

LOW-INCOME HOUSING TAX CREDIT PROGRAM
2002-2003 QUALIFIED ALLOCATION PLAN

I. Introduction

The Low-Income Housing Tax Credit Program (LIHTC), created by the Tax Reform Act of 1986, is intended to encourage the construction or rehabilitation of low-income rental units. The regulations which govern this Program are contained in Section 42 of the Internal Revenue Code. This Program provides Federal tax credits to qualified project owners who ~~have agreed~~ to maintain all or a portion of a project's units for low-income individuals or families. The State of Hawaii ~~also~~ created a State Low-Income Housing Tax Credit which is equal to thirty percent (30%) of the Federal tax credit allocated to a project. The Housing and Community Development Corporation of Hawaii (HCDCH) has been designated as the agency responsible for the administration of ~~the both~~ Federal and State Low-Income Housing Tax Credit Programs for the State of Hawaii.

In accordance with the Omnibus Spending Bill of 2000, Omnibus Budget Reconciliation Act of 1989 and the Budget Reconciliation Bill of 1990, the HCDCH ~~has~~ developed this "Qualified Allocation Plan" which sets forth (1) the criteria to evaluate and allocate tax credits to projects which best meet the housing needs of the State, and (2) the procedure to monitor for compliance with the provisions of the Low-Income Housing Tax Credit Program.

The allocation plan will utilize a point system to rank projects based upon the evaluation criteria established. The ranking of projects, along with all other relevant data, will determine the priorities to be followed by the HCDCH in allocating tax credits to the projects under consideration. The scores derived from the point system will be a component of the overall evaluation, and not the sole determining factor for the awarding of tax credits. In addition to the scores derived, the HCDCH will review all relevant data required in the application which include, but are not limited to, the applicant's financial statements, experience in producing low-income housing units, reasonableness of development and operating budgets, and an independent market~~ing~~ study in awarding the tax credits.

Projects selected under this allocation plan shall then be evaluated as to the minimum amount of tax credits required in order to make the project feasible.

II. Application Process

Applications for the Low-Income Housing Tax Credit are available at the HCDCH's office or by submitting a written request to the HCDCH at the address shown below.

Housing and Community Development Corporation of Hawaii
677 Queen Street, Suite 300
Honolulu, Hawaii 96813
ATTN: Finance Branch
(808) 587-0567

Applications for tax credits should be submitted to the HCDCH by no later than the indicated deadline. Upon receiving an application for tax credits, the HCDCH shall review the application to ensure that the application is complete and contains all required information. The executive director shall have

the right to defer the consideration of any application if, in his sole discretion, such deferral is deemed in the best interests of meeting housing needs.

Complete applications shall then be evaluated in accordance with the allocation plan to determine the project's rank in relation to other projects in the evaluation. Projects receiving the highest ~~ratings ranking~~ shall then be evaluated to determine the minimum amount of tax credits required to make the project feasible. The amount of tax credits reserved or allocated to a particular project will be limited to the amount the HCDCH, in its sole discretion, deems necessary to make the project feasible.

III. Selection Criteria Point System

Each application will be evaluated and awarded points in accordance with the following criteria. **Unless otherwise indicated, all references to low-income unit(s) or low-income rental unit(s) shall mean low-income housing tax credit unit(s).**

	CRITERIA	POINTS
1.	<u>Minimum Threshold</u> Tax credit application requests shall be limited to no greater than \$12,000 in federal tax credits per low-income rental unit . Applications with requests exceeding this limit shall be returned to the applicant and shall not be eligible for further consideration*.	N/A
2.	Project will provide low-income units for a longer period than is required under Section 42 of the Internal Revenue Code.	0 - 6*
3.	Project will provide a greater percentage of low-income units than required under Section 42 of the Internal Revenue Code.	1 - 6*
4.	Project will charge rent for low-income units that is less than the maximum rent allowed under Section 42 of the Internal Revenue Code.	0 - 6*
5.	Project has the lowest federal tax credit/low-income rental unit ratio.	1 - 6*
6.	Project has the appropriate zoning or the applicant has secured the necessary exemptions/variances to construct the project as proposed.	0 - 5*
7.	Applicant demonstrates that all low-income units will be made available, through a process acceptable to HCDCH, to people on the waiting list for low-income public housing.	0 or 3*
8.	Project will provide low-income units targeted to families.	0 or 3*
9.	Project will give preference to tenant populations with special housing needs beyond Federal and State requirements.	0 - 1 *
10.	Project is participating with a local tax-exempt organization and is sponsored by a qualified non-profit, as defined in Section 42 of the Internal Revenue Code.	0 - 1 *
11.	Project has the lowest total tax credit equity as a percentage of total project cost.	0 - 6 *
12.	Project has the lowest total permanent sources of state funds as a percentage of total project cost.	0 - 6 *

13.	Project has the lowest combined total of developer fee and developer overhead as a percentage of total project cost (combined total not to exceed 12% of total project cost)	0 - 6 *
14.	Project will be receiving project-based rental assistance subsidies which would result in eligible tenants paying approximately 30% of their gross monthly income towards rent. Eligible programs shall include, but not be limited to, the Rural Development 515 Loan Program and HUD Section 8 project-based Rental Assistance Program.	0 - 6 *
15.	Project has applied for or received county, federal, or private permanent financing assistance (other than for primary mortgage financing) which results in a lower tax credit request.	0 - 3 *
16.	Developer will provide a "rent-to-own" option for residents of the project after 30 years.	0 or 2 *
17.	Project is located in qualified census tract, the development of which contributes to a concerted community revitalization plan as determined by HCDCH.	0 or 3 *
18.	Project location and market demand.	0 - 6 *
19.	Developer experience.	0 - 6 *
20.	Overall project feasibility.	0 - 6 *

* See pages 4 - 8 for description.

Criteria 1. **Minimum Threshold.** Applicants requesting low-income housing tax credits must limit their request to no greater than \$12,000 in federal tax credits **per low-income rental unit (do not include resident manager's unit)**. Applications with requests that exceed this \$12,000 per low-income rental unit limit shall be returned to the applicant and shall not be eligible for further consideration in the present application cycle.

Criteria 2. If, under the Restrictive Covenant Document, the project is "affordable" for:

30 years or less	_____ 0 point
31 years through 35 years	_____ .5 point
36 years through 40 years	_____ 1 point
41 years through 45 years	_____ 2 points
46 years through 50 years	_____ 3 points
51 years through 55 years	_____ 4 points
56 through 60 years	_____ 5 points
61 years or more	_____ 6 points

Criteria 3. With respect to the set-aside affordability, if project provides:

20% of the project to households earning less than **50%** of AMGI, OR
40% of the project to households earning less than **60%** of AMGI _____ 1 point

40% of the project to households earning **50%** or less of AMGI, OR
80% of the project to households earning **60%** or less of AMGI _____ 2 points

80% of the project to households earning **50%** or less of AMGI, OR
100% of the project to households earning **60%** or less of AMGI _____ 3 points

100% of the project to households earning **50%** or less of AMGI _____ 4 points

100% of the project to households earning **40%** or less of AMGI _____ 5 points

100% of the project to households earning **30%** or less of AMGI _____ 6 points

Criteria 4. Based on the initial rent charged by the project, if rents are:

56% of AMGI and greater	_____ 0 points
51% through 55% of AMGI	_____ 1 point
46% through 50% of AMGI	_____ 2 points
41% through 45% of AMGI	_____ 3 points
36% through 40% of AMGI	_____ 4 points
31% through 35% of AMGI	_____ 5 points
30% or less of AMGI	_____ 6 points

Criteria 5. The ratio is derived as: "Total Federal Tax Credits Requested (Annual)/Total Number of Proposed Low-Income Rental Units"

\$10,001 through \$12,000/unit/year in federal tax credits requested, then	_____ 1 point
\$8,001 through \$10,000/unit/year in federal tax credits requested, then	_____ 2 points
\$6,001 through \$8,000/unit/year in federal tax credits requested, then	_____ 3 points
\$4,001 through \$6,000/unit/year in federal tax credits requested, then	_____ 4 points
\$2,001 through \$4,000/unit/year in federal tax credits requested, then	_____ 5 points
\$2,000 or less/unit/year in federal tax credits requested, then	_____ 6 points

Criteria 6. With respect to development approvals:

If necessary development approvals (i.e. zoning, 201G, variances) are obtained, _____ 5 points

If the applicant provides satisfactory evidence from the county agency that demonstrates that the application has been accepted and is advancing or progressing through the county's approval system. _____ 3 points

No development approvals, no applications filed, or if applications have not been accepted by the county agency for processing of necessary development approvals _____ 0 points

Criteria 7. The applicant demonstrates that all low-income units will be made available, through a process acceptable to HCDCH, to people on the waiting list for low-income public housing.

