible for the credit only if there is a minimum long-term commitment to low-income housing. Specifically, in order to receive a credit allocation in 1990 and later, the owner must record an extended low-income housing commitment. The document that evidences this commitment is called the Declaration of Land Use Restrictive Covenants for Housing Tax Credits (Declaration). The Declaration is recorded with the respective County Recorder and/or Registrar of Titles and “runs with the land”, regardless of subsequent changes in ownership.

1. For purposes of this section, the term “Extended Use Period” means the period:
  - a. beginning on the last day in the Compliance Period on which such building is part of a qualified low-income housing project, and
  - b. ending on the later of—
    - i. the date specified by the agency in the Declaration, or
    - ii. the date which is 15 years after the close of the Compliance Period.

IRC Section 42(h)(6)(E) provides exceptions to the Extended Use Period in the case of a legitimate foreclosure or deed in lieu or, for projects that have not waived this right, if the agency is unable to present a qualified contract pursuant to IRC Section 42(h)(6)(F). This Compliance Plan does not contain guidance for the provisions of IRC 42(h)(6)(F) regarding the qualified contract referenced in IRC Section 42(h)(6)(E)(i)(II).

2. Under IRC Section 42(h)(6)(E)(ii) the termination of an Extended Use Period due to foreclosure or deed in lieu, or for failure to present a qualified contract shall not be construed to permit before the close of the 3-year period following such termination:
  - a. the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or
  - b. any increase in the gross rent with respect to such unit not otherwise permitted by the applicable rent limits.
3. Under the PRHFA Declaration of Land Use Restrictive Covenants for Housing Tax Credits the owner agrees to comply with the following for the term of the agreement:
  - a. it will maintain the applicable fraction by leasing units to individuals or families whose income is 50% or 60%, as irrevocably elected by the owner at the time of allocation, or less of the area median gross income (including adjustments for family size) as determined in accordance with IRC Section 42;
  - b. it will maintain the Section 42 rent and income restrictions;

- c. all units subject to the credit shall 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 IRC Section 42(g) (Section 42(g) pertains to the minimum set-aside election);
- d. the owner agrees to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended;
- e. the owner will not refuse to lease a unit to the holder of a Section 8 voucher because of the status of the prospective tenant as such a holder;
- f. each low income unit will remain suitable for occupancy;
- g. the determination of whether a tenant meets the low-income requirement shall be made by the owner at least annually on the basis of the current income of such low-income tenant ; and
- h. other restrictions as required under the specific year's Qualified Allocation Plan (QAP) and related points the owner received in order to obtain a credit allocation.

These restrictions are property-specific within the respective Declarations and to the extent they are not otherwise time-limited, the additional restrictions remain in force and effect during the Extended Use Period.

Note that the Declarations have changed from year-to-year according to the respective Qualified Allocation Plans. However, the basic language pertaining to the Extended Use Period required by IRC has not materially changed.

## **B. Tenant Eligibility Criteria During the Extended Use Period**

During the Extended Use Period, PRHFA requires tenant eligibility and certification of income, as follows:

### **1. Tenant Income Certification**

The initial income certification is required (calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937 ("Section 8")). However, owners are no longer required to verify income and income from assets at annual recertification. Any household that experiences a change in composition within the first six (6) months of occupancy (not including birth or death) must meet the initial eligibility requirements and a new initial tenant income certification must be performed.

## **2. Rent Restriction**

Rent limits as elected by the owner at the time of allocation continue to be in force during the Extended Use Period. Owners of properties that were awarded selection points for additional rent restrictions should refer to the respective Qualified Allocation Plan or Declaration to determine whether those additional rent restrictions are time-limited or if they are in effect for the full term of the Extended Use Period.

## **3. Student Status**

Since student status is not one of the defined requirements of the Declaration, the student rules under IRC Section 42 are no longer applicable.

## **4. Unit Transfers**

Unit transfers from building to building are allowed without triggering noncompliance regardless of whether a household's income is over the applicable limit at the time of transfer.

## **5. Available Unit Rule**

The available unit rule is revised to provide that if a household's income goes over 140% of the applicable income limit, a currently vacant unit or the next unit in the same building must be rented to a qualifying household (the "comparable or smaller" requirement no longer applies). This is essentially a one-for-one unit replacement.

## **6. Applicable Fraction**

Only the unit fraction will be examined to determine a building's applicable fraction.

## **7. Utility Allowances**

Utility Allowances must continue to be updated annually. Revised utility allowances must be implemented within 90 days of their published effective date.

The Housing Tax Credit Program income and rent limits based on the Section 8 income limits published by HUD annually will continue to update by the PRHFA.

### **C. Monitoring Compliance During the Extended Use Period**

PRHFA will perform the following monitoring procedure during the Extended Use Period:

#### **1. Annual Certification**

PRHFA will require all owners to submit an annual certification of compliance by January 31. The PRHFA will provide the Owner's Certification of Compliance During the Extended Use Period Form, which will contain agency-defined certification language pursuant to the terms of the Declaration.

#### **2. Annual Reporting**

LIHTC project must submit to the PRHFA, via electronically, the Tenant Income information of each new Moving and Annual Re-certifications of income for each existing tenant.

This information must be submitted to the PRHFA by January 15<sup>th</sup> of each year during the extended use period. The PRHFA will provide the Tax Credit Certifications Online Reporting Software for the electronic submission of this information.

#### **3. Inspections**

Every five years, PRHFA will perform a physical inspection of the property and review of tenant files and other pertinent documentation. The first review in the Extended Use Period will be five years from the last inspection conducted during the Compliance Period.

A minimum of 3 low-income units chosen at random or maximum of 10% of the low-income units in any development will be inspected. Different units may be chosen for the file review as those receiving a physical inspection.

PRHFA compliance staff will continue to work with other inspection entities such as local inspection officials, other government agencies, PRHFA staff etc., to share inspection information. Also, we will accept Age HQS Staff

inspections done in the same year as our review. If inspected by PRHFA Tax Credit Compliance staff, inspection will be pursuant to Uniform Physical Conditions Standards.

PRHFA reserves the right to conduct a review of any building after serving appropriate notice and to examine all records pertaining to rental of tax credit units. PRHFA may perform a review at least through the end of the Extended Use Period of the buildings in the project.

#### **4. Annual Monitoring Fees**

The amount of annual compliance monitoring fees will be \$15 per unit since inspections are less frequent and are done on a smaller number of units. The agency reserves the right to adjust the fee due to changing circumstances. Fees are due at the same time as the Annual Certification.

#### **5. Transfer of Ownership or Ownership Interest**

A transfer agreement is required in the event of a transfer of ownership or ownership interest. Such transfer agreement will put the new owner or partner on notice that it is subject to the terms of the Declaration including all compliance restrictions and annual compliance monitoring. Documentation of signatory authorization for the new owner or partner may be requested. Owners contemplating transfers of ownership or ownership interest should notify PRHFA and request a copy of the appropriate transfer agreement.

#### **6. Expiration or Termination of Extended Use Period**

During the 3-year period after the Declaration has expired or terminated pursuant to IRC Section 42(h)(6)(E)(ii), owners are required to annually submit a list of all low-income households that occupied a unit at the end of the term of the Declaration, the respective tenant-paid rent, utility allowance, and move-out date, if applicable, along with a certification that no low-income residents have been evicted or displaced for other than good cause.

This report and certification will be due on January 31<sup>th</sup>. No monitoring fees will be due during this 3-year period and PRHFA is not required to perform inspections.

The Declaration of Land Use Restrictive Covenants allows for an amendment by written agreement between PRHFA and the owner. An amendment to the Declaration may be negotiated in the event a property suffers from a decline in market conditions that is not expected to improve and subsequent

vacancies compromise the economic viability of the property. Owner must demonstrate that reasonable efforts have been made to meet all compliance requirements. A change in applicable fraction, rent limits or other terms may be negotiated with PRHFA in order to preserve as many low-income units as possible, but still protect the economic viability of a property.

#### **D. Consequences of Noncompliance During the Extended Use Period**

The following are the procedures for and consequence(s) of noncompliance:

1. All properties whose Compliance Period has expired and are subject to the requirements of the Extended Use Period will be listed on categorized in either "Good Standing" or "Not in Good Standing".
2. If an owner fails to comply with the monitoring requirements and/or terms of the Declaration, PRHFA will issue a Notice of Noncompliance and recommendations for correction similar to what is issued during the Compliance Period. All owners will be given a period of time not to exceed 90 days with which to clarify or correct noncompliance and report to PRHFA that all corrections have been made. An extension of an additional 90 days may be granted, with good cause. If a property has one or more compliance violations, but the owner is making a good faith effort to correct within a reasonable time then the property can be considered in Good Standing. If the violation(s) cannot be corrected within the 90-day correction period (or within the 90-day extension, if granted) PRHFA may request that the owner and/or management agent formulate a plan and reasonable timeline to bring the violation(s) back into compliance and advise PRHFA in writing of such a plan.

Owners will have demonstrated good faith efforts by carrying out the plan within the referenced timeline and the property will remain in Good Standing.

3. If an owner repeatedly delays requests for monitoring reviews, fails to submit annual certifications, reports and compliance monitoring fees, does not correct violations timely or according to the agreed-upon plan, where applicable, or otherwise chooses to ignore the compliance and monitoring requirements (serious and/or flagrant noncompliance) the following are consequences:

- a. The owner & management company are considered to be Not in Good Standing;
- b. A Report of Development Not in Good Standing will be issued for such serious and/or flagrant noncompliance. This report will be sent to the owner and filed with the PRHFA Development team. No further PRHFA funds or tax credits will be awarded to the owner, its partners and/or proposed developments to be managed by the management company until the property is back in Good Standing. Once good faith efforts are demonstrated to the agency's satisfaction, the agency will reinstate the property, owner and management company in Good Standing.
- c. The agency and any interested party have the right to enforce specific performance of the Declaration through the court system.

Important: Owners and management agents must keep careful track of when a development, and in some cases certain buildings within a development, transition from the Compliance Period into the Extended Use Period. Premature implementation of the Extended Use Period compliance and monitoring guidelines may result in noncompliance with IRC Section 42 for which PRHFA would be required to file IRS form 8823.

PRHFA reserves the right to modify this Compliance Manual Plan including but not limited to the foregoing policy and procedure for compliance and monitoring during the Extended Use Period, as needed.

# APPENDIXES

---

## APPENDIX A

### INCOME VERIFICATION REQUIREMENTS AND PROCEDURES

#### A. General Requirements

1. Owners shall verify all income, household characteristics, and any circumstances that may affect eligibility and compliance under the LIHTC guidelines.
2. When determining annual income, owners must include all anticipated known sources of income. If a household is accepted as low-income and subsequently becomes over income, the owner should be prepared to prove due diligence.
3. Whenever possible, written verification of income is required from the income sources.
4. Owners are advised to maintain documentation of all verification efforts for at least three years after the effective date of the tenant's certification or recertification.
5. For units receiving Section 8 rental assistance, the verification requirement is satisfied if the Public Housing Authority ("PHA") provides the building owner with a statement that "the gross annual income of the tenants in the unit does not exceed the applicable income limit under Section 42(g) of the Internal Revenue Code." The Section 8 Tenant Income Verification Form may be used to satisfy this requirement. Owners may have the PHA contact the Compliance staff of the Agency if more information is needed. Income of Section 8 assistance recipients can also be verified in the usual way (by contacting employers, etc.) and requesting that they complete Income Verification forms. When the tenant household has no income, Certification of Zero Income (PRHFA-05) will be the only verification document.

