

**FY2009**

**MULTIFAMILY TAX SUBSIDY PROJECT**

**INCOME LIMITS**

**BRIEFING MATERIAL**

U.S. Department of Housing and Urban Development

Office of Policy Development & Research

March 18, 2009



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## I. OVERVIEW

### A. What are Multifamily Tax Subsidy Projects?

These are projects financed with tax exempt housing bonds issued to provide qualified residential rental development under section 142 of the Internal Revenue Code (the Code) and low-income housing projects funded with tax credits authorized under section 42 of the Code, both of which are subject to HUD-determined income limits. Collectively, we will refer to these projects as Multifamily Tax Subsidy Projects (MTSPs). This set of projects excludes qualified mortgage bonds issued under section 143 of the Code.<sup>1</sup> The MTSPs have been affected by provisions in the Housing and Economic Recovery Act of 2008.

### B. History of the Use of HUD Income Limits for MTSPs

Section 142(d)(2)(B) of the Code, which is cross referenced in section 42(g)(4) of the Code, links the income determinations of MTSPs to HUD income limits: “*The income of individuals and area median gross income shall be determined by the Secretary in a manner consistent with determinations of lower income families under section 8 of the United State Housing Act of 1937.*” IRS Revenue Ruling 89-24<sup>2</sup> links MTSP 60 percent income limits to HUD very low-income limits. Specifically it states:

*The income limits applicable to qualified residential rental projects and to qualified low-income housing projects are required to be made in a manner consistent with determinations of lower income families under section 8 of the United States Housing Act of 1937. With respect to the 20-50 requirement of sections 142(d)(1)(A) and 42(g)(1)(A) of the Code, 20 percent or more of the applicable units must be occupied by individuals or families having incomes equal to or less than the **income limit for a “very low-income” family** of the same size. With respect to the 40-60 requirement of sections 142(d)(1)(B) and 42(g)(1)(B), 40 percent of the applicable units must be occupied by individuals or families having incomes equal to 120 percent or less of the income limit for a very low-income family of the same size.*

The “income limit for a ‘very low-income’ family” is the Section 8 very low-income limit (VLIL) produced by HUD annually. Traditionally, HUD has held its VLILs harmless – that is, HUD has not allowed income limits to decline in accord with underlying data – primarily because of their use by MTSPs. Allowing income limits to fall when median family incomes fall would put the financial stability of MTSPs at risk. However MTSP owners and managers found it difficult to operate in areas where income limits had not increased in several years and sought

<sup>1</sup> The relevant portions of section 142 are provided in attachment 1. The relevant portions of section 42 are provided in attachment 2.

<sup>2</sup> IRS Revenue Ruling 89-24 is provided in its entirety in attachment 3.

statutory change in program income limit calculations. These changes were implemented as part of the Housing and Economic Recovery Act of 2008 (HERA).

### **C. Changes to Income Limits for MTSPs Under HERA<sup>3</sup>**

The new subpart (E) of Section 142(d)(2), as added by section 3009a of HERA provides for immediate holding harmless of “area median gross income” for MTSPs. HUD has determined that the legislative intent of this addition is to cause applicable MTSP income limits based on HUD’s VLIL to be statutorily held harmless since MTSPs use income limits in determining tenant eligibility and for setting maximum rental rates. As a consequence of this legislation, beginning with FY2010, HUD will no longer hold its Section 8 income limits harmless.

In addition, HERA creates a special class of MTSPs labeled “HUD hold harmless impacted project(s)” (Impacted MTSPs) for which an additional set of income limits will be required. An Impacted MTSP is defined as “any project with respect to which area median gross income was determined under subparagraph (B) for calendar year 2007 or 2008 if such determination would have been less but for the HUD hold harmless policy”. Income limits for these projects are the greater of the regular MTSP income limits or the FY2008 VLIL times the growth in median incomes between the current year and FY2008.<sup>4</sup>