If the answer to the question is NO 0 points are awarded.

If the answer to the question is YES and the applicant is able to demonstrate that all low-income units will be made available, through a process acceptable to HCDCH, to people on the waiting list for low-income public housing. 3 points are awarded.

Criteria 8. With respect to low-income units targeted to families, at least 25% of low-income units are 2-bedroom units **and** at least 25% of low-income units are 3-bedroom units or larger.

If the answer to the question is NO 0 points are awarded

If the answer to the question is YES 3 points are awarded.

Criteria 9 and 10.

If the answer to the question is NO 0 points are awarded

If the answer to the question in YES 1 point is awarded

Criteria 11. If total tax credit equity as a percentage of total project cost is:

Greater than 60% of total project cost 0 points

51% through 60% of total project cost 1 point

41% through 50% of total project cost 2 points

31% through 40% of total project cost 3 points

21% through 30% of total project cost 4 points

11% through 20% of total

project cost _____ 5 points

10% or less of total project cost _____ 6 points

Criteria 12. If total permanent sources of state funds as a percentage of total project cost is:

Greater than 70% of total project cost _____ 0 points

61% through 70% of total project cost _____ 1 point

51% through 60% of total project cost _____ 2 points

41% through 50% of total project cost _____ 3 points

31% through 40% of total project cost _____ 4 points

21% through 30% of total project cost _____ 5 points

20% or less of total project cost _____ 6 points

Permanent sources of state funds are those funds that are administered by the HCDCH. Such funds include, but are not limited, to the Rental Housing Trust Fund and the Dwelling Unit Revolving Fund.

Criteria 13. Combined total of developer fee and developer overhead shall not exceed 12% of total project cost. If the combined total of developer fee and developer overhead is:

Greater than 12% of total project cost _____ 0 points

10% through 12% of total project cost _____ 1.5 points

7% through 9.99% of total project cost _____ 3.0 points

4% through 6.99% of total project cost _____ 4.5 points

3.99% or less of total project cost _____ 6.0 points

Criteria 14. Project will be receiving project-based rental assistance subsidies which would result in eligible tenants paying approximately 30% of their gross monthly income towards rent. Eligible programs shall include, but not be limited to, the Rural Development 515 Loan Program and HUD Section 8 project-based Rental Assistance Program.

If the answer to the question is NO _____ 0 points are awarded

If the answer to the question in YES _____ 1 to 6 points are awarded *

* If the whole project has project based subsidies then 6 points is awarded, if only a portion of a project has project based subsidies, then the scoring will be adjusted based upon the percentage of units subsidized. The percentage is derived as "Number of Subsidized Units / Tax credit and non-tax credit subsidized units," provided they are developed simultaneously.

Criteria 15. Project has applied for or received county, federal, or private permanent financing assistance (other than for primary mortgage financing) which results in a lower tax credit request.

If the project has not applied for or has not received county, federal, or private permanent financing assistance (other than for primary mortgage financing) _____ 0 points are awarded

If the project has applied for county, federal, or private permanent financing assistance (other than for primary mortgage financing) _____ .5 points are awarded

If up to 50% of the financing from county, federal, or private permanent financing sources (other than for primary mortgage financing) has been secured _____ 1.5 points are awarded

If more than 50% of the financing from county, federal, or private permanent financing sources (other than for primary mortgage financing) has been secured _____ 3 points are awarded

Criteria 16. Developer will provide a "rent-to-own" option for residents of the project after 30 years. _____ 0 or 2 points

Criteria 17. Project is located in qualified Census tract, the development of which contributes to a concerted community revitalization plan as determined by HCDCH. _____ 0 or 3 points

Criteria 18. Project location and market demand. 0 to 6 points

The points awarded will be based on HCDCH's evaluation of factors such as, but not limited to:

- Project is located in a county's urban core/district (~~preferred~~preference) versus rural district;
- Employment opportunities, recreational facilities, shopping facilities, medical facilities located in the immediate vicinity of the project site;
- Strength of the market study. Is the market study specific to the project, specific to the site? Does the analysis include the estimated number of individuals or families in the area within the applicable income limits needing affordable housing and the comparable rent rates for the area?
- Is the market study current (less than 6 months old) and prepared by an independent firm not affiliated with the developer and approved by the HCDCH?
- Are the proposed rental rates below market rents for the immediate surrounding area?
- Are project or housing characteristics (e.g., design, density) appropriate for neighborhood? Does project appear to satisfy market need? Is there documented/supported market demand?
- Is location in the neighborhood conducive for senior or family residential use?

Criteria 19. Developer experience. 0 to 6 points

The points awarded will be based on the HCDCH's evaluation of factors such as, but not limited to:

- Developer's (or any party affiliated with the development team) experience or ability (or inexperience/inability) to successfully complete the project;
- Developer's success or failure in meeting the objectives of the program on past proposals;
- Project's general partner and/or affiliates has a history of chronic and/or substantive noncompliance, has failed to meet the requirements of the Declaration for Low-Income Housing Credits for previous projects, or has any significant tax credit history with other state tax credit allocating agencies.

Criteria 20. Overall Project Feasibility. 0 to 6 points

The points awarded will be based on HCDCH's evaluation of any and all factors that could impact overall project feasibility, such as, but not limited to:

- Development costs are judged to be unreasonable;
- Funding, developmental, and operational feasibility; project is unable to proceed in a timely manner or serious issues need resolution. For example, lack of adequate financing sources; unreasonably low operating budget; land use and zoning issues; utility, water, sewer availability.

IV. Rights of the HCDCH

The HCDCH reserves the right to disapprove any application or project for any tax credit reservation or allocation, regardless of ranking under the criteria and point system as contained in section III of this allocation plan. The executive director or his designated representative shall have the authority to defer consideration of any application if, in his sole discretion, such deferral is deemed in the best interest of meeting housing needs.

 The HCDCH reserves the right, in its sole discretion, to (i) hold back a portion of the annual state and federal housing credit ceiling for use during later reservation cycles, (ii) carry over a portion of the current year's housing credit ceiling for allocation to a project which has not yet been placed in service, and (iii) under certain conditions, issue a reservation for up to 25% of the next year's housing credit ceiling.

The HCDCH is required under the I.R.C. of 1986, as amended, to allocate the minimum amount of tax credits required to make a project feasible. The determination of the amount of tax credits to be reserved or allocated to a project shall be made solely at the discretion of the HCDCH. The HCDCH may, at the time of issuance of the IRS Form(s) 8609 for the project, decrease the amount of tax credits allocated to a project based on the actual cost and financing of the project.

 The HCDCH in no way represents or warrants to any interested party which may include, but is not limited to, any developer, project owner, investor or lender that the project is, in fact, feasible or viable.

No member, officer, agent or employee shall be personally liable concerning any matters arising out of, or in relation to, the reservation or allocation of the Low-Income Housing Tax Credit.