#### B. Acceptable Methods for Verifying Information

1. Written verification by a third party is preferred, as follows:

- a. the owner's request for verification should state why the information is being requested and include a statement signed by the applicant/tenant authorizing the release of the information;
  - b. owners must send the verification forms directly to the source, not through the applicant.
  - c. when written verification is not possible, as a last resort, the Agency accepts a direct contact with the source and must be confirmed by written verification within 10 days. The owner must document the conversation for the applicant's file and include all information that would have been provided in a written verification plus the date, time and the person's name providing the information and his qualification to provide it.
2. Review of Applicant Supplied Documents

Owners may use documents submitted by the applicant when information does not require third party verification (i.e. birth certificate) or third party verification is impossible or delayed beyond four weeks of initial date of request.

3. Applicant's Affidavit

Owners may accept an applicant's notarized statement or signed affidavit only if other preferred forms of verification cannot be obtained.

4. Faxed Verification

Recipients may reply to a request for income or asset verification by fax. The Agency accepts faxes as written verification if they are completely legible, date-stamped, and include the signature, name, job title, and phone number of the person making the verification and the date the form was signed.

### **C. Effective Term of Verification**

Third-party Verifications of income are valid for 90 days prior to move-in. If after 90 days, if the Tenant has not yet moved in, the information may be verbally updated from the source. This verbal Verification is valid for an additional 30 days, but only if documented. After this time, a new written third party Verification must be obtained.

### **D. Expediting the Verification Procedure**

1. In order to expedite the verification process, owners should maintain a checklist for each tenant to document the verification process.
2. Develop standard forms for all information that must be verified (see forms included in this plan).
3. Ask applicants/tenants to sign the copies of each verification form retaining one original in the applicant's file.
4. Make personal contacts with large employers and public assistance agencies from which a large number of tenants receive income or benefits.
5. Give the applicant an opportunity to explain any significant differences between the amounts reported by the applicant and the amounts reported on third party verifications in order to extract the correct information. Re-examine if necessary.

### **E. Acceptable Forms of Verification**

Sources of Verification given under each type of income are listed in order of preference.

1. **Employment Income**
  - a. Employment Verification Form (PRHFA-03) completed by the employer or a statement from the employer on company letterhead; or
  - b. check stubs or earning statements showing employee's gross pay per pay period and frequency of pay;

- c. W-2 forms if applicant has had the same job for at least two years and pay increases can be accurately projected;
- d. a copy of the most recent income tax returns signed by the applicant providing the amount of income, including income from tips and other gratuities. This form of verification alone may not be acceptable as income certification.

## 2. **Self-Employment Income**

The tenant must provide a projection or estimate of income and expenses to be realized by the business during the next 12 months. The owner may use the previous years' financial information to substantiate the reasonableness of the tenant's projection. The following documentation should be used in the verification process.

- a. Accountant's or bookkeeper's statement of net income; or
- b. Financial statement(s) of the business along with an affidavit or notarized statement from the applicant forecasting the anticipated income for the twelve (12) months following certification; or
- c. The applicant's most recent income tax return along with a notarized statement. This form of income verification alone may not be acceptable as income certification. Year-to-date income verification can be used to supplement other methods of certification.
- d. Applicant's notarized statement or affidavit as to net income realized from the business during previous year.

## 3. **Social Security, Pensions, Disability Income**

- a. Benefit print-out completed by the agency providing the benefits; or
- b. An award or benefit notification letter prepared and signed by the authorizing agency, dated within 90 days of the certification date. Since checks or bank deposit slips show only net amount remaining after deducting SSI, Medicare or state health insurance, they may be used only when award letters cannot be obtained. Any withholdings must be verified and included in annual income.

- c. If a local Social Security Administration (SSA) office refuses to provide written verification, the owner may accept a photocopy of a check or automatic deposit slips as interim verification. Otherwise, State Health Insurance withholdings will be included in annual **income**.

**4. Unemployment Compensation**

- a. A verification form completed by the unemployment compensation agency; or
- b. Records from unemployment office stating payment dates and amount.

**5. Alimony or Child Support Payments**

- a. A copy of a separation or settlement agreement, divorce decree, or support order stating the amount and type of support payment schedule. If the document is not dated within the 90-day time frame, obtain a notarized statement from the applicant stating that the amount of child support currently received is the same as stated in the agreement, decree, or order; or
- b. a letter from the person paying support; or
- c. a copy of the latest check and documentation of how often the check is received; or
- d. as a last alternative, the applicant's notarized statement of the amount of child support being received, including a written explanation detailing why *a* and *b* above cannot be provided.

**6. Recurring Contributions and Gifts**

- a. Notarized statement or affidavit signed by the person providing the assistance. The statement should define the purpose, dates, and value of gifts. Copies of canceled checks or receipts can be used to verify tuition, fees, books, and equipment, and other such net income and expenses not expected to change during the next 12 months.

- b. A letter from a bank, attorney or a trustee providing required verification; or
- c. As a last alternative, the applicant's notarized affidavit giving the same information, including a written explanation detailing why (1) or (2) above cannot be provided.

## 7. Unemployed Applicants

- a. The income of unemployed applicants with regular income from any source, such as Social Security, pension, recurring gifts, etc., must be verified as described previously; or
- b. **If the applicant is unemployed with no regular verifiable income from any source** and intends to live from assets only, an Asset Addendum to the Tenant Income Certification must be submitted along with the application. The applicant may not be certified as qualified by use of this form alone. An asset analysis must be included with the application to determine the applicant's actual income.

## F. Assets

Assets are items of value, other than necessary personal items, and are considered along with verified income in determining the eligibility of a household. The Agency does not require third party verification of assets having a value of less than \$5,000 but, assets valued at \$5,000 or more, must be verified by third parties (for example, the amount of money held in a savings account may be verified by the bank). The asset information (total value and income to be derived) must be obtained at the time of application. **Asset information must be collected on ALL family members.**

If a household claims to have zero (0) assets, and have sold no assets for less than fair market value during the two year period preceding the execution of the Tenant Income Certification, they must certify this information by inserting (0) in the "Income derived from assets" blanks for ALL family members on the Tenant Income Certification and signing and dating the form in the spaces provided.

For units receiving **Section 8 rental assistance**, the verification requirement is satisfied if the Public Housing Authority (“PHA”) provides the building owner with a statement that "the gross annual income of the tenants in the unit does not exceed the applicable income limit under Section 42(g) of the Internal Revenue Code." The Section 8 Tenant Income Verification Form (PRHFA-07) may be used to satisfy this requirement. Owners may have the PHA contact the Compliance staff of the Agency if more information is needed. Income of Section 8 assistance recipients can also be verified in the usual way (by contacting employers, etc.) and requesting that they complete Income Verification forms. When the tenant household has no income, the Certification of Zero Income form (PRHFA-05) will be the only verification document.

**ANNUAL RECERTIFICATION**

Owners must verify the income of tenants occupying set-aside units at least annually. If re-certifications are not completed within 12 months of the last certification date, the Authority may report this to the IRS as noncompliance. The annual re-certification process is identical to initial certification. Owners must re-verify income of those tenants in set-aside units who plan to remain in that unit for another lease term, or any portion thereof, and have a new Tenant Income Certification executed together with updated supporting documentation.

**1. Management should:**

- a. approximately 120 days before the lease expiration, notify the tenants in writing that re-certification is due and schedule an appointment for an interview;
- b. interview tenants to obtain current information on anticipated income, assets, and family composition for the ensuing certification year, and have tenants sign the necessary verification form(s) giving permission for release of the information requested;
- c. obtain third-party verification of the tenant's income;
- d. complete the Tenant Income Certification, have adult household members sign and date where indicated; and
- e. sign and date the Tenant Income Certification where indicated.

**2. Adding a New Tenant to a Resident Household**

The addition of new member(s) to an existing low-income household requires the income certification for the new member of the household, including third party verification. The new tenant's income is added to the income disclosed on the existing household's tenant income certification. If the total income combined exceeds 140% of the income limit, the Available Rule is applied.

A household may continue to add members as long as at least one member of the original low-income household continues to live in the unit. Once all the original tenants have moved out of the unit, the remaining tenants must be certified as a new income-qualified household unless the remaining tenants were income qualified at the time they moved into the unit.

### **3. Interim Re-Certifications**

Except when adding a new tenant to an existing household, the Authority does not require management to recertify a household due to a change in household composition or income before the annual recertification date in order to comply with LIHTC program rules. However, some LIHTC developments that also participate in other low income housing programs will have to recertify a household in order to comply with the other program's requirements.

### **4. Tax Credit Units Which Receive Federal Rental Assistance**

In the case of a unit which receives rental assistance payments from a Federal agency, a change in household composition or income may require an interim recertification by the agency that is providing the assistance. Owners of these units should recertify tenants simultaneously with the annual recertification completed by the provider of the rental assistance payments.

# FORMS & INSTRUCTIONS

---

## OWNER'S CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

To: Puerto Rico Housing Finance Authority P.O. Box 71361, San Juan, PR 00936-8461

<b>Certification Dates:</b>	From: <b>January 1, 20</b> _____	To: <b>December 31, 20</b> _____			
<b>Project Name:</b>			<b>Project No. :</b>		
<b>Project Address:</b>			<b>City:</b>		<b>Zip code:</b>
<b>Tax ID # of Ownership</b>					

<input type="checkbox"/>	No buildings have been Placed in Service
<input type="checkbox"/>	At least one building has been placed in service but owner elects to begin credit period in the following year. If either of the above applies, please check the appropriate box, and proceed to page 2 to sign and date this form.

The undersigned \_\_\_\_\_ on behalf of \_\_\_\_\_ (the "owner"), hereby certifies that:

- 1- The project meets the minimum requirements of: (check one)
  - 20 - 50 test under Section 42(g)(1)(A) of the Code
  - 40 - 60 test under Section 42(g)(1)(B) of the Code
  - 15 - 40 test for "deep rent-skewed" projects under Section 42(g)(4) and 142(d)(4)(B) of the Code
  
- 2- There has been no change in the applicable fraction (as defined in Section 42©(1)(B) of the Code) for any building in the project:
  - NO CHANGE     CHANGE

If "Change", the applicable fraction to be reported to the IRS for each building in the project for the certification year on page 3:
  
- 3- The owner has received an annual Tenant Income Certification from each low-income resident and documentation to support that certification, or the owner has a re-certification waiver letter from the IRS in good standing, has received an annual Tenant Income Certification from each low-income resident, and documentation to support the certification at their initial occupancy.
  - YES     NO
  
- 4- Each low-income unit in the project has been rent-restricted under Section 42(g)(2) of the Code:
  - YES     NO
  
- 5- All low-income units in the project has been for use by the general public and used on non-transient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) of the Code):
  - YES     NO     HOMELESS
  
- 6- No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42U.S.C. 3616a(a)(1), or an adverse judgement from a federal court:
  - NO FINDING     FINDING
  
- 7- Each building in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habilitiy standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the project.
  - YES     NO

If "No", status nature of violation on page 3 and attach a copy of the violation report as required by 26.CFR 1.42-5 and any documentation of correction.
  