## **II. INCOME LIMIT CALCULATIONS FOR MTSPs**

### **A. Income Limits**

The initial 50 percent income limit for each Non-Impacted MTSP is the Section 8 VLIL. In subsequent years, the income limit for each MTSP may not decline and will be the highest Section 8 VLIL obtained throughout the project’s qualifying period. For 2009 the MTSP 50 percent income limit is equal to the maximum of either the HUD Section 8 VLIL for fiscal year (FY) 2009 or the HUD Section 8 VLIL for FY2008, as expressed below:

$$\text{MTSP\_VLIL}_{2009} = \max (\text{VLIL}_{2009}, \text{VLIL}_{2008})^5$$

The 60 percent income limit for MTSPs is calculated by multiplying the MTSP VLIL by 1.2:

$$\text{MTSP\_60}_{2009} = \text{MTSP\_VLIL}_{2009} * 1.2$$

HUD is planning on eliminating its traditional hold harmless provision for Section 8 income limits. But each Non-Impacted MTSP’s income limit will be the highest Section 8 income limit achieved during the project’s qualifying period. Therefore, each MTSP’s income limit going forward will depend on the path of income limits in its individual area and the year the initial

<sup>3</sup> The relevant portions of HERA are provided in attachment 4.

<sup>4</sup> Legislation specifies that the FY2008 income limit should be added to, not multiplied by, the growth in median income. However, it cannot be the intent of Congress to add a growth rate to a value so HUD is assuming multiplication in its implementation of the legislation.

<sup>5</sup> Attachment 5 provides full details about the calculation of VLIL. Full detailed documentation for each area can be found at [www.huduser.org](http://www.huduser.org) (insert exact URL here when ready).

income limit was determined. HUD will publish sufficient historical data on income limits for such determinations to be made, but they will need to be done on a project-by-project basis.

**B. Income Limits for HERA-Defined HUD Impacted Projects**

The very low-income limit for Impacted MTSPs is equal to the maximum of the Non-Impacted MTSP VLIL or the HUD Section 8 VLIL for FY2008 times the ratio of the median family income in FY2009 to the median family income in FY2008. This adjustment insures that Impacted MTSPs will see an increase in their FY2009 income limit even if their FY2009 income limit would otherwise be constant from last year, due to having been held harmless in 2007 or 2008.

$$\text{MTSP\_VLIL\_Impacted}_{2009}^6 = \max(\text{MTSP\_VLIL}_{2009}, \text{VLIL}_{2008} * (\text{MFI}_{2009} / \text{MFI}_{2008}))$$

The 60 percent income limit merely multiplies the very low-income limit for MTSPs, as determined in the previous step by 1.2.

$$\text{MTSP\_60\_Impacted}_{2009} = \text{MTSP\_VLIL\_Impacted}_{2009} * 1.2$$

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<sup>6</sup> Both the FY2009 MTSP regular and special 50% income limits are rounded to the nearest \$50 in accordance with the methodology currently in place for calculating 50% income limits for HUD's Section 8 program.

## Attachment 1

### Sec. 142. Exempt facility bond

*[TITLE 26, Subtitle A, CHAPTER 1, Subchapter B, Part IV, Subpart A, Sec. 142]*

#### STATUTE

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**(d)** Qualified residential rental project

For purposes of this section -

**(1)** In general

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

**(A)** 20-50 test

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

**(B)** 40-60 test

The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

**(2)** Definitions and special rules

For purposes of this subsection -

**(A)** Qualified project period

The term "qualified project period" means the period beginning on the 1st day on which 10 percent of the residential units in the project are occupied and ending on the latest of -

- (i) the date which is 15 years after the date on which 50 percent of the residential units in the project are occupied,
- (ii) the 1st day on which no tax-exempt private activity bond issued with respect to the project is outstanding, or
- (iii) the date on which any assistance provided with respect to the project under section 8 of the United States Housing Act of 1937 terminates.

**(B) Income of individuals; area median gross income**

The income of individuals and area median gross income shall be determined by the Secretary in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937 (or, if such program is terminated, under such program as in effect immediately before such termination). Determinations under the preceding sentence shall include adjustments for family size. Section 7872(g) shall not apply in determining the income of individuals under this subparagraph.