V. Compliance Monitoring Plan

A. Summary

The HCDCH shall monitor compliance with all applicable Federal and State Program requirements for the period a project is committed to providing low-income rental units. The HCDCH will require that all qualified tenants of a project be certified upon occupancy and be re-certified annually to ensure compliance. Projects shall be required to maintain copies of the income certification for each tenant on forms approved or provided by the HCDCH. Projects will also be required to maintain records regarding number of rental units (including number of bedrooms and size of square footage of each bedroom); percentage of rental units that are low-income units; rent charged on each rental unit including utility allowances; number of occupants in each low-income unit for those buildings receiving tax credits prior to 1990; documentation regarding vacancies in the building; eligible and qualified basis of the building at the end of the first year of the credit period, and at the end of each year until required set-asides are met; and character and use of the nonresidential portion of the building that is included in the building's eligible basis, all in accordance with the rules published by the Internal Revenue Service. The HCDCH may perform an audit annually but, at a minimum, once every three years, and shall have access to all books and records upon notice to the project owner. Annually, owners of low-income housing tax credit projects will be required to certify to HCDCH that for the previous year, the minimum set-aside requirement was met; there was no change in the applicable fraction, or an explanation if there was a change; appropriate income certifications and documentation have been received for each low-income tenant; each low-income unit was rent-restricted in accordance with the Code; all units were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless as provided for in the Code); each building was suitable for occupancy, taking into account local health, safety and building codes; there was no change in the eligible basis in the project, or an explanation if there was a change; all tenant facilities included in the eligible basis were provided on a comparable basis without charge; rentals of vacancies were done in accordance with the Code; rentals of units were done in accordance with Code if any tenant's income increased above the limit allowed by Code; and a Restrictive Covenant document was in effect for the project, for those buildings receiving credits after 1989, all in accordance with the rules published by the Internal Revenue Service.

If the HCDCH becomes aware of non-compliance, the Internal Revenue Service shall be notified in accordance with the rules published by the Internal Revenue Service.

On January 14, 2000, the Internal Revenue Service published final Rules and Regulations on Compliance Monitoring and Miscellaneous Issues Relating to the Low Income Housing Credit. These final rules and regulations are attached as Schedule A and incorporated herein. Consult with your tax attorney and/or LIHTC consultant regarding additional Internal Revenue Code regulations. Owners are responsible for keeping abreast of current Program requirements.

The guidelines outlined below pertain to projects allocated Federal and State Low Income-Housing Tax Credits in the State of Hawaii.

B. Compliance

Owner/Manager Training

Owners, managing agents, and on-site managers should attend or document that they have recently attended training on management and compliance prior to leasing any units, but no later than receipt of IRS Form 8609, which certifies an allocation of tax credits. Training may be required

following significant or repeated noncompliance events. At minimum, such training should cover key compliance terms, qualified basis rules, determination of rents, tenant eligibility, file documentation, next available unit procedures and unit vacancy rules, agency reporting requirements, record retention requirements, and site visits.

Set Aside

The project must comply with the low-income set-aside requirements of Section 42 of the Internal Revenue Code (the "Code") as chosen by the owner at the time of receiving the credits. The minimum requirements are either:

1. 20 percent or more of the units are occupied by tenants having a household income of 50 percent or less of the area median gross income (the "20-50 requirement"), or
2. 40 percent or more of the units in the project are occupied by tenants having a household gross income of 60 percent or less of the area median gross income (the "40-60 requirement").

Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937, as directed by the Internal Revenue Code. Area median incomes are determined annually by the U.S. Department of Housing & Urban Development (HUD), and are available from the HCDCH.

Rent

Units in the project must be rent-restricted to either thirty (30) percent of the median income adjusted for family size for the area in which the project is located or rent-restricted to thirty (30) percent of the imputed income limitations based on unit size. This rent-restriction must be maintained throughout the Term of the Compliance and Extended-use period. See 'D. Rent Restrictions' in this section for further information.

Term of Compliance

Projects receiving allocations during 1987 through 1989 have only a 15-year compliance period. Projects receiving a LIHTC allocation after January 1, 1990 must comply with eligibility requirements for the initial 15-year period (compliance period), in addition to the 15 or more years (extended-use period) determined by elections indicated in the Restrictive Covenant Document. The Restrictive Covenant Document must be recorded before credits are allocated.

Annual Certification

These and other compliance requirements as listed in Section A. Summary must be certified annually by the owner through the submission of the Annual Report. The Annual Report includes the Owner's Certificate of Continuing Program Compliance and shall be submitted by February 1 of each year throughout the compliance/extended-use period. The Annual Report and the supporting documentation verifying the information on the Annual Report must be kept for a minimum of six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building, in accordance with published IRS guidelines.

IRS Form 8609

Owner shall complete Part II of IRS Form 8609 and submit with ~~subsequent initial~~ Annual Report.

Qualified Basis Tracking Sheet (QBTS)

This form shall be submitted annually until the required set-asides are established. Documents will provide information on original tenants qualifying each building for tax credits minimum set-asides, and other set-asides.

Status Reports

This report is to be submitted annually by owners in such format as required by the HCDCCH or its Authorized Delegate to document and track the continuous compliance of tax credit units. The documents report data that tenants are income eligible at move-in, that occupants of LIHTC units are re-certified at least on an annual basis and that the unit rents are restricted. Documentation will also indicate compliance with the vacant unit rule and 140% rule. The tracking of tax credit units substantiates the maintenance, increase or reduction of each BIN's qualified basis.

C. Qualifying Households

Applicants for low-income units should be advised early in their initial visit to the project that there are maximum income limits which apply for these units. Management should explain to the tenants that the anticipated income of all persons expecting to occupy the unit must be verified and included on a Certification of Eligibility (COE) Tenant Income Certification (TIC) prior to occupancy, and re-certified on an annual basis. Applicants should be informed of other Internal Revenue Services requirements such as the Student Rule and Interim Recertification/Recertifications.

Unborn Children

In accordance with the HUD Handbook 4350.3, owner shall include unborn children in determining household size and applicable income limits. If permitted by state laws, owner shall require documentation of pregnancy in such circumstances.

Student Households

In accordance with the Internal Revenue Code, a household comprised entirely of full-time students may not be counted as a qualified household, unless the household meets at least one exception. Refer to the Internal Revenue Code for additional guidelines on the exceptions.

Owner shall utilize a lease provision requiring tenants to notify managing agent of any change in student status.

Calculating Anticipated Tenant Income

Owner shall qualify tenants by calculating household income using the gross income the household anticipates it will receive in the 12-month period following the effective date of the income verification or recertification/Recertification. Anticipated income should be documented in the tenant file by third party verification whenever possible, or by an acceptable alternate method of verification with documentation as to why third party verification was not available. Owner shall use current circumstances to project income, unless verification forms or other verifiable documentation indicate that an imminent change will occur. Owner shall refer to HUD Handbook 4350.3 for guidance on the proper calculation and verification of income and assets per IRC regulations.

Certification

Upon acceptance of an applicant to the project, a TIC/COE must be completed for the applicant and certified to by the applicant and the owner. The form is a legal document which, when fully executed, qualifies the applicants to live in the set-aside units in the project.

The COE-TIC must be executed along with the lease prior to move-in. No one may live in a unit in the project unless he is certified and under lease.

The original copy of the executed COETIC form is to be retained in the applicant's file. The COETIC and the supporting documentation verifying the COETIC must be kept for a minimum of six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building, in accordance with published IRS guidelines.

Recertification

For projects with less than 100% set-aside:

To ensure each unit is complying with the LIHTC income restrictions, the HCDCH requires (a) the owner to annually recertify each tenant's income and household composition and (b) each tenant is to report certain changes in income and household composition which occur between regularly scheduled recertifications.

If the income of the tenants in a unit who have been previously verified increases above 140 percent of the applicable income limitation, the unit may continue to be counted as a low-income unit as long as the next available unit of comparable or smaller size is occupied by a qualified low-income tenant, and the rent continues to be restricted for the initial unit.