- 8- There has been no change in the eligible basis ( as defined in section 42(d) of the Code) of any building in the project since last certification submission:
  - NO CHANGE     CHANGE

If "change", state nature of change (e.g. a common area has become commercial space, a fee is now charged for a tenant facility formerly provided without charge, or the project owner has received federal subsidies with respect to the project which had not been disclosed to the allocating authority in writing) on page 3:

- 9- All tenant facilities, included in the eligible basis under Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings:  
 YES  NO
- 10- If a low-income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were or will be rented not having a qualifying income:  
 YES  NO
- 11- If the income of tenants of a low-income unit in a building increased above the limit allowed in Section 42(g)(2)(D)(ii) of the code, the next available unit of comparable or smaller size in that building was or will be rented to residents having a qualifying income:  
 YES  NO
- 12- An extended low-income housing commitment as described in Section 42(h)(6) was in effect, including the requirement under section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a vouchers or certificate of eligibility under Section 8 of the United State Housing Act of 1937, 42 U.S.C. 1437s. Owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment (not applicable to buildings with tax credits from years 1987-1989):  
 YES  NO  N/A
- 13- The owner received its credit allocation from the portion of the state ceiling set-aside for a project involving "qualified non-profit organization" under Section 42(h)(5) of the code and its non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code.  
 YES  NO  N/A
- 14- The owner has complied with Section 42(h)(6)(E)(ii)(I) and not evicted or terminated the tenancy of an existing tenant of any low-income unit other than for good cause:  
 YES  NO  N/A
- 15- The owner has complied with Section 42(h)(6)(E)(ii)(II) and not increased the gross rent above the maximum allowed under Section 42 with respect to any low-income unit:  
 YES  NO  N/A
- 16- There has been no change in the ownership or management of the project:  
 NO CHANGE  CHANGE  
 If "change", complete page 3 detailing the changes in ownership or management of the project.

Note: Failure to complete this form in its entirety will result in noncompliance with program requirements. In addition, any individual other than an owner or general partner of the project is not permitted to sign this form, unless permitted by the state agency.

The project is otherwise in compliance with the Code, including any Treasury Regulation, the applicable State Allocation Plan, and all other laws, rules and regulations. This certification and any attachments are made UNDER PENALTY OF PERJURY.

\_\_\_\_\_  
 (Ownership Entity)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF PUERTO RICO )  
 ) ss.  
 County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_

My commission expires \_\_\_\_\_

\_\_\_\_\_  
 Notary Public  
 PRHFA-01 (Rev 1/2008)

**PLEASE EXPLAIN ANY ITEMS THAT WERE ANSWERED "NO", "CHANGE" OR "FINDING" ON QUESTION 1-16**

QUESTIONS	Explanation
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	

**CHANGE IN OWNERSHIP OR MANAGEMENT**  
(to be completed ONLY if "CHANGE" marked for question 16 above)

**TRANSFER OF OWNERSHIP**

Date of change:	
Taxpayer ID Number:	
Legal Owner Name:	
General Partnership:	
Status of Partnership (LLC, etc):	

**CHANGE IN OWNER CONTACT**

Date of change:	
Owner contact:	
Owner Contact Phone:	
Owner Contact Fax:	
Owner Contact Email:	

**CHANGE IN MANAGEMENT CONTACT**

Date of change:	
Management Co. Name:	
Management Co. Address:	
Management City, State, Zip:	
Management Contact:	
Management Contact Phone:	
Management Contact Fax:	
Management Contact Email:	



**PART V DETERMINATION OF INCOME ELIGIBILITY**

TOTAL ANNUAL HOUSEHOLD INCOME  
FROM ALL SOURCES:   
From item (L) on page 1

Household meets  
Income Restriction  
at:  
 60%  50%  
 40%  30%  
 \_\_\_\_\_

**RECERTIFICATION ONLY:**

Current Income Limits X 140% :  
\$ \_\_\_\_\_  
Household Income exceeds X 140%  
Recertification:  
 Yes  No

Current Income Limit per Family Size: \$ \_\_\_\_\_

Household Size at Move-in: \_\_\_\_\_

Household Income at move-in: \$ \_\_\_\_\_

**PART VI RENT**

Tenant Paid Rent : \$ \_\_\_\_\_  
Utility Allowance: \$ \_\_\_\_\_

Rent Assistance: \$ \_\_\_\_\_  
Other non-optional charges: \$ \_\_\_\_\_

GROSS RENT PER UNIT:  
(Tenant paid rent plus utility Allowance  
& other non-optional charges) \$

Unit Meets Rent Restriction at:  
 60%  50%  40%  30%  \_\_\_\_\_

Maximum Rent Limit for this unit: \$ \_\_\_\_\_

**PART VII STUDENT STATUS**

ARE ALL OCCUPANT FULL TIME STUDENT ?  
 Yes  No

If yes, Enter student explanation \*  
(Also attach document)  
Enter  
1-4 .

- \* Student Explanation:
1. TANF assistance
  2. Job Training Program
  3. Single parent/dependant child
  4. Married/joint return

**PART VIII PROGRAM TYPE**

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.

- |  |  |  |  |   |
|--|--|--|--|---|
| <p>a. Tax Credit <input type="checkbox"/></p> <p>See part V above.</p> | <p>b. HOME <input type="checkbox"/></p> <p>Income Status</p> <p><input type="checkbox"/> &lt;=50 % AMGI</p> <p><input type="checkbox"/> &lt;=60 % AMGI</p> <p><input type="checkbox"/> &lt;=80 % AMGI</p> <p><input checked="" type="checkbox"/> OI **</p> | <p>c. Tax Exempt <input type="checkbox"/></p> <p>Income Status</p> <p><input type="checkbox"/> 50 % AMGI</p> <p><input type="checkbox"/> 60 % AMGI</p> <p><input type="checkbox"/> 80 % AMGI</p> <p><input type="checkbox"/> OI **</p> | <p>d. AHDP <input type="checkbox"/></p> <p>Income Status</p> <p><input type="checkbox"/> 50 % AMGI</p> <p><input type="checkbox"/> 80 % AMGI</p> <p><input type="checkbox"/> OI **</p> | <p>e. <input type="checkbox"/></p> <p>Income Status</p> <p><input type="checkbox"/> _____</p> <p><input type="checkbox"/> _____</p> <p><input type="checkbox"/> OI **</p> |
|--|--|--|--|---|

\*\*Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked above.

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual (s) named in part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land use restriction. Agreement (if applicable), to live a unit in this project.

\_\_\_\_\_  
SIGNATURE OF OWNER/REPRESENTATIVE

\_\_\_\_\_  
DATE

## INSTRUCTION FOR COMPLETING TENANT INCOME CERTIFICATION

This form is to be completed by the owner or an authorized representative,  
**Part I - Development Data**

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If other designate the purpose of the recertification (I.e. a unit transfer, a change in household composition, or other state-required recertification).

Move-in Date                      Enter the date the tenant has or will take occupancy of the unit.

Effective Date                    Enter the effective date of the certification. For Move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re) certification.

Property Name                    Enter the name of the development.

County                            Enter the county (or equivalent) in which the building is located.

BIN #                              Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).

Address                            Enter the address of the building.

Unit Number                      Enter the unit number.

# Bedrooms                        Enter the number of bedrooms in the unit.

### Part II - Household Composition

List all occupants of the unit. State each household member's relationship to the head of household by using one of the following coded definition:

H-	Head of Household	S-	Spouse
A-	Adult co-tenant	O-	Other family member
C-	Child	F-	Foster child(ren)/ adult(s)
L-	Live-in- caretaker	N-	None of the above

Enter the date of birth, student status and social security number or alien registration number for each occupant.

*If there are more than 7 occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification*

### Part III - Annual Income

See Handbook 4350.3 for complete instruction of verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income sources, enter the gross amount anticipated to be received for the twelve months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List the respective household member number from Part II.

Column (A)                      Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/ or net income from a business.

Column (B)                      Enter the annual amount of social security, Supplemental Security Income, pensions, military retirement, etc.

Column (C)                      Enter the annual amount of income received from public assistance (I.e. TANF, general assistance, disability, etc.)

Column (D) Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.

Row (E) Add the totals from column (A) through (D), above. Enter this amount.

#### Part IV - Income from Assets

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the twelve months from the effective date of the certification. List respective household member number from Part II and complete a separate line for each member.

Column (F) List the type of asset (i.e. checking account, saving account, etc.)

Column (G) Enter C (for current, if the family currently owns or holds the assets), or I (for imputed family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).

Column (H) Enter the cash value of the respective asset.

Column (I) Enter the anticipated annual income from the asset (i.e., saving account balance multiplied by the annual interest rate).

TOTALS Add the total of column (H) and Column (I), respectively.

If the total in Column (H) is greater than \$ 5,000 you must do an imputed calculation of asset income. Enter the total cash value, multiply by 2% and enter the amount in (J), imputed Income.

Row (K) Enter the greater of the total in column (I) or (J)

Row (L) Total Annual Household Income from all sources Add (E) and (K) and enter the total

#### HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verification of income and/ or assets have been received and calculated, each household member age 18 and older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed earlier than 5 days prior to the effective date of the certification.

#### Part V - Determination of Income Eligibility

Total Annual Household Income from all sources Enter the number from item (L)

Current Income Limit per Family Size Enter the current Move-in Income Limit for the household size.

Household income at move-in Household size at move-in For recertification, only. Enter the household income from the move-in certification. On the adjacent line, enter the number of the household members from the move-in certification.

Household meets Income Restriction Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.

Current Income Limit X 140 % For recertification only. Multiply the Current Maximum Move-in Income Limit by 140 % and enter the total. Below, indicate whether the household income exceeds that total. If the gross Annual Income at recertification is greater than 140 % of the current income limit, then the available unit rule must be followed.

#### Part VI - Rent

Tenant Paid Rent	Enter the amount the tenant pays toward rent (not including rent assistance payments such as section 8).
Rent Assistance	Enter the amount of rent assistance, if any.
Utility Allowance	Enter the utility allowance. If the owner pays, all utilities, enter zero.
Other non-optional charges	Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
Gross Rent for Unit	Enter the total of Tenant Paid Rent Plus Utility Allowance and other non-optional charges.
Maximum Rent Limit for this unit	Enter the maximum allowable gross rent for the unit.
Unit Meets Rent Restriction at	Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

#### Part VII - Student Status

If all household members are full time\* students, check "yes". If at least one household member is not a full time student, check "no".

If "yes" is checked, the appropriate exemption must be listed in the box to the right. If none of the exemption apply, the household is ineligible to rent the unit.

\* Full time is determined by the school the student attends.

#### Part VIII - Program Type

Mark the program(s) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempted Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit	See Part V above.
Home	If the property participates in the Home program and the unit this household will count toward the HOME program set-asides, mark the appropriate box indicating the household's designation.
Tax Exempt	If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household's designation.
ADHP	If the property participates in the Affordable Housing Disposition Program (AHDP), and this household's unit will count toward the set-aside requirements, mark the appropriate box indicating the household's designation.
Other	If the property participates in any other affordable program, complete the information as appropriate.

#### SIGNATURE OF THE OWNER/ REPRESENTATIVE

Is it the responsibility of the owner or owner's representative to sign and date document immediately following executing by the residents.

The responsibility of the documentation and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well trained in tax credit compliance.

*These instructions should not be considered as a complete guide on tax credit compliance. The responsibility for compliance with federal regulations lies with the owner of the building(s) for which the credit is allowable.*

# EMPLOYMENT VERIFICATION

**THIS SECTION TO BE COMPLETED BY MANAGEMENT AND EXCLUDED BY TENANT**

To: \_\_\_\_\_ (Name & address of employer) Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: \_\_\_\_\_ Applicant/Tenant name Social Security Number \_\_\_\_\_ Unit # (if assigned) \_\_\_\_\_

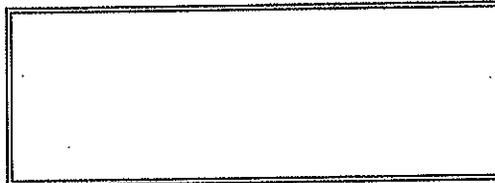
I hereby authorize release of my employment information.

\_\_\_\_\_  
Signature applicant/Tenant Date \_\_\_\_\_

The individual named directly above is an applicant/tenant of a housing program that requires verification of income. The information provided will remain confidential to satisfaction of that stated purpose only. Your prompt response is crucial and greatly appreciated.