**(3) Current income determinations**

For purposes of this subsection -

**(A) In general**

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

**(B) Continuing resident's income may increase above the applicable limit**

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

**(4) Special rule in case of deep rent skewing**

**(A) In general**

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

- (i) "170 percent" for "140 percent", and

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

**(B)** Deep rent skewed project

A project is described in this subparagraph if the owner of the project elects to have this paragraph apply and, at all times during the qualified project period, such project meets the requirements of clauses (i), (ii), and (iii):

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

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

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

**(C)** Definitions applicable to subparagraph (B)

For purposes of subparagraph (B) -

**(i)** Low-income unit

The term "low-income unit" means any unit which is required to be occupied by individuals who meet the applicable income limit.

**(ii)** Gross rent

The term "gross rent" includes -

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

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

**(5)** Applicable income limit

For purposes of paragraphs (3) and (4), the term "applicable income limit" means -

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

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

**(6)** Special rule for certain high cost housing area

In the case of a project located in a city having 5 boroughs and a population in excess

of 5,000,000, subparagraph (B) of paragraph (1) shall be applied by substituting "25 percent" for "40 percent".

(7) Certification to Secretary

The operator of any project with respect to which an election was made under this subsection shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual certification as to whether such project continues to meet the requirements of this subsection. Any failure to comply with the provisions of the preceding sentence shall not affect the tax-exempt status of any bond but shall subject the operator to penalty, as provided in section 6652(j).

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## Attachment 2

### Sec. 42. Low-income housing credit

*[TITLE 26, Subtitle A, CHAPTER 1, Subchapter A, PART IV, Subpart D, Sec. 42]*

#### STATUTE

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

For purposes of this section -

**(1)** In general

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

**(A)** 20-50 test

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

**(B)** 40-60 test

The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

**(2)** Rent-restricted units

**(A)** In general

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

**(B) Gross rent**

For purposes of subparagraph (A), gross rent -

- (i) does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof),
- (ii) includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937,
- (iii) does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and
- (iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949. For purposes of clause (iii), the term "supportive service" means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subsection (i)(3)(B)(iii), such term includes any service provided to assist tenants in locating and retaining permanent housing.

**(C) Imputed income limitation applicable to unit**

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

- (i) In the case of a unit which does not have a separate bedroom, 1 individual.
- (ii) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom. In the case of a project with respect to which a credit is allowable by reason of this section and for which financing is provided by a bond described in section 142(a)(7), the imputed income limitation shall apply in lieu of the otherwise applicable income limitation for purposes of applying section 142(d)(4)(B)(ii).

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

**(i) In general**

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

**(ii) Next available unit must be rented to low-income tenant**

if income rises above 140 percent of income limit

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

**(E) Units where Federal rental assistance is reduced as tenant's income increases**

If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the income limitation applicable under paragraph (1), such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if -

- (i)** a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and
- (ii)** the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if -
  - (I)** the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1), and
  - (II)** such units were rent-restricted within the meaning of subparagraph (A). The preceding sentence shall apply to any unit only if the result described in clause (ii) is required by Federal statute as of the date of the enactment of this subparagraph and as of the date the Federal rental assistance payment is made.

**(3) Date for meeting requirements**

**(A) In general**

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

**(B) Buildings which rely on later buildings for qualification****(i) In general**

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

**(ii) Treatment of elected buildings**

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

**(iii) Date prior building is treated as placed in service**

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

**(C) Special rule**

A building -

**(i) other than the 1st building placed in service as part of a project, and****(ii) other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified low-income building, shall in no event be treated as a qualified low-income building unless the project is a qualified low-income housing project (without regard to such building) on the date such building is placed in service.****(D) Projects with more than 1 building must be identified**

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

**(4) Certain rules made applicable**

Paragraphs (2) (other than subparagraph (A) thereof), (3), (4), (5), (6), and (7) of section 142(d), and section 6652(j), shall apply for purposes of determining whether

any project is a qualified low-income housing project and whether any unit is a low-income unit; except that, in applying such provisions for such purposes, the term "gross rent" shall have the meaning given such term by paragraph (2)(B) of this subsection.

