

SUPPORTING STATEMENT
(PS-78-91; PS-50-92; & REG-114664-97)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 1.42-5: Code section 42(m)(1)(B)(iii) provides that a low-income housing credit allocation plan is not qualified unless it contains a procedure that the State or local housing credit agency ("Agency") (or an agent of, or private contractor hired by, the Agency) will follow in monitoring compliance with the provisions of section 42. The Agency is to notify the IRS of any noncompliance of which the Agency becomes aware.

Section 1.42-13: In the situations described in §1.42-13(b)(3)(ii), an Agency must obtain the prior approval of the Secretary to correct administrative errors and omissions relating to allocations of low-income housing credit dollar amounts and recordkeeping. Section 1.42-13(b)(3)(iii) requires an Agency to request the Secretary's approval within a reasonable period after discovering the administrative error or omission, and agree to any conditions that may be required by the Secretary.

Section 1.42-17: Under Code §42(m)(2)(A), the housing credit dollar amount allocated to a project should not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. In making this determination, §42(m)(2)(B) requires that the housing credit agency must consider: (i) the sources and uses of funds and the total financing planned for the project, (ii) any proceeds or receipts expected to be generated by reason of tax benefits, (iii) the percentage of the housing credit dollar amount used for project costs other than the costs of intermediaries, and (iv) the reasonableness of the developmental and operational costs of the project.

2. USE OF DATA

Under the compliance monitoring procedures in §1.42-5, Agencies report noncompliance on Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance. The Service uses the information provided to ensure that

individuals or entities claiming §42 credits are entitled to claim it on their Federal income tax returns.

The information required under §1.42-13(b)(3)(iii) is used by the Service to determine whether an administrative error or omission can be corrected. If the information is not collected, it may be impossible for the Secretary to grant an Agency's request for approval.

The information provided by taxpayers to Agencies under the requirement in §1.42-17(a)(5) will be used by Agencies to evaluate the amount of §42 credits awarded for a low-income project.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

We have been unable to reduce the burden for small businesses.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

A notice of proposed rulemaking was published in the **Federal Register** on December 27, 1991 (56 FR 68018), a public hearing was held on March 4, 1992. The final regulations were published in the **Federal Register** on September 2, 1992 (57 FR 40118).

PS-50-92

The notice of proposed rulemaking was published in the **Federal Register** on January 4, 1993 (58 FR 44), and a public hearing was held on April 5, 1993. The final regulations were published in the **Federal Register** on February 24, 1994 (59 FR 8860).

REG-114664-97

The notice of proposed rulemaking was published in the **Federal Register** on January 8, 1999 (64 FR 1143), and a public hearing was held on May 27, 1999. The final regulations were published in the **Federal Register** on January 14, 2000 (65 FR 2323).

In response to the **Federal Register** notice dated July 6, 2010 (75 FR 38874), we received no comments during the comment period regarding PS-78-91, PS-50-92 or REG-114664-97.

9. **EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

10. **ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Generally, tax returns and tax return information are confidential as required by 26 U.S.C. 6103.

11. **JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

12. **ESTIMATED BURDEN OF INFORMATION COLLECTION**

Section 1.42-5(b) specifies the records that owners of low-income housing projects must retain. Owners must retain

these records to claim the low-income housing credit under §42. The burden for these recordkeeping requirements is reflected on Forms 8609 and 8586.

Section 1.42-5(c)(1) requires an owner of a low-income housing project to make certain annual certifications to the Agency responsible for monitoring the project. In addition, Agencies using the review procedure in §1.42-5(c)(2)(ii) require owners to provide copies of certain documents to accompany the above certifications. We estimate that approximately 20,000 owners will make this annual certification and it will take them from .5 hour to 3 hours, with an estimated average of 1 hour, to make the certifications and provide copies of the accompanying documents. **The total burden for this reporting requirement is 20,000 hours.**