\_\_\_\_\_  
Project Owner/ Management

Return Form To:



**THIS SECTION TO BE COMPLETED BY EMPLOYER**

Employer Name: \_\_\_\_\_ Job Title: \_\_\_\_\_

Presently Employed: Yes  No  Date First Employed \_\_\_\_\_ Last Day of Employment: \_\_\_\_\_

Current Wage/Salary: \$ \_\_\_\_\_ (Mark one)  hourly  weekly  bi-weekly  semi-monthly  monthly  yearly  Other \_\_\_\_\_

Average # of regular hours per week: \_\_\_\_\_ Year-to-date earnings: \$ \_\_\_\_\_ through \_\_\_\_\_

Overtime Rate: \$ \_\_\_\_\_ per hour Average # of overtime hours per week: \_\_\_\_\_

Shift Differential Rate: \$ \_\_\_\_\_ per hour Average # of shift differential hour per week: \_\_\_\_\_

Commissions, bonuses, tips, other: \$ (Mark one)  hourly  weekly  bi-weekly  semi-monthly  monthly  yearly  Other \_\_\_\_\_

List any anticipated change in the employee's rate of pay within the next 12 month: \_\_\_\_\_ Effective Date: \_\_\_\_\_

If the employee's work is seasonal or sporadic, please indicate the layoff period(s): \_\_\_\_\_

Additional remarks: \_\_\_\_\_

\_\_\_\_\_  
Employer's Signature Employer's Printed Name Date \_\_\_\_\_

\_\_\_\_\_  
Employer [Company] Name and Address

\_\_\_\_\_  
Phone # Fax # e-mail

NOTE: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United State as any matter within its jurisdiction.

## STUDENT VERIFICATION

### THIS SECTION COMPLETED BY MANAGEMENT AND EXECUTED BY STUDENT

This student verification is being delivered in connection with the undersigned's eligibility for residency in the following apartment:

Project Name: \_\_\_\_\_

Building Address: \_\_\_\_\_

Unit Number if assigned: \_\_\_\_\_

I hereby grant disclosure of the information requested below from \_\_\_\_\_  
Name of Educational Institution

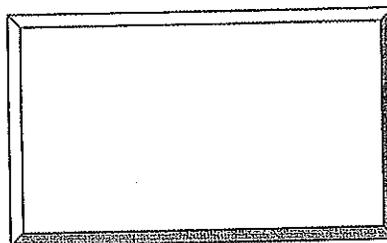
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Student ID #

Return Form to:



### THIS SECTION TO BE COMPLETED BY EDUCATIONAL INSTITUTION

This above-named individual has applied for residency or is currently residing in housing that requires verification of student status. Please provide the information requested below:

Is the above-named individual a student at this educational institution?  YES  NO

If so, part-time or full time?  PART-TIME  FULL-TIME

If full-time, the date the student enrolled as such: \_\_\_\_\_

Expected date of graduation: \_\_\_\_\_

I hereby certify that the information supplied in this section is true and complete to the best of my knowledge.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print your name: \_\_\_\_\_

Phone: \_\_\_\_\_

Title: \_\_\_\_\_

Educational Institution: \_\_\_\_\_

NOTE: Section 1001 of Title 18 of the U.S. Code makes it criminal offense to make willful false statements or misrepresentation to any Department or Agency of the United States as to any matter within its jurisdiction.

## CERTIFICATION OF ZERO INCOME

(To be completed by adult household members only, if appropriate.)

Household Name: \_\_\_\_\_ Unit No. \_\_\_\_\_

Development Name: \_\_\_\_\_ City: \_\_\_\_\_

1. I hereby certify that I do not individually receive income from any of the following sources:
  - a. Wages from employment (including commissions, tips, bonuses, fees, etc.);
  - b. Income from operation of a business;
  - c. Rental income from real or personal property;
  - d. Interest or dividends from assets;
  - e. Social Security payments, annuities, insurance policies, retirement funds, pensions, or death benefits;
  - f. Unemployment or disability payments;
  - g. Public assistance payment;
  - h. Periodic allowances such as alimony, child support, or gifts received from persons not living in my household;
  - i. Sales from self-employed resources (Avon, Mary Kay, Shaklee, etc.)
  - j. Any other source not named above.
  
2. I currently have no income of any kind and there is no imminent change expected in my financial status or employment status during the next 12 months.
  
3. I will be using the following sources of funds to pay for rent and other necessities:

---

Under penalty of perjury, I certify that the information presented in this certification is true and accurate to the best of my knowledge. The undersigned further understand(s) that providing false representations herein constitutes an act of fraud. False misleading or incomplete information may result in the termination of a lease agreement.

\_\_\_\_\_  
Signature of Applicant/Tenant

\_\_\_\_\_  
Printed Name of Applicant/Tenant

\_\_\_\_\_  
Date

PRHFA-05 (Rev 1-08)

## UNDER \$ 5,000 ASSET CERTIFICATION

For households whose combined net assets do not exceed \$ 5,000.  
Complete only one form per household; include assets of children.

Household Name: \_\_\_\_\_ Unit No. \_\_\_\_\_  
Development: \_\_\_\_\_ City: \_\_\_\_\_

Complete all that apply from 1 through 4:

1. My/our assets include:

(A) Cash Value*	(B) Int. Rate	(A*B) Annual Income	Source	(A) Cash Value	(B) Int. Rate	(A*B) Annual Income	Source
\$ _____	_____	\$ _____	Saving Account	\$ _____	_____	\$ _____	Checking account
\$ _____	_____	\$ _____	Cash on hand	\$ _____	_____	\$ _____	Safety Deposit Box
\$ _____	_____	\$ _____	Certificates of deposit	\$ _____	_____	\$ _____	Money Market funds
\$ _____	_____	\$ _____	Stocks	\$ _____	_____	\$ _____	Bonds
\$ _____	_____	\$ _____	IRA Accounts	\$ _____	_____	\$ _____	401K Accounts
\$ _____	_____	\$ _____	Keogh Accounts	\$ _____	_____	\$ _____	Trust Funds
\$ _____	_____	\$ _____	Equity in Real Estate	\$ _____	_____	\$ _____	Land Contract
\$ _____	_____	\$ _____	Lump Sum Receipts	\$ _____	_____	\$ _____	Capital Investment
\$ _____	_____	\$ _____	Life Insurance Policies (excluding Term)				
\$ _____	_____	\$ _____	Other Retirement/Pension Funds not named above:				_____
\$ _____	_____	\$ _____	Personal property held as an investment**:				_____
\$ _____	_____	\$ _____	Other (list):				_____

PLEASE NOTE: Certain funds (e.g. Retirement, Pension, Trust) may or may not be (fully) accessible to you. Include only amounts which are.

\* Cash value is defined as market value minus the cost of converting the asset to cash, such as broker's fees, settlement cost, outstanding loans, early withdrawal penalties, etc.

\*\* Personal Property held as an investment may include, but is not limited to , gem or coin collections, arts, antique cars, etc.. Do not include necessary personal property such as, but not necessarily limited to, household furniture, dally-use autos, clothing, assets of an active business, or special equipment for use by the disabled.

- 2  Within the past two years, I/we have sol given away assets(including cash, real estate, etc.) for more than \$1,000 below the their fair market value (FMV). Those amounts\* are included above and equal to a total of: \$ \_\_\_\_\_ (\*the difference FMV and the amount received, for each asset on which this occurred).
- 3  I/we have not sold or given away asset (including cash, real estate, etc.) for less than fair market value during the past two (2) years.
- 4  I/we do not have any assets at the time.

The net family assets(as defined in 24 CFR 813.1020 above do not exceed \$ 5,000 and the annual income from the net family assets is \$. \_\_\_\_\_ This amount is included in total gross annual income.

Under penalty of perjury, I/we certify that the information presented in this certification is true and accurate to the best of my/our knowledge the undersigned further understand(s) that providing false representaion herein constitus an act of fraud. False misleading or incomplete information may result in the termination of a lease agreement.

\_\_\_\_\_  
Applicant/Tenant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant/Tenant

\_\_\_\_\_  
Date

**INCOME VERIFICATION  
FOR TENANTS WITH SECTION 8 CERTIFICATES OF VOUCHERS.**

TO:

FROM:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ has applied for residency in/ is a resident of unit \_\_\_\_\_ of \_\_\_\_\_  
a low income Housing Tax Credit development. As part of our processing, we must obtain verification of  
households anticipated gross annual income.

Number occupants: \_\_\_\_\_

Number bedrooms: \_\_\_\_\_

Move-In

Re-certification

Permission by: \_\_\_\_\_  
(Applicant Signature)

\_\_\_\_\_  
(Date)

Under Section 42(g) of the Internal Revenue Code (as amended) and the Low Income Housing Tax Credit Program, the anticipated gross annual household income for the above referenced household cannot exceed \$\_\_\_\_\_, the applicable income limit for this unit. The applicant has reported an anticipated annual household income \$\_\_\_\_\_.

Please complete the section below and return this from in the enclosed self-addressed, stamped envelope or fax it back to my office at \_\_\_\_\_. Thank you in advance for your prompt attention.

Sincerely, \_\_\_\_\_  
Apartment Manager

The following is to be completed by the public housing authority:

The combined anticipated gross annual household income of the tenants in the above referenced unit does not exceed the applicable income limit under section 42(g) of the Internal Revenue Code, as amended.

Anticipated Gross Annual Income stated above \_\_\_\_\_ agree/ \_\_\_\_\_ Does not agree with our record.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Phone #)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

The Low Income Housing Tax Credit Program is a Federal low-income rental housing program governed by the Internal Revenue Service. Section 42 of the Internal Revenue Code requires owners to determine annually the income eligibility of all tenants occupying tax credit units.

PRHFA-07 (Rev 1-08)

© Audit & Compliance Office • Hato Rey Office  
Aerial Hostos St 235 • Capital Center Building • North Tower Suite 1201 • Hato Rey PR 00918  
Phone 787.765-7577 • Fax 787.765-5315

© Audit & Compliance Office • Hato Rey Office  
Arterial Hostos St 235 • Capital Center Building • North Tower Suite 1201 • Hato Rey  
PR 00918  
Phone 787.765-7577 • Fax 787.765-5315

## ANNEX P: GLOSSARY

**ACCEPTED UNITS:** (AS. NOTED ON THE LIHTC QUARTERLY STATUS REPORT) (FORM TC-92 CM1). UNITS FOR WHICH CERTIFICATES OF OCCUPANCY HAVE BEEN ISSUED.

**AGENCY:** PUERTO RICO HOUSING FINANCE AUTHORITY, AS DESIGNATED STATE CREDIT AGENCY FOR THE COMMONWEALTH OF PUERTO RICO.

**ANNUAL INCOME:** TOTAL INCOME ANTICIPATED TO BE RECEIVED BY A TENANT FROM ALL SOURCES INCLUDING ASSETS FOR THE COMING YEAR.

**ANNUAL HOUSEHOLD INCOME:** A REVIEW OF ALL PERSONS WHO INTEND TO PERMANENTLY RESIDE IN A UNIT. THE ANNUAL INCOME IS DEFINED AS INCOME AS OF THE DATE OF OCCUPANCY FOR THE COMING YEAR.

**ANNUAL MANAGEMENT REVIEW:** A REVIEW OF A PROJECT MADE ANNUALLY BY THE AGENCY, WHICH INCLUDES AN EXAMINATION OF RECORDS, A REVIEW OF OPERATING PROCEDURES, AND A VISUAL INSPECTION OF THE PROJECT.

**APPLICATION:** FORM COMPLETED BY A PERSON OR FAMILY SEEKING RENTAL OF A UNIT IN A PROJECT. AN APPLICATION SHOULD BE IN A FORM APPROVED BY THE AGENCY AND SHOULD SOLICIT SUFFICIENT INFORMATION SO AS TO DETERMINE THE APPLICANT'S ELIGIBILITY AND COMPLIANCE WITH FEDERAL AND AGENCY GUIDELINES.