- (5) Election to treat building after compliance period as not part of a project  
For purposes of this section, the taxpayer may elect to treat any building as not part of a qualified low-income housing project for any period beginning after the compliance period for such building.
- (6) Special rule where de minimis equity contribution  
Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if -
- (A) all amounts so paid are refunded to the occupant on the cessation of his occupancy of a unit in the project, and
- (B) the purchase of the unit is not permitted until after the close of the compliance period with respect to the building in which the unit is located. Any amount paid to the lessor as described in the preceding sentence shall be included in gross rent under paragraph (2) for purposes of determining whether the unit is rent-restricted.
- (7) Scattered site projects  
Buildings which would (but for their lack of proximity) be treated as a project for purposes of this section shall be so treated if all of the dwelling units in each of the buildings are rent-restricted (within the meaning of paragraph (2)) residential rental units.
- (8) Waiver of certain de minimis errors and recertifications  
On application by the taxpayer, the Secretary may waive -
- (A) any recapture under subsection (j) in the case of any de minimis error in complying with paragraph (1), or
- (B) any annual recertification of tenant income for purposes of this subsection, if the entire building is occupied by low-income tenants.

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## Attachment 3

### IRS Revenue Ruling 89-24

Rev. Rul. 89-24

1989-1 C.B. 24, 1989-9 I.R.B. 5.

Internal Revenue Service

Revenue Ruling

#### EXEMPT FACILITY BONDS; LOW-INCOME HOUSING CREDIT

Published: February 27, 1989

Section 142. - Exempt Facility Bond

(Also Sections 42, 103, 6652; 1.42-1T, 1.103-8.)

Exempt facility bonds; low-income housing credit. Guidance is provided for computing the income limits applicable to exempt facility bonds issued to provide for qualified residential rental projects under section 142 of the Code and to low-income housing credits under section 42.

This Revenue Ruling provides the manner in which properly to compute the income limits applicable both to exempt facility bonds issued to provide for qualified residential rental projects under section 142 of the Internal Revenue Code and to low-income housing credits under section 42.

#### LAW

Section 1301 of the Tax Reform Act of 1986, 1986-3 (Vol. I) C.B. 524 (the Act), revised the income limits applicable to exempt facility bonds issued to provide for multifamily residential rental projects. COMPARE section 142(d) and former section 103(b)(4)(A) of the Code. In general, in order for interest on an exempt facility bond issued to provide for a multifamily residential rental project to be tax-exempt, the project must meet the income limit requirement of section 142(d)(1) of the Code. Under section 142(d)(1), a 'qualified residential rental project' is defined to include only residential rental projects where, either (A) 20 percent or more of the residential units in the project are occupied by individuals whose income is 50 percent or less of the area median gross income (the 20-50 requirement), or (B) 40 percent or more of the residential units in the project are occupied by individuals whose income is 60 percent or less of

the area median gross income (the 40-60 requirement), whichever is elected by the issuer of the bonds providing for such project.

Section 142(d)(4) of the Code provides that, in the case of a deep rent skewed project, 15 percent or more of the low-income units must be occupied by individuals whose income is 40 percent or less of the area median gross income.

Section 142(d)(2) of the Code provides that the income of individuals and the area median gross income shall be determined by the Secretary in a manner consistent with determinations of lower income facilities and area median gross income under section 8 of the United States Housing Act of 1937 or, if such program is terminated, under such program as in effect immediately before such termination. Determinations under the preceding sentence shall include adjustments for family size.

Section 252 of the Act enacted section 42 of the Code, which provides a new federal income tax credit that may be claimed by owners of residential rental projects providing low-income housing. Section 42(a) provides that the amount of the credit shall be based on an applicable percentage of the qualified basis of each qualified low-income building. Section 42(c)(2) defines the term 'qualified low-income building' to mean, in part, any building that at all times during the compliance period with respect to such building is part of a qualified low-income housing project.

