

## FY 2021 Multifamily Tax Subsidy Project Income Limits Report

### 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 (IRC) and low-income housing projects funded with tax credits authorized under section 42 of the IRC, both of which are subject to HUD-determined income limits. Collectively, HUD refers 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> Separate income limits are issued for MTSPs as required 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 IRC, which is cross referenced in section 42(g)(4) of the IRC, 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 [IRC], 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. Prior to fiscal year (FY) 2010, HUD had held its VLILs harmless – that is, HUD did not allow 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

<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.



managers found it difficult to operate in areas where income limits had not increased in several years and sought statutory change in program income limit calculations. These changes were implemented as part of the Housing and Economic Recovery Act of 2008 (HERA).

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

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. Beginning with the FY 2010 Income Limits, HUD no longer holds its Section 8 income limits harmless. HUD published a *Federal Register* notice, dated May 17, 2010, to officially notify the public of this change.

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 are 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 FY 2008 VLIL times the growth in median incomes between the current year and FY 2008.<sup>4</sup>

### **D. Changes to Income Limits for Income Averaging and Trending**

Section 103 of Division T of the Consolidated Appropriations Act of 2018, Public Law No. 115-141, 132 Stat. 348 added a third minimum set-aside test, the average income test for low-income housing credit projects. This system provides the income averaging limits (20%, 30%, 40%, 50%, 60%, 70%, 80%) based on the FY 2019 Multifamily Tax Subsidy Project (MTSP) Income Limits for any area of the country selected by the user.

The income limits are calculated in accord with IRS Revenue Ruling 2020-4, pages 6 and 7. Beginning with the FY 2019 MTSP income limits, HUD posts MTSP Income Averaging Limits Summary on its annual MTSP page: <https://www.huduser.gov/portal/datasets/mtsp.html#2019>,

Last year HUD discussed considering a change that would replace the CBO forecast with the economic forecast of the Office of Management and Budget (OMB), beginning with the calculation of the FY 2021 Medians. This OMB forecast would have matched the economic assumptions used in the calculation of HUD median family income estimates with assumptions used in the formulation of the Administration’s Budget and with the economic assumptions used in the calculation of Fair Market Rents (FMRs). However, the OMB economic assumptions were

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

<sup>4</sup> Legislation specifies that the FY 2008 income limit should be added to, not multiplied by, the growth rate 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.

not used in the calculation of the FY 2021 FMRs. CBO forecast assumptions were used because they were based on more recent economic data that measured early economic impacts of the pandemic. HUD will still consider using OMB forecasts instead of CBO forecasts next year.

## 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 FY 2021, the MTSP 50 percent income limit for existing projects is equal to the maximum of either the HUD Section 8 VLIL for FY 2021 or the HUD Section 8 VLIL in place for FY2020, as expressed below:

$$\text{MTSP\_VLIL}_{2021} = \max (\text{VLIL}_{2021}, \text{MTSP\_VLIL}_{2020})^5$$

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

$$\text{MTSP\_60}_{2021} = \text{MTSP\_VLIL}_{2021} * 1.2$$

HUD has eliminated 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 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 FY2020 VLIL for Impacted Projects or the HUD Section 8 VLIL for FY 2008 times the ratio of the median family income in FY 2021 to the median family income in FY 2008. By including last year's MTSP VLIL for Impacted Projects in the area, this ensures implementation of the statutory hold harmless found in subpart (E) of Section 142(d)(2), as added by section 3009a of HERA. This adjustment insures that Impacted MTSPs will have increases should the change in

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<sup>5</sup>Attachment 5 provides full details about the calculation of VLIL. Full detailed documentation for each area can be found at <http://www.huduser.org/portal/datasets/mtsp.html>.

the current median family estimate to FY 2008 estimate be larger than the increase from last year's (FY 2020) income limits.<sup>6</sup>

$$\text{MTSP\_VLIL\_Impacted}_{2021} = \max(\text{MTSP\_VLIL\_Impacted}_{2020}, \text{VLIL}_{2008} * (\text{MFI}_{2021} / \text{MFI}_{2008}))$$

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

$$\text{MTSP\_60\_Impacted}_{2021} = \text{MTSP\_VLIL\_Impacted}_{2020} * 1.2$$

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<sup>6</sup> Both the FY 2021 MTSP regular and special 50 percent income limits are rounded up to the nearest \$50 in accordance with the methodology currently in place for calculating very low-income limits (50 percent 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 2008 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 PROCEDURE FOR ESTIMATING FY 2021 MEDIAN FAMILY INCOMES

In estimating FY 2021 median family incomes, HUD uses the median family<sup>7</sup> income data (as opposed to median household income data) from the 2018 American Community Survey (ACS) and the Puerto Rico Community Survey (PRCS). HUD uses the Consumer Price Index (CPI) forecast published by the Congressional Budget Office (CBO) to bring the ACS and PRCS data forward from mid-2018 to the mid-point of the fiscal year, April 2021. HUD calculates these medians for each metropolitan and nonmetropolitan area using the Fair Market Rent (FMR) area definitions applied in the Section 8 Housing Choice Voucher Program.