**ASSETS:** ITEMS OF VALUE, OTHER THAN NECESSARY PERSONAL ITEMS, WHICH ARE CONSIDERED IN DETERMINING THE ELIGIBILITY OF A HOUSEHOLD.

**ASSET INCOME:** THE AMOUNT OF MONEY RECEIVED BY A HOUSEHOLD FROM ITEMS OF VALUE AS DEFINED.

**AWARD OR BENEFIT LETTER:** NOTIFICATION OF INCOME FORM, WHICH IS COMPLETED BY THE AGENCY OR COMPANY PROVIDING BENEFITS TO TENANTS. SUCH INCOME WOULD INCLUDE SOCIAL SECURITY, PENSION, SUPPLEMENTARY SECURITY INCOME (SSI) OR DISABILITY INCOME.

**CERTIFICATION YEAR:** THE 12-MONTH PERIOD BEGINNING ON THE DATE THE UNIT IS FIRST OCCUPIED AND EACH 12-MONTH PERIOD COMMENCING ON THE SAME DATE THEREAFTER.

**COMPLETION CERTIFICATE:** THE DEVELOPER'S STATEMENT, FURNISHED TO THE AGENCY THAT THE ACQUISITION AND CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF THE PROJECT HAS BEEN SUBSTANTIALLY COMPLETED.

**COMPLETION DATE:** THE SPECIFIED DATE ON WHICH A PROJECT IS COMPLETED AS SET FORTH IN THE COMPLETION CERTIFICATE.

**COMPLIANCE:** THE ACT OF MEETING THE REQUIREMENTS AND CONDITIONS SPECIFIED UNDER THE LAW AND THE LIHTC PROGRAM REQUIREMENTS.

**COMPLIANCE TRAINING CONFERENCE:** A MEETING HELD BY THE AGENCY OR THE MONITORING AGENT WITH THE OWNER/DEVELOPER AND/OR REPRESENTATIVE AND MANAGEMENT STAFF, IF POSSIBLE, WITHIN 45 DAYS OF RECEIPT OF A FINAL TAX CREDIT ALLOCATION TO REVIEW FEDERAL STATE LAW AGENCY POLICIES AND REPORTING PROCEDURES FOR THE LIHTC PROGRAM.

**CURE PERIOD:** A REASONABLE TIME AS DETERMINED BY THE AGENCY FOR AN OWNER TO CORRECT ANY VIOLATIONS WHICH HAVE RESULTED IN DEFAULT UNDER THE LAND USE RESTRICTION AGREEMENT.

**CURRENT ANTICIPATED INCOME:** GROSS INCOME AS OF THE DATE OF OCCUPANCY THAT IS EXPECTED TO BE RECEIVED BY THE TENANT OR TENANTS FOR THE UPCOMING TWELVE MONTHS.

**DEVELOPER:** ANY INDIVIDUAL, ASSOCIATION, CORPORATION, JOINT VENTURE OR PARTNERSHIP, WHICH IS A SPONSOR OF A LIHTC PROJECT.

**DISCREPANCY LETTER:** LETTER SENT BY THE AGENCY OR THE COMPLIANCE MONITORING AGENT TO THE PROJECT MANAGER, MANAGEMENT COMPANY AND/OR OWNER/DEVELOPER LISTING ANY DISCREPANCIES NOTED ON A PARTICULAR QUARTERLY STATUS REPORT (FORM TC-92 MC1) AND ANNUAL REPORT, OR AN ANNUAL MANAGEMENT REVIEW.

**EARNED INCOME TAX CREDIT:** INCOME IN THE FORM OF A TAX CREDIT GIVEN TO FAMILIES WITH BOTH A DEPENDENT AND ANNUAL EMPLOYMENT INCOME OF LESS THAN THE AMOUNT SPECIFIED ON THE EARNED INCOME CREDIT TABLE ISSUED BY THE INTERNAL REVENUE SERVICE. IT IS COUNTED AS INCOME ONLY TO THE EXTENT THAT IT EXCEEDS TAX LIABILITY.

**EFFECTIVE TERM OF VERIFICATION:** NOT TO EXCEED 120 DAYS. A VERIFICATION IS VALID FOR 90 DAYS, AND MAY BE UPDATED ORALLY FOR AN ADDITIONAL 30 DAYS. VERIFICATION MUST BE WITHIN THE EFFECTIVE TERM AT TIME OF TENANT'S INCOME CERTIFICATION.

**ELIGIBLE PERSON:** ONE OR MORE PERSONS OR A FAMILY DETERMINED TO BE OF VERY LOW-INCOME.

**EMPLOYMENT INCOME:** WAGES, SALARIES, TIPS, BONUSES, OVERTIME PAY, OR OTHER COMPENSATION FOR PERSONAL SERVICES FROM A JOB.

**EVENT OF NONCOMPLIANCE:** OCCURS WHEN THE DEVELOPER FAILS IN THE PERFORMANCE OF COMPLIANCE OBLIGATIONS.

**FAIR MARKET VALUE:** AN AMOUNT, WHICH REPRESENTS THE TRUE VALUE AT WHICH PROPERTY, WOULD BE SOLD ON THE OPEN MARKET.

**GROSS INCOME** - SEE ANNUAL HOUSEHOLD INCOME

**HOUSEHOLD:** THE INDIVIDUAL, FAMILY, OR GROUP OF INDIVIDUALS LIVING TOGETHER AS A UNIT.

**IMPUTED INCOME (FROM ASSETS):** THE ESTIMATED EARNING POTENTIAL OF ASSETS HELD BY A TENANT USING THE POTENTIAL EARNING RATE ESTABLISHED BY HUD. THE CURRENT RATE IS PROVIDED BY THE AGENCY IN ITS INSTRUCTIONS TO THE INCOME CERTIFICATION.

**INCOME CERTIFICATION:** DOCUMENT BY WHICH THE TENANT CERTIFIES HIS/HER INCOME, FOR THE PURPOSE OF DETERMINING WHETHER THE TENANT WILL BE OF VERY LOW-INCOME ACCORDING TO THE PROVISIONS OF THE LIHTC PROGRAM.

**INCOME LIMITS:** MAXIMUM INCOMES AS DEFINED BY THE AGENCY FOR PROJECTS GIVING THE MAXIMUM INCOME LIMITS PER UNIT FOR VERY LOW-INCOME (50% OR 60% OF MEDIAN) UNITS. THESE LIMITS WILL BE ADJUSTED PERIODICALLY BY THE AGENCY BASED ON MEDIAN FIGURES PROVIDED BY HUD.

**INELIGIBLE PERSON:** ONE OR MORE PERSONS OR A FAMILY WHO APPLY FOR RESIDENCY IN A SET-ASIDE VERY LOW-INCOME UNIT AND WHOSE COMBINED INCOME EXCEEDS THE CHOSEN INCOME LIMITATION (I.E., 50% OR 60% OF MEDIAN) OR SOMEONE LIVING IN A SET-ASIDE UNIT WHO IS NOT CERTIFIED OR UNDER LEASE.

**LAND USE RESTRICTIVE COVENANTS AGREEMENT:** THE AGREEMENT BETWEEN THE AGENCY AND THE DEVELOPER RESTRICTING THE USE OF THE PROJECT DURING THE TERM OF THE LIHTC COMPLIANCE PERIOD.

**LEASE:** THE LEGAL AGREEMENT BETWEEN THE TENANT AND THE OWNER WHICH DELINEATES THE TERMS AND CONDITIONS OF THE RENTAL OF A UNIT.

**MANAGEMENT COMPANY:** A FIRM SELECTED BY THE OWNER/DEVELOPER TO OVERSEE THE OPERATION AND MANAGEMENT OF THE PROJECT AND WHO ACCEPTS COMPLIANCE RESPONSIBILITY.

**MANAGEMENT PLAN:** PLAN, WHICH DELINEATES POLICIES UNDER WHICH A PROJECT WILL BE MANAGED SUCH AS OCCUPANCY STANDARDS, AND MAINTENANCE PLAN.

**MEDIAN INCOME:** A DETERMINATION MADE THROUGH STATISTICAL METHODS ESTABLISHING A MIDDLE POINT FOR DETERMINING INCOME LIMITS. MEDIAN IS THE AMOUNT THAT DIVIDES THE DISTRIBUTION INTO TWO EQUAL GROUPS: ONE GROUP HAVING INCOME ABOVE THE MEDIAN AND ONE GROUP HAVING INCOME BELOW THE MEDIAN.

**MONITORING AGENT:** THE AGENCY OR ITS DESIGNATE RESPONSIBLE FOR MONITORING THE OWNER/DEVELOPER'S COMPLIANCE WITH THE TERMS AND CONDITIONS SPECIFIED UNDER THE LAW AND THE LIHTC PROGRAM.

**OWNER/DEVELOPER - SEE DEVELOPER**

**PERSONAL PROPERTY CONSIDERED AS ASSETS:** PROPERTY HELD AS AN INVESTMENT (GEMS, JEWELRY, COIN COLLECTIONS, ANTIQUE CARS). NECESSARY ITEMS (SUCH AS CLOTHING, FURNITURE, CARS, ETC.) ARE NOT CONSIDERED AS ASSETS.

**PROJECT:** RENTAL HOUSING DEVELOPMENT RECEIVING A LIHTC ALLOCATION.

**PRHFA:** PUERTO RICO HOUSING FINANCE AUTHORITY (STATE CREDIT AGENCY)

**REAL PROPERTY CONSIDERED AS ASSETS:** OWNERSHIP IN BUILDINGS OR LAND.

**SECTION 8 OF THE U. S. HOUSING ACT OF 1937, AS AMENDED:** REGULATIONS USED IN DEFINING AND DETERMINING INCOME AS REQUIRED UNDER SECTION 103(B) (4) (A) OF THE INTERNAL REVENUE CODE OF 1954, AS AMENDED.

**STUDENT - (FOR PURPOSES OF THE INCOME CERTIFICATION):** ANY INDIVIDUAL WHO HAS BEEN, OR WILL BE, A FULL-TIME STUDENT AT AN EDUCATIONAL INSTITUTION WITH REGULAR FACILITIES AND STUDENTS, OTHER THAN CORRESPONDENCE SCHOOL, DURING FIVE MONTHS OF THE YEAR.

**SUBSTANTIAL REHABILITATION PROJECTS:** FOR PURPOSES OF THE LIHTC PROGRAM, PROJECTS IN WHICH THE GREATER OF 10 PERCENT OF THE ADJUSTED BASIS OF THE BUILDING OR \$3,000 PER LOW-INCOME SET-ASIDE UNITS IS EXPENDED FOR REHABILITATION PURPOSES.

**TENANT:** OCCUPANT OF A UNIT TO WHOM THE UNIT IS LEASED.

**TENANT FILES:** COMPLETE AND ACCURATE RECORDS PERTAINING TO EACH DWELLING UNIT, CONTAINING THE APPLICATION FOR EACH TENANT, VERIFICATION OF INCOME OF EACH TENANT, INFORMATION AS TO ASSETS, AN INCOME CERTIFICATION, AND LEASE. ANY AUTHORIZED REPRESENTATIVE OF THE AGENCY, THE COMPLIANCE MONITORING AGENT, THE DEPARTMENT OF TREASURY OR THE INTERNAL REVENUE SERVICE MAY BE PERMITTED ACCESS TO THESE FILES.

**VERIFICATION:** INFORMATION FROM A THIRD PARTY WHICH IS COLLECTED IN ORDER TO CORROBORATE THE ACCURACY OF INFORMATION CONCERNING INCOME PROVIDED BY APPLICANTS TO A PROJECT.