Section 42(g)(1) provides that the term 'qualified low-income housing project' means any project for residential rental property if, either (A) 20 percent or more of the units in the project are both rent-restricted and occupied by individuals whose income is 50 percent or less of the area median gross income, or (B) 40 percent or more of the units in the project are both rent restricted and occupied by individuals whose income is 60 percent or less of the area median gross income, whichever is elected by the taxpayer.

Section 42(g)(4) of the Code provides in part, that paragraph (2) (other than subparagraph (A)) and paragraph (4) of section 142(d) 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.

## ANALYSIS AND HOLDING

The income limits applicable to qualified residential rental projects and to qualified low-income housing projects are required to be made in a manner consistent with determinations of lower income families under section 8 of the United States Housing Act of 1937. With respect to the 20-50 requirement of sections 142(d)(1)(A) and 42(g)(1)(A) of the Code, 20 percent or more of the applicable units must be occupied by individuals or families having incomes equal to or less than the income limit for a 'very low-income' family of the same size. With respect to the 40-60 requirement of sections 142(d)(1)(B) and 42(g)(1)(B), 40 percent of the applicable units must be

occupied by individuals or families having incomes equal to 120 percent or less of the income limit for a very low-income family of the same size.

With respect to certain deep rent skewed projects, as described in section 142(d)(4), the determination of whether 15 percent of the low-income units are occupied by individuals having incomes equal to 40 percent or less of the area median gross income shall be made by determining whether 15 percent of such units are occupied by individuals or families having incomes equal to or less than 80 percent of the income limit for a very low-income family of the same size.

The income limits for very low-income families are computed and listed, according to family size, by the Department of Housing and Urban Development (HUD) for every Metropolitan Statistical Area, Primary Metropolitan Statistical Area, and nonmetropolitan county of the United States and Puerto Rico. HUD also releases income limits for the possessions of Guam and the Virgin Islands.

A list of income limits released by HUD may be relied upon until 30 days after the Internal Revenue Service publishes an announcement or notice in the Internal Revenue Bulletin indicating that HUD has released updated income limits.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Mark Scott of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, contact Mr. Scott on (202) 566-4336 (not a toll-free call).

Rev. Rul. 89-24, 1989-1 C.B. 24, 1989-9 I.R.B. 5.



## Attachment 4

### Housing and Economic Recovery Act of 2008

Section 3009: HOLD HARMLESS FOR REDUCTIONS IN AREA MEDIAN GROSS INCOME

(a) In general- Paragraph (2) of section 142(d), as amended by section 3008 by adding at the end the following new subparagraph:

(E) HOLD HARMLESS FOR REDUCTIONS IN AREA MEDIAN GROSS INCOME-

- i. IN GENERAL – Any determination of area median gross income under subparagraph (B) with respect to any project for any calendar year after 2008 shall not be less than the area median gross income determined under such subparagraph with respect to such project for the calendar year preceding the calendar year for which such determination is made.
- ii. SPECIAL RULE FOR CERTAIN CENSUS CHANGES- In the case of a HUD hold harmless impacted project, the area median gross income with respect to such project for any calendar year after 2008 (hereafter in this clause referred to as the current calendar year) shall be the greater of the amount determined without regard to this clause or the sum of—
  - I. The area median gross income determined under the HUD hold harmless policy with respect to such project for calendar year 2008, plus
  - II. Any increase in the area median gross income determined under subparagraph (B) (determined without regard to the HUD hold harmless policy and this subparagraph) with respect to such project for the current calendar year over the area median gross income (as so determined) with respect to such project for calendar year 2008.
- iii. HUD HOLD HARMLESS POLICY- The term ‘HUD hold harmless policy’ means the regulations under which a policy similar to the rules of clause (i) applied to prevent a change in the method of determining area median gross income from resulting in a reduction in the area median gross income determined with respect to certain projects in calendar years 2007 and 2008.
- iv. HUD HOLDHARMLESS IMPACTED PEOJECT- The term ‘HUD hold harmless impacted project’ means any project with respect to which area median gross income was determined under subparagraph

(B) for calendar year 2007 or 2007 if such determination would have been less but for the HUD hold harmless policy’.