Each tenant's annual recertification is to be completed within one year of last recertification. The request for recertification shall be made between 60 and 90 days before the effective date, and it must clearly state that the tenant has ten (10) calendar days in which to contact the owner to begin recertification processing. The notice must also state the days and hours available for the interview, the information the tenant should bring to the interview, and how and whom to contact to schedule the interview.

Upon reverification of the tenant's income, the owner shall complete a new COETIC, which shall be certified to by the applicant and the owner or owner's designee.

~~For 100% set-aside projects:
Upon meeting Section 42 Internal Revenue Code requirements and subject to HCDCH's approval, annual recertification may be waived for existing tenants, however, initial certification (when tenants first move in) is required.~~

Past-Due Recertification

A recertification is considered past due if the COETIC form for the tenant is not certified by tenant and owner within twelve months of the last recertification.

~~**Interim Recertifications**
Each tenant is obligated to report changes in household income and family composition which occur between the regularly scheduled recertification. These changes could include, but are not limited to any household member moving out of the unit, any adult member of the household, who was previously reported as unemployed on the most recent certification or recertification, obtaining employment, or the tenant's household income increasing.~~

D. Rent Restrictions

For projects receiving Low-Income Housing Tax Credits during the years 1987 to 1989, the tenant's gross rent may not exceed thirty (30) percent of the median income adjusted for family size for the area in which the project is located. The gross rent must include an allowance for utilities.

Projects receiving Low-Income Housing Tax Credits after January 1, 1990 must comply with the following procedures:

Units in the project must be rent-restricted to 30% of the imputed income limitations for each unit, based upon HUD area median incomes and size of units. Rents are imputed by bedroom size in the following manner: a unit which does not have a separate bedroom - 1 individual; and a unit with 1 or more separate bedrooms - 1.5 individuals per bedroom. The HCDCH provides rent limits for projects receiving a LIHTC allocation.

Gross rent does not include any payment for various rental assistance programs and supportive service assistance as outlined in Section 42 of the Code. Gross rent must include an y allowance for utilities.

HUD publishes the area median incomes for each state annually. Updated income limits must be implemented pursuant to IRS Revenue Ruling 94-57, "Taxpayers may rely on a list of income limits released by HUD until 45 days after HUD releases a new list of income limits, or until HUD's effective date for the new list, whichever is later." Rents may be increased accordingly as the area median income increases.

If the income of the tenants in a unit who have been previously verified increases above 140 percent of the applicable income limitation, the unit may continue to be counted as a low-income unit as long as the next unit of comparable or smaller size is occupied by a qualified low-income tenant, and the rent continues to be restricted for the initial unit.

E. Eviction of Tenants

Once an eligible tenant has been certified and admitted to the project, the tenant may not be displaced solely due to an increase in the tenant's household income beyond the restricted limit.

F. Audits

The project may be subject to a management audit by the HCDCH or its Authorized Delegate annually but, at a minimum, once every three years. Notification of an audit shall be given to the owner at least 30 days prior to such audit. The results of the management audit and the recommendations for corrective action to protect and maintain the project shall be transmitted to the owner within thirty (30) days following the completion of the audit.

The purpose of the audit will be to conduct a physical inspection of the building and/or project, and, for at least 20 percent of the project's low-income units, to inspect the units and review the low-income certifications, documentation supporting the certifications, and rent records for the tenants in those units. The audit may also consist of a review of first year tenant records, a review of the documentation supporting the Annual Report, and any other documentation necessary for the HCDCH to make a determination as to whether the project is not in compliance with the Code and Section 235-110.8 of the Hawaii Revised Statutes.

When conducting tenant file reviews, HCDCH's and its Authorized Delegate's reviews shall include, but not be limited to:

- completed rental application, 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;
- income verification(s) completed and documented;
- assets verified in accordance with IRC regulations;
- student eligibility documentation;
- lease and lease addendums completed at move-in;
- utility allowance on file;
- review of first year tenant records which qualified the project initially for tax credits

The owner shall have a period of ~~sixty (60)~~thirty (30) days in which to respond to the findings of the management audit. The HCDCH shall review the owner's response to determine the extent to which the issues raised in the management audit letter are addressed. Findings, whether corrected or not, will be reported to the IRS.

See the following Section J for information on notification to the IRS of any non-compliance found in the management audit.

G. Rural Housing Service (RHS) and Tax-exempt Bond Issue Projects

In accordance with the published IRS guidelines on compliance monitoring, an exception may be granted to RHS projects under its section 515 program and buildings or projects of which 50 percent or more of the aggregate basis is financed with the proceeds of tax-exempt bonds. ~~The exception of the submission of the COE may be granted because these two types of projects are monitored by RHS or the agency issuing the tax-exempt bonds in accordance with those specific programs.~~

The IRC regulations allow for exception of a building from the inspection requirement if the building is financed by RHS under the section 515 program, the RHS inspects the building [under 7 CFR part 1930(C)], and the RHS and the allocating agency enter into a memorandum of understanding, or other similar arrangement, under which the RHS agrees to notify the allocating agency of the inspection results. Irrespective of the physical inspection standard selected by the allocating agency, a low-income housing project under section 42 of the Internal Revenue Code must continue to satisfy local health, safety and building codes. A memorandum of understanding has not been executed between the HCDCH and RHS.

Annual Reports, QBTS, Compliance Monitoring Status Reports and other reports are still required of RHS projects. Although the HCDCH has allowed the use of the RD 1944-8, the form does not determine eligibility for specific LIHTC requirements. Owners need to determine whether the ~~COETIC~~ will be used or a worksheet will be attached to RD 1944-8 to determine eligibility under the IRC. Management audits will still be conducted as indicated herein.

An owner who for some reason is not able to make any of the required certifications stated on the Annual Report or other requirements must inform the Agency immediately of such inability, as well as explain the reason for said inability.

H. Reporting Requirements

- a. The **LIHTC Annual Report** must be submitted annually by February 1 of each year throughout the compliance/extended-use period.
- b. ~~—~~Part II of the **IRS Form 8609** must be completed by the owner and submitted

- with initial Annual Report.
- c. **Qualified Basis Tracking Sheets (QBTS)** are submitted at a minimum annually with LIHTC Annual Report until all set-asides are established.
 - d. **Status Reports** are submitted annually by owners with Annual Report to document and track the continuance compliance of tax credit units throughout the compliance/extended-use period.

These forms must be sent in to the HCDCH or its Authorized Delegate at the address shown in Section II.

The Certification of Eligibility and LIHTC forms listed above are available from the HCDCH. Additionally, the HCDCH has data regarding HUD area median incomes, maximum rental rates, income verification information and third-party verification forms.

I. Fees

A compliance monitoring fee of up to \$25 per unit for all units within each project shall be charged annually for administrative expenses. This fee shall be submitted with the LIHTC Annual Report for each year of the compliance/extended-use period. The HCDCH reserves the right to adjust fees due to changing circumstances annually each January 1. It will be the responsibility of the HCDCH to inform the owner of any changes in the annual compliance fee prior to the submission of fees.

J. Non-compliance Penalties

The penalty for non-compliance with these procedures is the potential recapture of the credits awarded and interest on the amount recaptured. The Internal Revenue Service shall determine penalties for non-compliance.

Upon determination by the HCDCH of non-compliance with the LIHTC Program, the owner shall be notified and given ~~sixty (60)~~thirty (30) days to correct any discovered violations. In accordance with the Internal Revenue Service's published guidelines on compliance monitoring, the HCDCH will be required to notify the IRS within forty-five (45) days after the end of the ~~sixty-day~~thirty day correction period, whether or not the non-compliance is corrected. The HCDCH will be given the opportunity on the IRS form to indicate whether the owner has corrected the non-compliance. The HCDCH may extend the correction period, up to a total of six (6) months, if it is determined by the HCDCH that good cause exists for granting such an extension. In such case, the IRS will not be notified until the end of the extended correction period.