**VERIFICATION REQUEST FORM:** THE FORM USED BY MANAGEMENT TO REQUEST VERIFICATIONS OF INCOME FROM THE SOURCE OF THE INCOME. THE FORM MUST STATE THE PURPOSE OF THE REQUEST, INCLUDE A RELEASE STATEMENT BY THE APPLICANT, AND REQUEST THE FREQUENCY AND AMOUNT OF PAY.

---

\* SOURCE: HOUSING TAX CREDITS 1991: STATE AGENCY ADMINISTRATION AND THE PRIVATE AND NON-PROFIT SECTORS, PART vi, "STATE AGENCY MONITORING", PAGES vi-13, THRU vi-16, MARCH 20-21, 1991.

**Application and Terms and Conditions:**

**Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009 under the**

**AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**



**U.S. Treasury Department  
Office of the Fiscal Assistant Secretary**

**May 2009**

**Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009  
under the  
American Recovery and Reinvestment Act Of 2009**

Under Section 1602 of the American Recovery and Reinvestment Tax Act of 2009 (Section 1602), State housing credit agencies are eligible to receive Section 1602 Grants to States for Low-income Housing Projects in Lieu of Low-income Housing Credits under section 42 of the Internal Revenue Code (the Code) for 2009. In doing so, the State housing credit agency is electing to take a portion of its 2009 State housing credit ceiling in the form of grant amounts and agreeing to the terms and conditions applicable to the Section 1602 program.

This application package contains the application form and Terms and Conditions for the Section 1602 program. The United States Department of the Treasury (Treasury) accepts applications from State housing credit agencies for the first portion of the funds as explained in the Submission Requirements section below, May through June 2009. Treasury welcomes questions about the program and the application process at [1602Questions@do.treas.gov](mailto:1602Questions@do.treas.gov). The email address for submitting an application is given below under the Submission Requirements section.

Background

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), an omnibus bill containing several parts including the American Recovery and Reinvestment Tax Act of 2009. The purpose of the Recovery Act is to preserve and create jobs and promote economic recovery in the near term and to invest in infrastructure that will provide long-term economic benefits.

Section 1602 of the American Recovery and Reinvestment Tax Act appropriates funds for grants to States to finance construction or acquisition and rehabilitation of qualified low-income building for low-income housing in lieu of low-income housing tax credits. Treasury will award Section 1602 grants to State housing credit agencies in an amount equal to their low-income housing grant election amount.

The grant election amount is the amount requested by the State which does not exceed 85 percent of:

(1) 10 times 100 percent of (a) the unused State housing credit ceiling (if any) of the State for calendar year 2008 and (b) the amount of State housing credit ceiling returned in 2009

Plus

(2) 10 times 40 percent of (c) the greater of \$2.30 multiplied by the State population or \$2,665,000 and (d) unused housing credit carryover allocated to the State in the 2009 National Pool

Additional housing credit dollar amounts for the Gulf Opportunity Zone (Go Zone) and the Midwestern and Hurricane Ike Disaster Areas (Disaster Areas), including amounts returned from additional housing credit amounts previously allocated in the Go Zone or Disaster Areas, do not apply to Section 1602.

The State housing credit agency receiving the grant uses the funds to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income buildings with or without an allocation under Section 42 of the Code. The subawards are subject to the same requirements as low-income housing credits under Section 42 of the Code. Subawardees must demonstrate a good faith effort to obtain investment commitments utilizing credits before the State agency may make an award. The State housing credit agency may use the funds to make subawards through December 31, 2010. Any grant funds not used to make subawards before January 1, 2011 must be returned to the Treasury on January 1, 2011. Any interest earned in excess of \$200 on grant funds held by the state housing credit agency before a subaward is made and that is not used for subawards before January 1, 2011 must be returned to the Treasury.

It is expected that the Section 1602 program will temporarily fill the gap left by a diminished investor demand for low-income housing tax credits. The Section 1602 program will allow projects for construction or acquisition and rehabilitation of low-income housing to continue where developers are unable to proceed due to lack of investors. In this way, the near term goal of creating and retaining jobs is achieved, as well as the long-term benefit of increasing the affordable housing supply.

#### Submission Requirements for State Housing Credit Agencies

A designated State housing credit agency, interested in accepting all or a portion of the Section 1602 grant amount, may submit the attached application and Terms and Conditions during the period May-June 2009. A designated State housing credit agency is one that files Form 8610, "Annual Low-Income Housing credit Agencies Report," for all agencies within the State. The List of Designated Agencies is provided below.

In addition to applications submitted in the period May-June 2009 applicants will be able to submit subsequent applications through 2010. Treasury is receiving applications from State housing credit agencies in May-June 2009 in order to respond to the immediate need caused by a diminished demand for low-income housing tax credits. However, for purposes of the grant amount calculation, only two of the four factors that comprise the 2009 State Housing Credit Ceiling are known at this time: Factor (a) the unused State

housing credit ceiling (if any) of the State for calendar year 2008 and factor (c) the greater of \$2.30 multiplied by the State population or \$2,665,000.

The other two factors are not fully known at this time: Factor (b) the amount of State housing credit ceiling returned in 2009 and factor (d) the unused housing credit carryover allocated to the State from a National Pool of unused credits. As factors (b) and (d) become known, Treasury expects to receive subsequent applications from the designated State housing credit agencies. Moreover, as conditions change throughout the year, the designated State housing credit agency may request additional funds provided the total of their requests does not exceed the maximum grant election amount prescribed by Section 1602.

To submit an application, the designated State housing credit agency sends a completed application electronically to: [1602Apply@do.treas.gov](mailto:1602Apply@do.treas.gov). A complete application includes the filled-in and signed application form and the signed Terms and Conditions.

Treasury will provide grant funds only to those designated State housing credit agencies that provide complete applications. Treasury will review each application for eligibility and completeness within 10 working days of receipt. Treasury will notify the designated State housing credit agency if its application is found to be incomplete and will provide instructions to remedy the deficiency.

The application form requests, among other identifying data elements, the designated State housing credit agency's Data Universal Numbering System (DUNS) number from Dun and Bradstreet. If the agency does not already have a DUNS number, it may request one at no cost by calling the dedicated toll-free DUNS Number request line at 1-866-705-5711. An agency must also register with the Central Contractor Registration (CCR). To register, go to [www.ccr.gov/startregistration.aspx](http://www.ccr.gov/startregistration.aspx).

#### Grant Agreements

After Treasury determines that an application is complete, it will send a grant agreement to the designated State housing credit agency. The grant agreement notifies the grantee (i.e., the designated State housing credit agency) that the grant has been awarded and incorporates the information contained in the designated State housing credit agency's completed application form and the Terms and Conditions. Treasury will then make funds available for the grantee to draw from as needed to make subawards.

If Treasury determines that the grantee has a history of unsatisfactory performance, is not financially stable, or has a management system that does not meet management standards set forth in Office of Management and Budget (OMB) Circular A-102, it may attach special conditions to the grant agreement.

#### Amendments to the Grant Agreements

When a designated State housing credit agency requests additional grant funds (as described under the Submission Requirements section above) and Treasury approves the request, Treasury will amend the grant award accordingly.

**Application for Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009**

1. Applicant Information – Enter information about the designated State housing credit agency.

Agency name		Street address	
DUNS number		City	
EIN		State & zip code	

2. Contact Person – Enter information about the person to be contacted about this application.

Name		Organizational affiliation	
Phone & fax		E-mail address	

3. Initial Grant Amount Requested from Factors (a) and (c). Complete the chart below for an application submitted for the first time in April-June 2009. Factor (a) is the unused State housing credit ceiling (if any) of the State for calendar year 2008. The maximum amount to be entered in the first line below is the amount of the unused credit ceiling for 2008 times 10 times .85. The maximum amount to be entered in the second line below is the amount listed as Factor (c) in the List of Designated Agencies in this application package. Enter the amount of grant funds requested on the fourth line.

Maximum amount of Factor (a)	
Maximum amount of Factor (c) from List	
Total of Factors (a) and (c)	
Initial grant amount requested of Factors (a) and (c)	

4. Grant Amount Requested from Factor (b): Returned 2009 Ceiling – Complete the chart below for an application submitted after the returned 2009 amount is known in whole or in part. The maximum is the amount of State housing credit ceiling returned in 2009 times 10 times .85.

Maximum amount of Factor (b)	
Grant amount requested of Factor (b)	

5. Grant Amount Requested from Factor (d): 2009 National Pool Allocation – Complete the chart below for an application submitted after the National Pool allocation amount is known. The maximum is the National Pool allocation amount times .4 times 10 times .85

Maximum amount of Factor (d)	
Grant amount requested of Factor (d)	

6. Subsequent Grant Amount Requested – Complete the chart below for an application submitted when the grantee did not request the maximum amount from Factors (a), (b), (c), or (d).

Subsequent grant amount requested of Factor (a)	
Subsequent grant amount requested of Factor (b)	
Subsequent grant amount requested of Factor (c)	
Subsequent grant amount requested of Factor (d)	

Treasury use only		

7. Signature of Authorized Representative - Under penalties of perjury, I declare that I have examined this application and to the best of my knowledge and belief, it is true, correct, and complete. I declare that I am an authorized official for the designated State housing credit agency authorized to submit this application on behalf of agency. Further, the agency agrees the information in this application can be disclosed to the Internal Revenue Service.

Name		Title	
Phone		Email	
Signature		Date signed	

### List of Designated Agencies

Use this list to fill in information in the second line of section 3 of the Application Form – the maximum amount of Factor (c). Factor (c) is based on the greater of \$2.30 multiplied by the State population or \$2,665,000. The calculations required by Section 1602 have already been applied to the amounts listed below. It is not necessary to make any further calculations.

This list contains the names of eligible applicants for the Section 1602 grant funds. These State housing credit agencies are eligible because they file Form 8610 for their State. If awarded Section 1602 grant funds, these agencies may enter into agreements with other housing credit agencies within their State to receive grant funds and carry out the Section 1602 program in the same manner as the designated State housing credit agency.

The list contains only one of the four factors in the maximum grant amount calculation. Factor (a) is based on the unused State housing credit ceiling (if any) of the State for calendar year 2008 and should be calculated as instructed on the Application Form. Factor (b) is based on the amount of State housing credit ceiling returned in 2009 and factor (d) is based on the unused housing credit carryover allocated to the State in the 2009 National Pool allocation. When the factors (b) and (d) become known, a State housing credit agency may request additional grant funds. As Treasury approves the requests, Treasury will amend the grant award accordingly.