- (b) Effective Date- The amendment made by this section shall apply to determinations of area median gross income for calendar years after 2008.

## Attachment 5

HUD METHODOLOGY FOR ESTIMATING FY2009  
MEDIAN FAMILY INCOMES  
(ECONOMIC AND MARKET ANALYSIS DIVISION,  
OFFICE OF ECONOMIC AFFAIRS, PD&R)

FY2009 HUD estimates of median family income are based on 2000 Census median family income (MFI) estimates updated using Census American Community Survey (ACS) state-level MFI estimates and/or ACS local area MFI estimates. Separate HUD MFI estimates are calculated for all Metropolitan Statistical Areas (MSAs), HUD Metro FMR Areas, and nonmetropolitan counties.

FY2009 HUD MFI estimates expand HUD's use of American Community Survey data. Like the two previous years, the manner in which the ACS data are used depends on the type of data available, which differs by place size. Local ACS MFI estimates are available for areas with populations of 20,000 or more, but the statistical reliability of these estimates differs. When local MFI estimates are available, HUD MFI estimates are based partly on local ACS estimates and partly on state-level ACS estimates. The higher the statistical reliability of local estimates, the more heavily HUD estimates rely on local ACS estimates. Local ACS MFI estimates are used in inverse proportion to the size of their margin of error ratios (MoERs)<sup>7</sup>. In practice, estimates for areas with small MoERs are almost entirely based on local ACS estimates but, where MoERs are large, state-level estimates more heavily influence results. All areas with less than 20,000 people and areas with MoERs of more than 10 percent are updated exclusively with update factors generated using 2000 Census to 2007 ACS three-year MFI changes. All estimates are then updated from December 2007 to April 2009 using a trend factor of 3.0 percent, which reflects the annual change in median income from the Census 2000 Supplemental Survey<sup>8</sup> to the 2007 one-year ACS national estimate.

While the ACS provides the best data on local medians since the 2000 Census, ACS estimates differ from those of the 2000 Census in significant ways. Neither annual nor three-year ACS

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<sup>7</sup> The MoER is computed as the ratio of margin of error for the median family income estimate to form the "90 percent confidence interval" for the estimate itself. There is a 90 percent probability that any random sample of the same size from the population will yield an estimate of the median family income in this range.

<sup>8</sup> The Census 2000 Supplemental Survey was a developmental and testing version of the ACS conducted in 2000 to aid comparison of ACS techniques with 2000 Census results.

estimates of MFI have the same reliability as Decennial Census estimates. This is primarily due to the fact that ACS survey samples are still significantly smaller than decennial census “long-form” samples, which results in larger estimated MoERs for the ACS surveys. Table 1 summarizes MoER characteristics for the Decennial Census, ACS 2007 one-year estimates, ACS 2007 three-year estimates, and ACS 2007 three-year estimates for one-year survey areas.

Table 1 MoER Summary Statistics for One- and Three-year areas

|  | Decennial Census       | One-year survey areas     | Three-year survey areas      | Three-year MoERs for one-year areas |
|--|------------------------|---------------------------|------------------------------|-------------------------------------|
| Minimum                                    | 0.3                    | 0.8                       | 0.6                          | 0.6                                 |
| Maximum                                    | 9                      | 25                        | 26                           | 12                                  |
| Average                                    | 1.5                    | 6.2                       | 6.3                          | 3.5                                 |
| Percent of areas with less than 2.5% MoERs | 91                     | 13                        | 13                           | 33                                  |
| Number of Areas                            | All metropolitan areas | 546 one-year survey areas | 1400 three-year survey areas | 546 one-year survey areas           |

As can be seen in Table 1, three-year MoERs for all three-year areas have similar statistical characteristics as one-year MoERs for one-year areas. They range from less than one percent to approximately twenty-five percent and average about six percent. In both survey types, thirteen percent of the areas have MoERs that are less than two and a half percent. However, three-year MoERs for one year areas show a marked improvement over one-year MoERs; the largest three-year MoER for a one-year area is less than half the size of the largest one-year MoER and almost three times as many areas have MoERs less than 2.5 percent. Nevertheless, three-year estimates are still less reliable than 2000 Census results.