**Final Rules and Regulations Issued by
The Internal Revenue Service on
Compliance Monitoring and Miscellaneous Issues
Relating to the Low Income Housing Credit**

EXHIBIT A

(attachment to the 2003 Qualified Allocation Plan)

premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

239. Section 892.1890 is amended by revising paragraph (b) to read as follows:

§ 892.1890 Radiographic film illuminator.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

240. Section 892.1910 is amended by revising paragraph (b) to read as follows:

§ 892.1910 Radiographic grid.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

241. Section 892.1960 is amended by revising paragraph (b) to read as follows:

§ 892.1960 Radiographic intensifying screen.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

242. Section 892.1970 is amended by revising paragraph (b) to read as follows:

§ 892.1970 Radiographic ECG/respirator synchronizer.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

243. Section 892.2010 is amended by revising paragraph (b) to read as follows:

§ 892.2010 Medical image storage device.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

244. Section 892.2020 is amended by revising paragraph (b) to read as follows:

§ 892.2020 Medical image communications device.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

245. Section 892.5650 is amended by revising paragraph (b) to read as follows:

§ 892.5650 Manual radionuclide applicator system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

246. Section 892.6500 is amended by revising paragraph (b) to read as follows:

§ 892.6500 Personnel protective shield.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

Dated: December 22, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00-884 Filed 1-13-00; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8859]

RIN 1545-AV44

Compliance Monitoring and Miscellaneous Issues Relating to the Low-Income Housing Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the procedures for compliance monitoring by state and local housing agencies (Agencies) with the requirements of the low-income housing credit; the requirements for making carryover allocations; the rules for Agencies' correction of administrative errors or omissions; and the independent verification of information on sources and uses of funds submitted by taxpayers to Agencies. These final regulations affect owners of low-income housing projects who claim the credit and the Agencies who administer the credit.

DATES: Effective Dates: These regulations are effective January 1, 2001, except that the amendments made to §§ 1.42-5(c)(5) and (e)(3)(i), and 1.42-13 are effective January 14, 2000, and the amendment made to § 1.42-6(d)(4)(ii) is effective January 1, 2000.

Applicability Dates: For dates of applicability of the amendments to § 1.42-5, see § 1.42-5(h). For date of

applicability of the amendment made to § 1.42-6, see § 1.42-12(c). For date of applicability of the amendments made to § 1.42-13, see § 1.42-13(d). For date of applicability of § 1.42-17, see § 1.42-17(b).

FOR FURTHER INFORMATION CONTACT: Paul Handleman, (202) 622-3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545-1357. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For § 1.42-5, the estimated annual burden per respondent varies from .5 hour to 3 hours for taxpayers and 250 to 5,000 hours for Agencies, with an estimated average of 1 hour for taxpayers and 1,500 hours for Agencies. For § 1.42-13, the estimated annual burden per respondent varies from .5 hour to 10 hours for taxpayers and Agencies, with an estimated average of 3.5 hours for taxpayers and 3 hours for Agencies. For § 1.42-17, the estimated annual burden per respondent varies from .5 hour to 2 hours for taxpayers and .5 hour to 5 hours for Agencies, with an estimated average of 1 hour for taxpayers and 2 hours for Agencies.

Comments concerning the accuracy of these burden estimates and suggestions for reducing these burdens should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On January 8, 1999, the IRS published proposed regulations (REG-114664-97) in the **Federal Register** (64 FR 1143) inviting comments under section 42. A

public hearing was held May 27, 1999. Numerous comments have been received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury Decision.

Public Comments

A. Compliance Monitoring

1. Inspection Requirement for New Buildings

The proposed regulations require that, by the end of the calendar year following the year the last building in a project is placed in service, the Agency conduct on-site inspections of the projects and review the low-income certification, the documentation supporting such certification, and the rent record for each tenant in the project. Most commentators view the requirement for reviewing all tenant records for all buildings in a project as unnecessary and burdensome. Most commentators suggest limiting inspections for new buildings to 20 percent of the project's low-income units.

Commentators also suggest extending the time limit for inspecting new buildings to the end of the calendar year following the first year of the credit period or at least until a reasonable time after the Agency issues Form 8609, "Low-Income Housing Credit Allocation Certification." This added flexibility would allow the Agency to combine a physical inspection with a file review of the first year of the credit period.

In response to the comments, the final regulations reduce the inspection burden for new buildings by requiring the Agency to conduct on-site inspections of all new buildings in the project and, for at least 20 percent of the project's low-income units, to inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units. To allow the Agency sufficient time to review the tenant files for the first year of the credit period, the final regulations extend the time limit for inspecting new buildings to the end of the second calendar year following the year the last building in the project is placed in service.

2. Three-year Inspection Requirement

The proposed regulations require that, at least once every 3 years, each Agency conduct on-site inspections of all buildings in each low-income housing project and, for each tenant in at least 20 percent of the project's low-income units selected by the Agency, review the low-income certification, the

documentation supporting such certification, and the rent record.

Most commentators agree with requiring physical inspections of the buildings at least once every 3 years. However, commentators recommend reviewing tenant income and rent records once every 5 years, which is one of the options under the current compliance monitoring regulations (see § 1.42-5(c)(2)(ii)(B) requiring an Agency to review tenant files for 20 percent of the low-income housing projects each year). Commentators also recommend reviewing tenant files either on-site or at other locations, including desk audits.

Although the physical inspection and file review requirements for new buildings are relaxed in the final regulations, the final regulations retain the 3-year inspection cycle for existing buildings. The final regulations do not separate the physical inspection and file review cycles (every 3 years for physical inspections and every 5 years for file reviews) as suggested by commentators because it is administratively complete to do both during the same year. The tenant income and rent restrictions in section 42(g) are equally important as the habitability standards for a low-income unit in section 42(i)(3)(B)(ii). The final regulations adopt the suggestion that the file review may be done wherever the tenant files are maintained.

3. Health, Safety, and Building Code Inspections

The proposed regulations require the Agency to determine whether the project is suitable for occupancy, taking into account local health, safety, and building codes.

Many commentators object to this requirement as too costly and unadministerable because building codes vary considerably within states. Commentators also asked for guidelines as to what constitutes an "inspection." Some commentators propose defining an inspection as looking at selected units in the building and common areas for visible problems or defects without applying the local health, safety, and building codes standards. One commentator suggests inspections based on a complaint from the local jurisdiction or from a tenant. Some commentators suggest using a uniform physical standard such as the uniform physical condition standards for public housing established by the Department of Housing and Urban Development (HUD) in 24 CFR 5.703.

Section 42(i)(3)(B)(i) excludes from the definition of a "low-income unit" a unit that is not suitable for occupancy. Under section 42(i)(3)(B)(ii), suitability of a unit for occupancy shall be

determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes. Recognizing that these codes vary considerably within states, the final regulations require an Agency to determine whether a low-income housing project satisfies these codes, or satisfies the HUD uniform physical condition standards. The HUD standards are intended to ensure that housing is decent, safe, sanitary, and in good repair. Though it would be appropriate that an Agency use HUD's inspection protocol under 24 CFR part 5.705, the final regulations do not mandate use of HUD's inspection protocol because to do so could increase costs to the Agencies as well as limit their latitude in applying standards consistent with their own operating procedures and practices. The final regulations except a building from the inspection requirement if the building is financed by the Rural Housing Service (RHS) under the section 515 program, the RHS inspects the building (under 7 CFR part 1930(c)), and the RHS and Agency enter into a memorandum of understanding, or other similar arrangement, under which the RHS agrees to notify the Agency of the inspection results. Irrespective of the physical inspection standard selected by the Agency, a low-income housing project under section 42 must continue to satisfy local health, safety, and building codes.

The proposed regulations limit an Agency's delegation of the physical inspection of a project to only a state or local government unit responsible for making building code inspections. Commentators suggest expanding the delegation of inspections to professional firms. The final regulations remove the delegation limitation and Agencies may delegate the physical inspection requirement to state or local governmental agencies, HUD, or private contractors.