Section 1.42-5(c) and (e) require Agencies to audit the records described in §1.42-5(b), review the annual certifications described in §1.42-5(c)(1), and notify the owner of a low-income housing project if the Agency does not receive the required certifications, or if the Agency discovers that the project is not in compliance with §42 or the Agency's monitoring procedure. Also, §1.42-5(c)(2) requires that Agencies make on-site physical inspections. We estimate that 55 Agencies will take 250 hours to 5,000 hours, with an estimated average of 1,500 hours, to review and inspect the low-income housing projects in their jurisdictions. **The total burden for this reporting and recordkeeping requirement is 82,500 hours.**

Section 1.42-5(c)(5) requires that an Agency report its compliance monitoring activities annually to the IRS on Form 8610. The burden for reporting this information will be reflected on Form 8610.

Section 1.42-5(e)(3) requires Agencies to file Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance, with the Service. The burden for this requirement is reflected in the burden of Form 8823.

Section 1.42-13(b)(3)(ii) allows an Agency to correct administrative errors and omissions with respect to allocations and recordkeeping within a reasonable period after discovery. Section 1.42-13(b)(2) defines an administrative error or omission as a mistake that results in a document that inaccurately reflects the intent of the

Agency at the time the document is originally completed or, if the mistake affects a taxpayer, a document that inaccurately reflects the intent of the Agency and the affected taxpayer at the time the document is originally completed. However, an administrative error or omission does not include a misinterpretation of the applicable rules and regulations under section 42. Agencies must obtain prior approval from the Secretary to correct an administrative error or omission if the correction is not made before the close of the calendar year of the error or omission and the correction: (1) is a numerical change to the housing credit dollar amount allocated for the building or project; (2) affects the determination of any component of the State's housing credit ceiling under section 42(h)(3)(C); or (3) affects the State's unused housing credit carryover that is assigned to the Secretary under section 42(h)(3)(D). In all other cases an Agency may correct an administrative error or omission without obtaining the prior approval from the Secretary. We estimate that 10 taxpayers and 10 Agencies will take from .5 to 3 hours to comply with this requirement, with an estimated average of 2 hours per taxpayer and .5 hour per Agency. **The total burden for this recordkeeping requirement is estimated to be 25 hours.**

Section 1.42-13(b)(3)(iii) allows the Secretary's automatic approval for an administrative error or omission in an allocation document (the Form 8609, or the allocation document under the requirements of §1.42-6(d)(2)) that either did not accurately reflect the number of buildings constructed by the affected taxpayer, or transposed the information for one or more buildings with other buildings in the project. If the automatic approval provision applies to the administrative error or omission, the Agency must amend the allocation document. We estimate that 33 taxpayers and 33 Agencies will take from .5 to 10 hours to comply with this requirement, with an estimated average of 4 hours per taxpayer and Agency. **The total burden for this recordkeeping requirement is estimated to be 264 hours.**

The burden for amending the Form 8609, or the form to be prescribed by the IRS that summarizes the allocation document (within the meaning of §1.42-6(d)(2)), will be reflected on those forms.

Section 1.42-17(a)(5) requires that taxpayers must obtain an opinion by a certified public accountant on the financial

determinations and certifications provided by the taxpayers to the Agency and on the costs that may qualify for inclusion in eligible basis under §42(d), based upon the accountant's examination. This opinion must be submitted to the Agency before the Agency issues the Form 8609. We estimate that approximately 2,000 owners of new low-income housing projects will obtain this opinion and the owners will spend between .5 hour and 2 hours dealing with the accountant, with an estimated average of 1 hour per respondent. We estimate that the 55 Agencies will spend between .5 hour and 5 hours reviewing the opinions, with average of 2 hours per Agency. **The total burden for these reporting and recordkeeping requirements is estimated to be 2,110 hours.**

The total burden for all respondents described in the preceding paragraphs is 104,899 hours. It is estimated that the burden will fall on 22,141 separate respondents.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our **Federal Register** notice dated **July 6, 2010 (75 FR 38874)**, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal if OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

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 OMB control number. Books or records relating to a 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.