A principal objective of the MFI estimates program is to minimize the possibility of publishing income estimates with annual changes driven more by sampling error than changes in underlying economic conditions. HUD therefore uses a formula to incorporate 2007 ACS local median income estimates into its FY2009 MFI estimates that explicitly considers the MoER in the local ACS results. The formula gives low weight to ACS local median income estimates with large MoERs, thereby limiting the influence of these local ACS estimates on the HUD MFI estimates. Conversely, the formula gives high weights to ACS local median income estimates with small

MoERs, allowing the ACS estimate to be the dominant component of the HUD estimate in these areas.

Put simply, the formula produces a multiplicative update factor for the 1999 MFI reported in the 2000 Census. The factor is a weighted average of (a) the change in local area MFI from 1999 (2000 Census) to 2007 (local 2007 ACS), and (b) the change in state MFI from 1999 (state 2000 Census estimates) to 2007 (state 2007 ACS estimates). The weight assigned to the change in state MFI (b) is ten times the local MoER, or one, whichever is smaller. The MoER is defined as the margin of error of the 2007 ACS local estimate divided by the 2007 ACS estimate of local MFI. The weight assigned to the change in local median family income from the ACS (a) is the larger of 1 minus 10 times the MoER or zero.

When multiplied by the 1999 MFI reported in the 2000 Census, the weighted average factor defined above produces a FY2007 MFI estimate equivalent to the ACS survey estimate. This estimate is then trended forward from December 2007 to April 2009 by multiplying it by the national average annual income growth factor.

The step-by-step procedures used to develop FY2009 estimates for areas of 20,000 plus are as follows:

1. The 2000 Census was used to estimate what are treated as mid-1999 local median family income estimates<sup>9</sup>.
2. The 2000 Census estimates are updated from mid-1999 to end-2007 using the following formula:

$$(1 - 10 * \text{margin of error}) * (\text{ACS2007 local median}^{10} / \text{Census 2000 local median}) \\ + \\ (10 * \text{margin of error}) * (\text{ACS2007 state median} / \text{Census 2000 state median})$$

3. Median family income estimates for April 1, 2009, are then estimated as follows:

<sup>9</sup> Estimates of income need to be associated with a point in time. This poses the need to attribute an “as of” date to estimates when such dates are not explicitly defined. The 2000 Census income data, for instance, are based on questions regarding total income for 1999. For most households, income for a year is based on an income stream with at least some changes during the year. For purposes of estimation, HUD assumes that the 2000 Census income estimates have an “as of” date of mid-1999.

<sup>10</sup> ACS estimates are based on samples drawn throughout the survey year that ask about income for the previous 12 months, thereby reflecting income over a 24-month period. Three-year estimates reflect income data over a 48-month period. All responses are then adjusted by the Bureau of the Census to “annual” 2007 values using the average of the sum of the CPI indexes for the number of months before the survey date over the annual CPI index for the year. See “Income, Earnings, and Poverty from the 2007 American Community Survey”, August 2008 (Update) at <http://www.census.gov/prod/2008pubs/acs-09.pdf>. HUD makes a further adjustment to these values by moving the “as of” date to December of the survey year, again using CPI indexes. Specifically, HUD adjusts the annual 2007 estimate to December using the seasonally adjusted December 2007 CPI (211.680) over the 2007 annual CPI (207.342).

Step 1 median family income

\* Step 2 adjusted local update factor

\* 1.03 (3% annual trending)<sup>11</sup>

= FY 2009 Median Family Income estimate

Lastly, FY2009 Income Limit estimates continue to reflect HUD's policy of setting income limits at the higher of normal income limit calculations or at the previous year's income limits.

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<sup>11</sup> The caret symbol (^) means applying the exponent 1.25, commonly phrased "raised to the power".