4. Local Reports of Building Code Violations

The proposed regulations require the owner of a low-income housing project to certify that for the preceding 12-month period the state or local government unit responsible for making building code inspections did not issue a report of a violation for the project. If the governmental unit issued a report of a violation, the owner is required to attach a copy of the report of the violation to the annual certification submitted to the Agency.

A commentator noted that the number of violations attached to the annual owner certification would be highest

quality rental housing operations do not have an inspection without a report or notice of some violation. Two commentators suggest attaching reports only for violations that have not been corrected prior to filing the annual owner certification or requiring that owners only attach reports for "major" violations. The commentators suggest defining major violations as violations not corrected within 90 days of the notice of violation or violations where the cost to comply exceeds \$2,500. A commentator suggests that Agencies be allowed to distinguish between minor technical violations and serious violations (i.e., lack of heat or hot water, hazardous conditions, and security) in reporting noncompliance.

Though a minor violation will not lead to the disallowance or recapture of section 42 credits, a series of minor violations may be the equivalent of a major violation resulting in disallowance or recapture of credits. Determining the difference between a major and minor violation is subjective. The final regulations do not exclude minor violations from the reporting and recordkeeping requirement. However, to reduce the inspection violation paperwork, the final regulations require that the owner must either attach a statement summarizing the violations or a copy of each violation report to the annual owner certification submitted to the Agency. The owner must state on the certification whether the violation has been corrected. In addition, the final regulations require that the owner retain the original violation report for the Agency's physical inspection. Retention of the original violation report is not required once the Agency reviews the violation and completes its inspection, unless the violation remains uncorrected.

5. Correction of Noncompliance or Failure to Certify

The final regulations adopt commentators' suggestion to limit to a 3-year period after the end of the correction period in § 1.42-5(e)(4) the requirement that Agencies file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the IRS reporting the correction of the noncompliance or failure to certify.

6. Compliance Monitoring Effective Dates

Commentators suggest an effective date of at least one year after the final regulations are published in the **Federal Register**. Commentators also recommend on-site inspections apply only to new buildings allocated section

42 credits after the effective date of the final regulations.

Because the amendments to the compliance monitoring regulations will require amendments to qualified allocation plans, the final regulations relating to compliance generally contain a January 1, 2001, effective date. Thus, the requirements to attach local health, safety, or building code violations to the annual owner certification and to inspect buildings and review tenant files for existing projects are effective January 1, 2001. The inspection requirement and tenant file review for new buildings is effective for buildings placed in service on or after January 1, 2001.

7. Section 8 and Federal Civil Rights Laws

Two commentators state that insufficient controls are in place to ensure that low-income housing projects adhere to the requirement in section 42(h)(6)(B)(iv) of nondiscrimination against Section 8 voucher or certificate holders. The commentators suggest that the IRS could help compensate for lack of controls by working with HUD to ensure that Section 8 voucher or certificate holders are aware of, and have access to, low-income housing projects. The commentators also suggest that Agencies provide regional HUD offices a list of low-income housing projects in that state, with information that would be helpful for prospective tenants. One commentator suggests that the prohibition on discrimination based on Section 8 status be clarified to exclude policies that bar Section 8 tenants but have no substantial business justification. For example, low-income housing projects should not be permitted to exclude Section 8 voucher or certificate holders through a rule that requires every applicant to have income equal to at least three times the total rent.

The commentators also suggest that the Agencies should be required to develop a plan for educating applicants and owners of projects of the prohibition against discrimination on the basis of Section 8 voucher or certificate status. They recommend that the Agencies should be required to have a procedure for accepting and processing complaints about discrimination against Section 8 voucher or certificate holders. They also recommend that IRS and HUD should work together to study the circumstances under which Section 8 voucher or certificate holders are, or are not, accessing projects.

Section 42(h)(6)(A) provides that no credit shall be allowed by reason of

section 42 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. Section 42(h)(6)(B)(iv) defines the term "extended low-income housing commitment" to include any agreement between the taxpayer and the housing credit agency that 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. To help monitor compliance with section 42(h)(6)(B)(iv), the final regulations amend the annual owner certification relating to the extended low-income housing commitment under § 1.42-5(c)(1)(xi) to require owners to certify that the owner has not refused to lease a unit in the project to a Section 8 applicant because the applicant holds a Section 8 voucher or certificate.

The IRS has informed HUD of the comments received about preventing discrimination based on Section 8 status. Agencies should provide HUD with publicly available information on section 42 low-income housing projects if HUD requests it.

A commentator also suggests that the compliance monitoring regulations be amended to acknowledge the authority of Title VIII of the 1968 Civil Rights Act, as well as HUD's Title VIII regulations; specify the civil rights obligations of the Agencies; and specify what developers and owners of projects must do to satisfy their civil rights obligations.

To monitor for compliance with the Fair Housing Act, the final regulations amend the annual owner certification relating to the general public use requirement in § 1.42-5(c)(1)(v) to require owners to certify that no finding of discrimination under the Fair Housing Act has occurred for the project (a finding of discrimination includes an adverse final decision by HUD, an adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgment from a Federal court).

B. Sources and Uses of Funds

Section 42(m)(2)(A) requires Agencies to limit the housing credit dollar amount allocated to a project to only the amount necessary for the financial feasibility of a project and its viability as a qualified low-income project through the credit period. The proposed regulations require an Agency to evaluate the housing credit dollar amount at four times: (1) at application for the housing credit dollar amount, (2) the allocation of the housing credit dollar amount, (3) the date the building

is placed in service, and (4) after the building is placed in service, but before the Agency issues the Form 8609. Commentators recommend elimination of the evaluation at the placed-in-service date. In practice, Agencies currently evaluate the credit amount at the three other times. The final regulations adopt the recommendation by deleting the fourth time requirement and clarifying that the placed-in-service evaluation may occur not later than the date the Agency issues the Form 8609.

Commentators are concerned that the opinion by a certified public accountant, based upon the accountant's audit or examination, on the financial determinations and certifications required in the proposed regulations, could have significant cost implications, particularly for smaller developers. Commentators suggest limiting the requirement to projects with 25 or more units, or projects with total development costs of \$5 million or more.

The third-party validation on financial information was recommended in the report by the General Accounting Office (GAO), "Tax Credits: Opportunities to Improve Oversight of the Low-Income Housing Program," (GAO/GGD/RCED-97-55), dated March 28, 1997. The GAO report states on page 93 that an accounting firm with a tax credit speciality would charge in the \$5,000 to \$7,500 range per engagement for tax credit certifications (opinion on total costs, eligible basis, and tax credit amount) prepared on the basis of an audit done in accordance with AICPA audit standards even for projects costing upwards of \$5 million to \$10 million. As a percentage of development costs, the CPA tax credit certifications represent a minimal cost for validating financial information. However, in recognition that the cost may be burdensome for smaller developers, the final regulations limit the requirement for an audited schedule of costs for projects with more than 10 units.

Two commentators were concerned that the meaning of the term "financial determinations and certifications" is unclear. A CPA would not be able to evaluate what needs to be audited and whether there are relevant and reliable criteria against which the information can be evaluated. To conduct an audit or attestation engagement, CPAs require that the subject matter be defined and that such subject matter be capable of evaluation against reasonable criteria. Reasonable criteria are essential so that CPAs using the same criteria will be able to arrive at similar conclusions.

Another concern expressed by commentators involved uncertainty as

to whether the CPA is being asked to report on financial information that is only historical or whether the CPA is also being asked to examine prospective financial information. CPAs can compile or examine and report on certain types of prospective financial information. However, such engagements generally are more costly than audits of historical information because of minimum presentation guidelines required by professional standards as well as increased risk associated with future-oriented information. The commentators believe that if an Agency were to require CPAs to be associated with prospective financial information, the related costs to the taxpayer may far exceed any perceived benefits to the Agency. Accordingly, the final regulations have been revised to specify that the CPA's opinion only relates to historical project costs.