<u>Area</u>	<u>Designated State Housing Credit Agency</u>	<u>Factor (c)</u>
AL	Alabama Housing Finance Authority	\$36,456,058
AK	Alaska Housing Finance Corporation	\$9,061,000
AQ	[American Samoa – no agency designated]	\$9,061,000
AZ	Arizona Department of Housing	\$50,831,408
AR	Arkansas Development Finance Authority	\$22,329,150
CA	California Tax Credit Allocation Committee	\$287,437,128
CO	Colorado Housing and Finance Authority	\$38,626,546
CT	Connecticut Housing Finance Authority	\$27,379,791
DE	Delaware State Housing Authority	\$9,061,000
DC	DC Department Housing & Community Development	\$9,061,000
FL	Florida Housing Finance Corporation	\$143,327,619
GA	Georgia Housing and Finance Authority	\$75,742,518
GU	Guam Housing and Urban Renewal Authority	\$9,061,000
HA	Hawaii Housing Finance and Development Corporation	\$10,073,708
ID	Idaho Housing and Finance Association	\$11,916,241
IL	Illinois Housing Development Authority	\$100,890,223
IN	IN Housing and Community Development Authority	\$49,866,513
IA	Iowa Finance Authority	\$23,479,980
KS	Kansas Housing Resources Corporation	\$21,912,688
KY	Kentucky Housing Corporation	\$33,385,496
LA	Louisiana Housing Finance Agency	\$34,492,425
ME	Maine State Housing Authority	\$10,294,686
MD	MD Community Development Administration	\$44,054,729
MA	MA Department of Housing & Community Development	\$50,814,102
MI	Michigan State Housing Development Authority	\$78,226,760
MN	Minnesota Housing Finance Agency	\$40,823,473
MS	Mississippi Home Corporation	\$22,979,993
MO	Missouri Housing Development Commission	\$46,228,751
MT	Montana Board of Housing	\$9,061,000
NE	Nebraska Investment Finance Authority	\$13,946,438
NV	Nevada Housing Division	\$20,333,306
NH	New Hampshire Housing Finance Authority	\$10,289,626
NJ	New Jersey Housing and Mortgage Finance Agency	\$67,898,409

NM	New Mexico Mortgage Finance Authority	\$15,517,664
NY	NY State Division of Housing & Community Renewal	\$152,414,123
NC	North Carolina Housing Finance Agency	\$72,119,277
ND	North Dakota Housing Finance Agency	\$9,061,000
MP	[Northern Mariana Islands – no agency designated]	\$9,061,000
OH	Ohio Housing Finance Agency	\$89,819,816
OK	Oklahoma Housing Finance Agency	\$28,483,263
OR	Oregon Housing and Community Services	\$29,638,269
PA	Pennsylvania Housing Finance Agency	\$97,345,542
PR	Puerto Rico Housing Finance Authority	\$30,920,569
RI	Rhode Island Housing and Mortgage Finance Agency	\$9,061,000
SC	SC State Housing Finance & Development Authority	\$35,032,036
SD	South Dakota Housing Development Authority	\$9,061,000
TN	Tennessee Housing Development Agency	\$48,600,424
TX	Texas Department of Housing and Community Affairs	\$190,236,937
VI	Virgin Islands Housing Finance Authority	\$9,061,000
UT	Utah Housing Corporation	\$21,398,836
VT	Vermont Housing Finance Agency	\$9,061,000
VA	Virginia Housing Development Authority	\$60,754,276
WA	Washington State Housing Finance Commission	\$51,214,932
WV	West Virginia Housing Development Fund	\$14,189,140
WI	Wisconsin Housing & Economic Development Authority	\$44,010,702
WY	Wyoming Community Development Authority	\$9,061,000

## **Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009**

### **GRANTEE TERMS AND CONDITIONS**

#### **1. Authority**

a. Section 1602 of the American Recovery and Reinvestment Tax Act of 2009 (Act) authorizes the United States Department of the Treasury (Treasury) to issue grants to State housing credit agencies in lieu of low-income housing credits.

b. The grantee has authority to receive Section 1602 grants.

#### **2. Grantee Eligibility**

a. The grantee is the housing credit agency for one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or the Northern Mariana Islands which files Form 8610, Annual Low-Income Housing Credit Agencies Report with the Internal Revenue Service.

b. The grantee shall be the sole recipient of the Section 1602 funds in the State and must coordinate with other housing credit agencies within the State (including any constitutional home rule cities) to determine how much of their 2009 credit ceiling the other agencies would elect to take in the form of a grant election amount and will provide to those agencies their proportionate share.

c. The grantee shall enter into written agreement with any other participating housing credit agencies within the State, binding the participating agency to comply with the terms and conditions applicable to the grantee or designated state agency in the sections 3 through 10 of these terms and conditions.

d. The grantee is the party responsible to Treasury for all grant matters.

#### **3. Eligible Projects**

a. The grantee shall only select projects for subawards which are qualified low-income buildings under Section 42 of the Internal Revenue Code (the Code).

b. The grantee must ensure that the subaward is consistent with the requirement of section 42(m)(2) of the Code that the subaward made for a project [building(s)] does not exceed the amount necessary to ensure the financial feasibility of the project and its viability as a project throughout the credit period.

#### **4. Use of Grant Funds**

a. The grantee is receiving an initial grant election amount. The grantee may apply for additional grant funds through 2010. If the Treasury Department approves the request, the Treasury Department will amend the award to increase the grant amount.

- b. The grantee shall use all grant amounts to make subawards, or for transfer to other agencies to make subawards. The subawards shall be in the form of cash assistance and are not required to be repaid unless there is a recapture event with respect to the qualified low-income building. The grantee shall not use grant election amounts for any other purpose, including administrative costs. The grantee may collect reasonable fees from a subawardee to cover expenses associated with performance of its duties under Section 1602(c)(3) of the Act, Compliance and Asset Management. Reasonable fees are amounts customarily charged for the same or similar services and in no event may exceed costs.
- c. The grantee may disburse grant funds to subawardees in 2009 and 2010. No grant funds may be disbursed to subawardees after December 31, 2010.
- d. The subawards shall finance the construction or acquisition and rehabilitation of qualified low-income buildings in accordance with Section 1602(c) of the Act.
- e. The grantee shall make subawards in the same manner and shall be subject to the same limitations as an allocation of housing credit dollar amount allocated under Section 42(m) of the Code, except for the additional determinations required in subsection g of this section.
- f. Prior to making any subaward, the grantee shall establish a written process for making a determination that applicants for subawards have demonstrated a good faith effort to obtain investment commitments for tax credits in lieu of a subaward.
- g. Prior to making any subaward, the grantee shall make a determination that the applicant for the subaward has demonstrated a good faith effort to obtain investment commitments for tax credits in lieu of the subaward.

#### **5. Written Agreements and Disbursements to Subawardees**

- a. The grantee shall execute a legally binding written agreement with the entity receiving a subaward. The grantee and the subawardee must execute the written agreement before any Section 1602 funds are disbursed to the subawardee.
- b. The written agreement must set forth (explicitly, or incorporated by reference) all Section 1602 program requirements, including the requirements of Section 42 of the Code, applicable to the subaward.
- c. The written agreement shall impose conditions or restrictions, including a requirement providing for recapture, so as to assure that the qualified low-income building remains a qualified low-income building during the 15-year compliance period. The written agreement may include the extended low-income housing commitment under Section 42(h)(6)(B) of the Code.
- d. The written agreement shall require the subawardee to provide sufficient information to the grantee to report on the use of grant funds as required by section 8 of these terms and conditions.

**6. Asset Management**

a. The grantee shall perform asset management functions so as to ensure compliance with Section 42 of the Code and the regulations thereunder (including Title 26 Code of Federal Regulations section 1.42.9), and the long-term viability of the buildings funded by a subaward under the Act in accordance with Section 1602(c)(3) of the Act.

**7. Compliance with the 2009 State Housing Credit Ceiling**

a. The grantee shall track (1) the credit equivalent of all grant election amounts to ensure that the 2009 State Housing Credit Ceiling is appropriately reduced as required by section 42(i)(9)(A) of the Code and (2) total grant election amounts to ensure that these amounts do not exceed the amount authorized by section 1602(b).

b. The grantee shall track the total of credits allocated under Section 42(h)(1) of the Code.

c. The grantee shall ensure that the credit equivalent of all elected grant amounts through 2010, plus the credits allocated under Section 42(h)(1) of the Code during 2009, do not exceed the State housing credit ceiling for 2009.

**8. Reporting**

a. The grantee shall provide periodic reports as required by Treasury. A financial status report and a project performance report is required on a quarterly basis, due 10 working days after the end of the quarter. Quarters end on March 31, June 30, September 30, and December 31.

b. The performance report has the following elements on each project receiving a subaward during the quarter:

- Name of recipient entity
- Name of project
- Brief description of project
- Location of project: city/county, State, zip code
- Number of construction jobs created
- Number of construction jobs retained
- Number of non-construction jobs created
- Number of non-construction jobs retained
- Number of total housing units newly constructed
- Number of total housing units rehabilitated
- Number of low-income housing units newly constructed
- Number of low-income housing units rehabilitated

c. The grantee shall submit any other reports that Treasury deems necessary to comply with Section 1602 of the Act and American Recovery and Reinvestment Act guidance.

**9. Recapture**

- a. The grantee shall include in any subaward a requirement providing for recapture to assure that the building remains a qualified low-income building during the 15-year compliance period.
- b. The grantee shall notify subawardees that any amount subject to recapture becomes a debt owed to the United States payable to the General Fund of the Treasury and enforceable by all available means against any assets of the recipient entity.

#### **10. Financial Management**

- a. The grantee must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the designated State housing credit agency must be sufficient to permit preparation of required reports and permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes. Effective control and accountability must be maintained for all grant funds.
- b. The grantee shall open a new account (Grant Account) with a financial institution for the purpose of receiving grant election amounts, for making distributions of grant election amounts to other agencies within the State, and for making subawards.
- c. The grantee must maintain program, financial, and accounting records sufficient to demonstrate that grant funds were used in accordance with the Section 1602 program and these terms and conditions. The Treasury as the awarding office, the cognizant Treasury inspector general, and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to facilities and to any pertinent books, documents, papers, or other records (electronic and otherwise) of grantees, which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.
- d. The grantee shall minimize the time between the receipt of grant funds and the disbursement of those funds to subawardees. Federal funds cannot be drawn by the grantee from the U.S. Treasury in advance of need. The grantee shall not place in escrow or advance lump sums to project owners. Once funds are drawn from the grantee's U.S. Treasury account, they must be expended as a subaward by the grantee within three days, or if grant funds are transferred by the grantee to another agency, as a subaward by that agency within three days following the date of transfer by the grantee.
- e. The grantee shall promptly return to its Grant Account any subawards returned to the designated State housing credit agency from subawardees and shall expend returned amounts as subawards before additional grant amounts are drawn from the Treasury.

#### **11. Disallowance, Suspension, and Termination**

- a. If the grantee materially fails to comply with any term of the award, whether stated in a Federal statute or regulation, the terms and conditions herein, in a State plan or application, a notice of award, or elsewhere, Treasury may take one or more of the following actions, as appropriate in the circumstances:

- Temporarily halt cash payments pending correction of the deficiency by the grantee
- Disallow all or part of the cost of the activity or action not in compliance
- Wholly or partly suspend or terminate the current award
- Withhold further awards for the program
- Take other remedies that may be legally available

In taking an enforcement action, Treasury will provide the grantee the opportunity for a hearing, appeal, or other administrative proceeding to which the grantee is entitled under any statute or regulation applicable to the action involved.

b. The grantee must immediately report any indication of fraud, waste, abuse, or potentially criminal activity pertaining to grant funds to Treasury and the cognizant Treasury inspector general.

### **12. Return of Unused Grant Funds**

a. The grantee shall return to the Treasury any grant election amounts not disbursed to subawardees before January 1, 2011 including any interest earned in excess of \$200 on grant funds held by the State housing credit agency before a subaward is made and that is not used for subawards before January 1, 2011.

### **Signature**

Under penalties of perjury, I declare that I have examined the terms and conditions in this application and that the designated State housing credit agency agrees to and will ensure that these terms and conditions will be followed. I declare that I am an authorized official of the designated State housing credit agency and am authorized to bind the State housing credit agency to these Terms and Conditions.