As mentioned above, the FY 2021 median family incomes incorporate the 2018 ACS and PRCS data into the calculation process. Specifically, for each metropolitan area, subarea of a metropolitan area (designated as a HUD Metro FMR Area (HMFA), and nonmetropolitan county, HUD determines if a statistically valid one-year ACS income estimate is available. If one-year data is not available, then HUD uses statistically valid five-year ACS data (data collected from 2014 through 2018). There are cases where statistically valid five-year ACS data is not available. In those cases, HUD uses an average of at least two of the past three years of income estimates. If at least two years of median income estimates are not statistically valid, HUD uses the state nonmetro median.

#### Statistically Valid Estimate

For the FY 2021 medians, HUD requires that the margin of error be less than half of the estimate **and** that the survey median is based on at least 100 responses (as identified by a count indicator value of 4 or more in HUD's special tabulations of ACS data). If the current year estimate does not meet both conditions, the current and previous years' estimates must meet the margin of error condition for HUD to use them in averaging. In the few cases where the statistical confidence interval for the 5-year ACS estimate of median family income is greater than half the estimate for more than one of the three years HUD uses in averaging (the current year and the two previous years), HUD assigns the state nonmetropolitan median.

#### CPI Inflation and Trend Factor

HUD uses a CPI forecast from CBO to inflate the 2018 ACS data to the mid-point of FY 2021. HUD uses the CBO projection of fiscal year CPI, published in February 2021, to inflate the 2018 data.

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<sup>7</sup> Family refers to the Census definition of a family, which is a householder with one or more other persons living in the same household who are related to the householder by birth, marriage, or adoption. The definition of family excludes one-person households and multi-person households of unrelated individuals.



Last year HUD discussed considering a change that would replace the CBO forecast with the economic forecast of the Office of Management and Budget (OMB), beginning with the calculation of the FY 2021 Medians. This OMB forecast would have matched the economic assumptions used in the calculation of HUD median family income estimates with assumptions used in the formulation of the Administration's Budget and with the economic assumptions used in the calculation of Fair Market Rents (FMRs). However, HUD did not use the OMB economic assumptions in the calculation of the FY 2021 FMRs. HUD uses CBO forecast assumptions because they were based on more recent economic data that measured early economic impacts of the pandemic. HUD will still consider using OMB forecasts instead of CBO forecasts next year.

## **Median Calculations**

Median family incomes start with the development of median family incomes for the nation (with national metropolitan and nonmetropolitan median family incomes) for each state and territory (again including national metropolitan and nonmetropolitan median family incomes) and for each metropolitan area and nonmetropolitan area using the FMR geographic area definitions for the United State and its territories.

The major steps are as follows:

HUD uses 2018 ACS or PRCS median family incomes as the basis for FY 2021 medians for all areas designated as Fair Market Rent areas in the United States and Puerto Rico.<sup>8</sup> In areas where there is a statistically valid 2021 one-year survey estimate, HUD uses it. If not, HUD uses statistically valid 2018 five-year data. Where statistically valid five-year data is not available, HUD averages the valid income estimates from the current (where there is valid margin of error of the estimate) and two previous years of ACS or PRCS data or for at least two of these three years.

HUD considers the 2017 five-year data and the 2016 five-year data valid if the margin of error of the estimate is less than one-half of the estimate. These are inflated to 2018 using the change in national CPI calculated between 2016 or 2017 and 2018.

For all places in the United States and Puerto Rico:

HUD trends all estimates (using either one-year data or five-year data) from 2018 to April 2021 using the CPI forecast produced by CBO.

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<sup>8</sup> When HUD's Fair Market Rent area definitions match a standard census geography, the ACS data HUD uses to calculate median family income estimates may be obtained from ACS table B19113: Median Family Income in the Past 12 Months.

For the non-Puerto Rico Insular Areas of the United States,<sup>9</sup> which currently lack the annual survey of ACS or PRCS, HUD uses 2010 Decennial Census data which collected 2009 median family incomes. These data were first incorporated into HUD's medians with the FY 2016 median family incomes and income limits. This continues to be the basis of the FY 2021 median family incomes and income limits. HUD uses national ACS median family income changes to update the 2009 median family income data to 2018. HUD then applies the same CBO forecast from mid-2018 to the mid-point of the fiscal year, April 2021.

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<sup>9</sup> The areas without ACS coverage are the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands. Puerto Rico is covered by the ACS-equivalent Puerto Rico Community Survey.