C. Correction of Administrative Errors and Omissions

Commentators recommend filing the corrected allocation document with the current year's Form 8610, "Annual Low-Income Housing Credit Agencies Report," instead of amending the Form 8610 for the year the allocation was made. Because the administrative errors covered by the automatic approval provision will not have an effect on the total amount of credit the Agency allocated to the building(s) or project, commentators view an amended Form 8610 as unnecessary. Agency recordkeeping would be simplified if all corrected allocation documents could be submitted with the current year's Form 8610. The final regulations adopt this recommendation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the burden on taxpayers is minimal and the burden on small entity Agencies is not significant. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these

regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting information. The principal author of these regulations is Paul F. Handleman, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.42-17 also issued under 26 U.S.C. 42(n); * * *

Par. 2. Section 1.42-5 is amended by:

1. Removing the word "Revenue" in paragraph (b)(1)(iv) and adding "Omnibus Budget" in its place.
2. Adding paragraph (b)(3).
3. Revising paragraphs (c)(1)(v), (c)(1)(vi), (c)(1)(xi), (c)(2)(ii), and (c)(2)(iii).
4. Removing the word "project" in paragraph (c)(1)(x) and adding "building" in its place.
5. Removing the word "and" at the end of paragraph (c)(1)(x).
6. Adding paragraph (c)(1)(xii).
7. Removing the language "paragraph (c)(2)(ii)(A), (B), and (C) of this section" from the first sentence in paragraph (c)(4)(i) and adding "paragraph (c)(2)(ii) of this section" in its place.
8. Removing the language "Farmers Home Administration (FmHA)" in the first sentence in paragraph (c)(4)(i) and adding "Rural Housing Service (RHS), formerly known as Farmers Home Administration," in its place.
9. Removing the language "FmHA" in paragraph (c)(4)(ii) and adding "RHS" in its place in each place it appears.
10. Removing the language "An Agency chooses the review requirement of paragraph (c)(2)(ii)(A) of this section and some of the buildings selected for review are" from the first sentence in

the example in paragraph (c)(4)(iii) and adding "An Agency selects for review" in its place.

11. Removing the language "FmHA" in paragraph (c)(4)(iii) *Example* and adding "RHS" in its place in each place it appears.

12. Adding paragraph (c)(5).

13. Revising paragraph (d).

14. Removing the language "(c)(2)(ii)(A), (B), or (C) of this section (whichever is applicable)" from paragraph (e)(2) and adding the language "(c)(2)(ii) of this section" in its place.

15. Adding a sentence at the end of paragraph (e)(3)(i).

16. Removing the language "paragraph (e)(3) of this section" in the third sentence in paragraph (f)(1)(i) and adding "paragraphs (c)(5) and (e)(3) of this section" in its place.

17. Adding three sentences at the end of paragraph (h).

The revisions and additions read as follows:

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

* * * * *

(b) * * *

(3) *Inspection record retention provision.* Under the inspection record retention provision, the owner of a low-income housing project must be required to retain the original local health, safety, or building code violation reports or notices that were issued by the State or local government unit (as described in paragraph (c)(1)(vi) of this section) for the Agency's inspection under paragraph (d) of this section. Retention of the original violation reports or notices is not required once the Agency reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

(c) * * * (1) * * *

(v) All units in the project were for use by the general public (as defined in § 1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court;

(vi) The buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the

State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the annual certification submitted to the Agency under paragraph (c)(1) of this section. In addition, the owner must state whether the violation has been corrected;

* * * * *

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

(xii) All low-income units in the project were used on a nontransient basis (except for transitional housing for the homeless provided under section 42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under section 42(i)(3)(B)(iv)).

(2) * * *

(ii) Require that with respect to each low-income housing project—

(A) The Agency must conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service and, for at least 20 percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units; and

(B) At least once every 3 years, the Agency must conduct on-site inspections of all buildings in the project and, for at least 20 percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units; and

(iii) Require that the Agency randomly select which low-income units and tenant records are to be

inspected and reviewed by the Agency. The review of tenant records may be undertaken wherever the owner maintains or stores the records (either on-site or off-site). The units and tenant records to be inspected and reviewed must be chosen in a manner that will not give owners of low-income housing projects advance notice that a unit and tenant records for a particular year will or will not be inspected and reviewed. However, an Agency may give an owner reasonable notice that an inspection of the building and low-income units or tenant record review will occur so that the owner may notify tenants of the inspection or assemble tenant records for review (for example, 30 days notice of inspection or review).

* * * * *

(5) *Agency reports of compliance monitoring activities.* The Agency must report its compliance monitoring activities annually on Form 8610, "Annual Low-Income Housing Credit Agencies Report."

(d) *Inspection provision*—(1) *In general.* Under the inspection provision, the Agency must have the right to perform an on-site inspection of any low-income housing project at least through the end of the compliance period of the buildings in the project. The inspection provision of this paragraph (d) is a separate requirement from any tenant file review under paragraph (c)(2)(ii) of this section.

(2) *Inspection standard.* For the on-site inspections of buildings and low-income units required by paragraph (c)(2)(ii) of this section, the Agency must review any local health, safety, or building code violations reports or notices retained by the owner under paragraph (b)(3) of this section and must determine—

(i) Whether the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards); or

(ii) Whether the buildings and units satisfy, as determined by the Agency, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703). The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A low-income housing project under section 42 must continue to satisfy these codes and, if the Agency becomes aware of any violation of these codes, the Agency must report the violation to the Service. However, provided the Agency determines by inspection that the HUD standards are met, the Agency is not required under this paragraph (d)(2)(ii)

to determine by inspection whether the project meets local health, safety, and building codes.

(3) *Exception from inspection provision.* An Agency is not required to inspect a building under this paragraph (d) if the building is financed by the RHS under the section 515 program, the RHS inspects the building (under 7 CFR part 1930), and the RHS and Agency enter into a memorandum of understanding, or other similar arrangement, under which the RHS agrees to notify the Agency of the inspection results.

(4) *Delegation.* An Agency may delegate inspection under this paragraph (d) to an Authorized Delegate retained under paragraph (f) of this section. Such Authorized Delegate, which may include HUD or a HUD-approved inspector, must notify the Agency of the inspection results.

(e) * * *

(3) * * *

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

* * * * *

(h) * * * In addition, the requirements in paragraphs (b)(3) and (c)(1)(v), (vi), and (xi) of this section (involving recordkeeping and annual owner certifications) and paragraphs (c)(2)(ii)(B), (c)(2)(iii), and (d) of this section (involving tenant file reviews and physical inspections of existing projects, and the physical inspection standard) are applicable January 1, 2001. The requirement in paragraph (c)(2)(ii)(A) of this section (involving tenant file reviews and physical inspections of new projects) is applicable for buildings placed in service on or after January 1, 2001. The requirements in paragraph (c)(5) of this section (involving Agency reporting of compliance monitoring activities to the Service) and paragraph (e)(3)(i) of this section (involving Agency reporting of corrected noncompliance or failure to certify within 3 years after the end of the correction period) are applicable January 14, 2000.

Par. 3. Section 1.42-6 is amended by:

1. In paragraph (c)(3), second sentence, remove the language "Annual Low-Income Housing Credit Agencies Report" and add the language "Annual Low-Income Housing Credit Agencies Report" in its place.

2. In paragraph (d)(1), first sentence, remove the language "Low-Income Housing Credit Allocation

Certification," and add the language "Low-Income Housing Credit Allocation Certification," in its place.

3. Revising the first sentence in paragraph (d)(4)(ii).

§ 1.42-6 Buildings qualifying for carryover allocations.

* * * * *

(d) * * *

(4) * * *

(ii) *Agency.* The Agency must retain the original carryover allocation document made under paragraph (d)(2) of this section and file Schedule A (Form 8610), "Carryover Allocation of the Low-Income Housing Credit," with the Agency's Form 8610 for the year the allocation is made. * * *

* * * * *

Par. 4. Section 1.42-11 is amended by revising the last sentence in paragraph (b)(3)(ii)(A) to read as follows:

§ 1.42-11 Provision of services.