Name		Title	
Phone		Email	
Signature		Date signed	

**ANNEX R: TAX CREDIT ASSISTANCE PROGRAM &  
TAX CREDIT EXCHANGE PROGRAM**

**I. TAX CREDIT ASSISTANCE PROGRAM (TCAP) - IMPLEMENTATION PLAN**

**A. Description of Competitive Selection Criteria**

1. PRHFA will distribute these funds competitively according to the dispositions of the 2009 QAP.
2. Projects expected to be completed by February 16, 2012, pursuant to the 2009 QAP, and that received other HOME funds will have priority.
3. Selection criteria and weightings appear on the attached 2009 QAP. The QAP is also posted on <http://www.bgfpr.com/subsidiaries/housing-finance-authority.html>.
4. Eligible projects include rental housing developments that have been awarded LIHTCs in 2007, 2008, or 2009. HUD will award TCAP grants to facilitate development of projects that received or will receive LIHTC awards between October 1, 2006, and September 30, 2009.
5. Projects awarded LIHTCs that may execute bond financing are eligible to receive TCAP funds.
6. For TCAP purposes the term "Award of LIHTCs" means the date of public notice of the funding decision for a project.
7. The TCAP written agreement cannot be executed until the environmental clearance for the project is final and a Request for Release of Funds (RROF) is approved.
8. Priority will be given to projects under construction and "shovel ready" (those able to begin construction once the TCAP written agreement is signed).
9. Applicants for sub-awards (who also receive TCEP funds) must demonstrate to PRHFA good faith efforts made to obtain an investment commitment for tax credits by:
  - a. Detailed narrative statement of the efforts made to acquire a tax credit investment commitment for the project.
  - b. Presentation of copies of all communications (e-mails and letters) exchanged with syndicators/investors or potential investors, including contact names, phone numbers, documentation exchange as a result of the communications.
  - c. Should written communications not be available a sworn statement explaining steps taken and institutions or individuals contacted must be presented with the application.
  - d. PRHFA reserves its right to confirm any provided information.
  - e. Misrepresentations will draw maximum penalties under applicable regulations.

**B. Commitment and Expenditure Deadlines**

1. PRHFA must commit 75% of TCAP funds by February 16, 2010.
2. Property owners must expend 75% of TCAP funds by February 16, 2011.
3. Property owners must expend 100% of TCAP funds by February 16, 2012.
4. TCAP funds may be used in conjunction with the Tax Credit Exchange Program (TCEP).
5. TCAP awards must meet LIHTC's rent, income, use and compliance monitoring limitations, as well as any other existing or future regulatory requirements.
6. PRHFA will commit 100% of TCAP funds by September 30, 2009.
  - a. Allocations will be based on proportionate equity gaps determined for each submitted application, once the project is evaluated as per the QAP requirements, with updated sources and uses budget and any additional financial information PRHFA may require.
  - b. All TCAP funds will be awarded to projects that, as per the dispositions of item I-A-4 above, received a LIHTC award between October 1, 2006 and September 30, 2009.
7. Each project may receive a combination of TCAP and TCEP funds with credit allocations. Depending on each project's feasibility and compliance with the guidelines, one project could, for example, receive TCAP, TCEP and credits, whereas another project may only receive TCEP and credits.
8. Funds will be disbursed on a draw basis. No disbursements are allowed unless the TCAP written agreement is signed and dated by both parties (PRHFA and project owner).
9. Once funds are deposited in PRHFA's bank accounts (*i.e.*, disbursed from PRHFA's US Treasury account), the project owner has three days to expend them in an eligible TCAP cost. Project owners must expend all program income (*e.g.*, principal and income from a loan made with TCAP funds, other income or fees received from project owners in connection with TCAP funds, interest PRHFA earns on program income prior to its disposition) before additional appropriated TCAP funds are drawn from the US Treasury.
10. Accounting of disbursements and projects expenditures will be ongoing to ascertain that funds are expended according to the programs' deadlines. That accounting will help identify those projects that do not comply with deadlines. PRHFA will track and report to HUD regularly in its Integrated Disbursement and Information System (IDIS) PRHFA's funds commitments and expending. TCAP awardees will commit to a development funding plan, acceptable to PRHFA confirming that:
  - a. Development of the qualified rental property will be constructed and placed in service in accordance with the February 16, 2012 deadline established in the Act
  - b. The expenditure of TCAP funds will meet the requirement that 75% of TCAP funding by February 16, 2011 and 100% by February 16, 2012.
  - c. Owners will be required to file a monthly report providing confirmation of progress toward meeting these expenditure deadlines.
11. The TCAP written agreements will specify that projects not complying will return funds, if any, or may not receive any additional funding under TCAP and TCEP.
12. The TCAP written agreements will set forth all TCAP program and crosscutting federal grant requirements. These will be enforceable through the recordation of

a restriction binding on all owners and successors. In Puerto Rico it is achieved with a public deed recorded at an appropriate Property Registry.

13. Depending on each project's percentage of completion and an assessment of whether any project delays will affect meeting TCAP deadlines, project owners will be responsible for any equity gap they may face, unless circumstances then prevailing merit any reconsideration of PRHFA's determination.
14. Recovered funds will be redistributed to the next highest scoring, qualifying project that did not receive TCAP funds or a project that TCAP funds and has met all progress requirement and needs additional funds. This could include an existing or new projects per the QAP, the guidelines and any future regulation. HUD will recapture funds not expended by February 16, 2012.
15. TCAP funds cannot be used for administrative costs of PRHFA, including the cost of operating the program or monitoring compliance, and use of funds for swimming pools.
16. Costs related to asset management functions that PRHFA performs are administrative costs, thus not eligible to be paid with TCAP funds.
17. Project owners may retain/hire specialists to help them comply with federal grant requirements. Those costs are eligible TCAP costs. PRHFA will encourage those efforts.

### **C. Recovery Act Accountability and Transparency Requirements**

1. Selection criteria and weightings appear on the attached 2009 QAP. The QAP is also posted on <http://www.bgfpr.com/subsidiaries/housing-finance-authority.html>.
2. PRHFA celebrated a public hearing on May 11, 2009 (notice published May 7, 2009) to discuss the 2009 Qualified Allocation Plan (QAP) draft and ARRA's impact on new and existing projects.
3. Report to HUD, 10 days after the end of each calendar quarter, beginning June 10, 2009 (reports will be available in the website):
  - a. Total amount of TCAP funds received.
  - b. Amount of TCAP funds expended or obligated to projects or activities, and unobligated balances.
  - c. List of projects or activities that expended or obligated TCAP funds:
    - i. Name of project.
    - ii. Description of project.
    - iii. Evaluation of completion status of project.
    - iv. Estimate of number of jobs created.
    - v. Estimate of number of jobs retained.
4. Since TCAP funds are federal financial assistance, TCAP recipients will be subject to:
  - a. Fair Housing Act
    - i. 42 U.S.C. 3601-19.
    - ii. 24 CFR Part 100: implementing regulations.
    - iii. 24 CFR Part 107: Equal Opportunity in Housing.
  - b. Title VI of Civil Rights Act of 1975
    - i. 42 U.S.C. 2000(d): Nondiscrimination in Federally Assisted Programs.
    - ii. 24 CFR Part 1: implementing regulations.

- c. Age Discrimination Act of 1975
  - i. 42 U.S.C. 6101-07.
  - ii. 24 CFR Part 146: Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance.
- d. Affirmative Fair Housing Marketing Plan: PRHFA will work in conjunction with the Puerto Rico Department of Housing and municipalities to:
  - i. Inform the public, owners and potential tenants about Federal fair housing law and PRHFA's affirmative marketing policy.
  - ii. Establish requirements and practices each owner must follow to carry out PRHFA's requisites.
  - iii. Implement and help owners with procedures to inform and solicit applications from individuals in the housing market not likely to apply for housing without special outreach, such as:
    - 1) Translation of marketing material for English deficient persons.
    - 2) Placement of translated marketing material in minority owned media.
    - 3) Meaningful access concerning the project (*i.e.*, translations of application procedures, tenancy and other project amenities).
  - iv. Create records that describe what PRHFA and owners did to affirmatively market units and records to assess the results of those actions.
  - v. Annually assess the success of affirmative marketing steps and what corrective measures will take place if these marketing requirements are not met.
- e. Rehabilitation Act of 1973 – Section 504
  - i. 29 U.S.C. 794.
  - ii. 24 CFR Part 8: Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development.
- f. National Environmental Policy Act and Related Laws
  - i. Environmental review responsibilities.
  - ii. 24 CFR Part 58: implementing regulations.
- g. Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992 with implementing regulations at 24 CFR Part 35.
- h. Davis-Bacon Act of 1931: Prevailing Wages.
- i. Anti-Lobbying Restrictions
  - i. 31 U.S.C. 1352.
  - ii. 24 CFR Part 87: New Restrictions on Lobbying.
- j. Drug-Free Workplace Act of 1988
  - i. 41 U.S.C. 701.
  - ii. 24 CFR Part 21: Government-Wide Requirements for Drug-Free Workplace (Grants).
- k. OMB Regulations and Circulars applicable to PRHFA
  - i. 24 CFR Part 85: Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.

- ii. 2 CFR Part 222: Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87).
- iii. OMB Circular A-133: Audits of Institutions of Higher Education and Other Nonprofit Institutions.
- iv. 2 CFR Part 2424: Non-procurement Debarment and Suspension.

## II. TAX CREDIT EXCHANGE PROGRAM (TCEP)

### A. Eligible Projects

1. Eligible recipients include qualified low income projects as defined in Section 42 with or without a tax credit allocation.
2. Priority will be given to projects under construction and “shovel ready” to begin construction.
3. TCAP funds may be used in conjunction with TCEP funds, at PRHFA’s discretion, for projects that received or will simultaneously with TCAP funding receive a LIHTC award between October 1, 2006 and September 30, 2009 (federal fiscal years 2007, 2008, or 2009).

**B. Timing:** Any TCEP funds not used to make sub-awards before January 1, 2011 must be returned to the Treasury on January 1, 2011.

### C. Restrictions

1. Sub-awards shall be subject to the same income limits, rent limits, use restrictions and compliance monitoring of any award of LIHTCs.
2. The TCEP agreements will include provisions for recapture, so as to assure that the qualified low-income building remains a qualified low-income building during the 15-year compliance period
3. Any amount subject to recapture becomes debt owed to the United States payable to the General Fund of the Treasury and enforceable by all available means against any assets of the recipient entity
4. Treasury might issue more specific guidelines regarding the TCEP

### D. Fund Allocations

1. Funds will be allocated based on a project’s evaluation, underwriting, available resources, and according to the QAP guidelines.
2. Applicants for sub-awards must demonstrate to PRHFA the good faith efforts to obtain an investment commitment for tax credits by:
  - a. Detailed narrative statement of the efforts made to acquire a tax credit investment commitment for the project;
  - b. Presentation of copies of all the communications (e-mails and letters) exchanged with syndicators/investors or potential investors;
  - c. If written communications are not available, a sworn statement must be presented with the application.

- d. PRHFA will reserve its right to confirm the provided information directly with the cited companies.
3. PRHFA will have two rounds of credit allocations in 2009.
  - a. PRHFA will commit 75% of TCAP and TCEP funds in those two rounds.
  - b. Allocations will be based on proportionate equity gaps determined for each submitted application, once the project is evaluated as per the QAP requirements.
  - c. Approximately 50% of that 75% will be allocated in each round.
4. There will also be two additional rounds in 2010. The remaining 25% of TCAP and TCEP funds will be allocated in those rounds.
5. Each project may receive a combination of TCAP and TCEP funds with credit allocations. Depending on each project's feasibility and compliance with the guidelines, one project could, for example, receive TCAP, TCEP and credits, whereas another project may only receive TCEP and credits.
6. Funds will be disbursed on a draw basis.
7. Accounting of disbursements and projects expenditures will be ongoing to ascertain that funds are expended according to the programs' deadlines. That accounting will help identify those projects that do not comply with deadlines.
8. The agreements that the projects will sign with PRHFA will specify that projects not complying will return funds, if any, or may not receive any additional funding under TCAP and TCEP.
9. Depending on each project's percentage of completion, developers will be responsible for any equity gap they may face, unless circumstances then prevailing merit any reconsideration of PRHFA's determination.
10. Recovered funds will be redistributed to existing or new projects per the QAP, the guidelines and any future regulation.