* * * * *

(b) * * *

(3) * * *

(ii) * * * (A) * * * For a building described in section 42(i)(3)(B)(iii) (relating to transitional housing for the homeless) or section 42(i)(3)(B)(iv) (relating to single-room occupancy), a supportive service includes any service provided to assist tenants in locating and retaining permanent housing.

* * * * *

Par. 5. Section 1.42-12 is amended by adding paragraph (c) to read as follows:

§ 1.42-12 Effective dates and transitional rules.

* * * * *

(c) *Carryover allocations.* The rule set forth in § 1.42-6(d)(4)(ii) relating to the requirement that state and local housing agencies file Schedule A (Form 8610), "Carryover Allocation of the Low-Income Housing Credit," is applicable for carryover allocations made after December 31, 1999.

Par. 6. Section 1.42-13 is amended by:

1. Revising the introductory text of paragraph (b)(3)(iii).

2. Adding paragraphs (b)(3)(vi), (b)(3)(vii), and (b)(3)(viii).

3. Adding a sentence at the end of paragraph (d).

The revisions and additions read as follows:

§ 1.42-13 Rules necessary and appropriate; housing credit agencies' correction of administrative errors and omissions.

* * * * *

(b) * * *

(3) * * *

(iii) *Secretary's prior approval required.* Except as provided in

paragraph (b)(3)(vi) of this section, an Agency must obtain the Secretary's prior approval to correct an administrative error or omission, as described in paragraph (b)(2) of this section, if the correction is not made before the close of the calendar year of the error or omission and the correction—

* * * * *

(vi) *Secretary's automatic approval.* The Secretary grants automatic approval to correct an administrative error or omission described in paragraph (b)(2) of this section if—

(A) The correction is not made before the close of the calendar year of the error or omission and the correction is a numerical change to the housing credit dollar amount allocated for the building or multiple-building project;

(B) The administrative error or omission resulted in an allocation document (the Form 8609, "Low-Income Housing Credit Allocation Certification," or the allocation document under the requirements of section 42(h)(1)(E) or (F), and § 1.42-6(d)(2)) that either did not accurately reflect the number of buildings in a project (for example, an allocation document for a 10-building project only references 8 buildings instead of 10 buildings), or the correct information (other than the amount of credit allocated on the allocation document);

(C) The administrative error or omission does not affect the Agency's ranking of the building(s) or project and the total amount of credit the Agency allocated to the building(s) or project; and

(D) The Agency corrects the administrative error or omission by following the procedures described in paragraph (b)(3)(vii) of this section.

(vii) *How Agency corrects errors or omissions subject to automatic approval.* An Agency corrects an administrative error or omission described in paragraph (b)(3)(vi) of this section by—

(A) Amending the allocation document described in paragraph (b)(3)(vi)(B) of this section to correct the administrative error or omission. The Agency will indicate on the amended allocation document that it is making the "correction under § 1.42-

13(b)(3)(vii)." If correcting the allocation document requires including any additional B.I.N.(s) in the document, the document must include any B.I.N.(s) already existing for buildings in the project. If possible, the additional B.I.N.(s) should be sequentially numbered from the existing B.I.N.(s);

(B) Amending, if applicable, the Schedule A (Form 8610), "Carryover

Allocation of the Low-Income Housing Credit," and attaching a copy of this schedule to Form 8610, "Annual Low-Income Housing Credit Agencies Report," for the year the correction is made. The Agency will indicate on the schedule that it is making the "correction under § 1.42-13(b)(3)(vii)." For a carryover allocation made before January 1, 2000, the Agency must complete Schedule A (Form 8610), and indicate on the schedule that it is making the "correction under § 1.42-13(b)(3)(vii)";

(C) Amending, if applicable, the Form 8609 and attaching the original of this amended form to Form 8610 for the year the correction is made. The Agency will indicate on the Form 8609 that it is making the "correction under § 1.42-13(b)(3)(vii)"; and

(D) Mailing or otherwise delivering a copy of any amended allocation document and any amended Form 8609 to the affected taxpayer.

(viii) *Other approval procedures.* The Secretary may grant automatic approval to correct other administrative errors or omissions as designated in one or more documents published either in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

* * * * *

(d) * * * Paragraphs (b)(3)(vi), (vii), and (viii) of this section are effective January 14, 2000.

Par. 7. Section 1.42-17 is added to read as follows:

§ 1.42-17 Qualified allocation plan.

(a) *Requirements*—(1) *In general.* [Reserved]

(2) *Selection criteria.* [Reserved]

(3) *Agency evaluation.* Section 42(m)(2)(A) requires that the housing credit dollar amount allocated to a project is not to exceed the amount the 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. In making this determination, the Agency must consider—

(i) The sources and uses of funds and the total financing planned for the project. The taxpayer must certify to the Agency the full extent of all federal, state, and local subsidies that apply (or which the taxpayer expects to apply) to the project. The taxpayer must also certify to the Agency all other sources of funds and all development costs for the project. The taxpayer's certification should be sufficiently detailed to enable the Agency to ascertain the nature of the costs that will make up the total financing package, including subsidies and the anticipated syndication or

placement proceeds to be raised. Development cost information, whether or not includible in eligible basis under section 42(d), that should be provided to the Agency includes, but is not limited to, site acquisition costs, construction contingency, general contractor's overhead and profit, architect's and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, syndication and legal fees, and developer fees;

(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 costs of intermediaries. This requirement should not be applied so as to impede the development of projects in hard-to-develop areas under section 42(d)(5)(C); and

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

(4) *Timing of Agency evaluation*—(i) *In general.* The financial determinations and certifications required under paragraph (a)(3) of this section must be made as of the following times—

(A) The time of the application for the housing credit dollar amount;

(B) The time of the allocation of the housing credit dollar amount; and

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

(ii) *Time limit for placed-in-service evaluation.* For purposes of paragraph (a)(4)(i)(C) of this section, the evaluation for when a building is placed in service must be made not later than the date the Agency issues the Form 8609, "Low-Income Housing Credit Allocation Certification." The Agency must evaluate all sources and uses of funds under paragraph (a)(3)(i) of this section paid, incurred, or committed by the taxpayer for the project up until date the Agency issues the Form 8609.

(5) *Special rule for final determinations and certifications.* For the Agency's evaluation under paragraph (a)(4)(i)(C) of this section, the taxpayer must submit a schedule of project costs. Such schedule is to be prepared on the method of accounting used by the taxpayer for federal income tax purposes, and must detail the project's total costs as well as those costs that may qualify for inclusion in eligible basis under section 42(d). For projects with more than 10 units, the schedule of project costs must be accompanied by a Certified Public

Accountant's audit report on the schedule (an Agency may require an audited schedule of project costs for projects with fewer than 11 units). The CPA's audit must be conducted in accordance with generally accepted auditing standards. The auditor's report must be unqualified.

(6) *Bond-financed projects.* A project qualifying under section 42(h)(4) is not entitled to any credit unless the governmental unit that issued the bonds (or on behalf of which the bonds were issued), or the Agency responsible for issuing the Form(s) 8609 to the project, makes determinations under rules similar to the rules in paragraphs (a) (3), (4), and (5) of this section.

(b) *Effective date.* This section is effective on January 1, 2001.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In § 602.101, paragraph (b) is amended by revising the entry for 1.42-5 and adding an entry for 1.42-17 to the table in numerical order to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
1.42-5	1545-1357
* * * * *	* * * * *
1.42-17	1545-1357
* * * * *	* * * * *

Robert E. Wenzel,
Acting Commissioner of Internal Revenue.

Approved: December 28, 1999.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury.

[FR Doc. 00-111 Filed 1-13-00; 8:45 am]

BILLING CODE 4830-01-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.