

## SUPPORTING STATEMENT

### 1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The low-income housing credit determined under section 42 generally is allowable for a qualified low-income building only if the owner receives a housing credit allocation from a state or local housing credit agency. Under section 42(h) (1)(E), a carryover allocation may be made to a qualified building that has not yet been placed in service provided that the qualified building is placed in service not later than the close of the second calendar year following the calendar year of the allocation. A qualified building for this purpose is any building that is part of a project if the taxpayer's basis in the project (as of the close of the calendar year of the allocation) is more than 10 percent of the taxpayer's reasonably expected basis in the project (as of the close of the second calendar year following the calendar year of the allocation).

Under section 42(b)(2)(A), the amount of the low-income housing credit for any tax year in the 10-year credit period is the applicable percentage of the qualified basis of each qualified low-income building. The applicable percentage for buildings placed in service after 1987 is normally the appropriate percentage prescribed by the Secretary for the month the building is placed in service. Alternatively, the taxpayer may elect to use the appropriate percentage for the month in which the taxpayer and the housing credit agency enter into an agreement for the building which is binding on the agency, the taxpayer, and all successors in interest as to the housing credit dollar amount to be allocated to the building. In the case of a substantially bond-financed building, the taxpayer may elect to use the appropriate percentage for the month in which the tax exempt obligations are issued. In either case, the election must be made no later than the 5th day after the close of the elected month.

This document contains final regulations that amend the utility allowances regulations concerning the low-income housing tax credit. The final regulations update the utility allowance regulations to provide new options for estimating tenant utility costs. The final regulations affect owners of low-income housing projects who claim the credit, the tenants in those low-income housing projects, and the State and local housing credit agencies that administer the

credit.

2. USE OF DATA

The housing credit agency will collect and review the data submitted by the taxpayers to the agency to ensure that credits are being properly allocated and that the requirements of section 42 are otherwise being complied with. The housing credit agency will submit annually to the Internal Revenue Service copies of the carryover allocation documents, election statements, and binding agreements executed during the year with the housing credit agency's Form 8610, Annual Low-Income Housing Credit Agencies Report.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

We have no plans to offer electronic filing. IRS publication, 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 specifically 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

The notice of proposed rulemaking (TD 8520), was published in the **Federal Register** on December 29, 1992 (57 FR 61852). No public hearing was held. The final regulations (TD 9420), were published in the **Federal Register** on July 29, 2008 (73 FR 43863).

We received no comments during the comment period in response to the **Federal Register** notice (75 FR 53022) dated August 30, 2010.

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 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Binding agreement w/out electing percentage

Sections 1.42-8(a)(1) and (a)(6) of the regulations specify the items of information that must be included in a binding agreement and the recordkeeping requirements imposed on the taxpayers and the housing credit agencies.

|  |       |
|--|-------|
| Reporting respondents (taxpayers and agencies) | 200   |
| Number of responses per respondent (average)   | x 1.0 |
| Total number of responses                      | 200   |
| Time per response                              | x .50 |
| Reporting burden                               | 100   |

|                       |       |
|-----------------------|-------|
| Recordkeepers         | 200   |
| Time per recordkeeper | x .10 |
| Recordkeeping burden  | 20    |

Election percentage statement (encompasses binding agreement)

Sections 1.42-8(a)(3), (a)(6), (b)(1), and (b)(4) of the

regulations specify the manner of properly electing an appropriate percentage month and the recordkeeping requirements imposed on the taxpayers and the housing credit agencies.

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| Reporting respondents                        | 200          |
| Number of responses per respondent (average) | <u>x 1.0</u> |
| Total number of responses                    | 200          |
| Time per response                            | <u>x .75</u> |
| Reporting burden                             | 150          |

|                       |              |
|-----------------------|--------------|
| Recordkeepers         | 200          |
| Time per recordkeeper | <u>x .10</u> |
| Recordkeeping burden  | 20           |

Carryover Allocation Document

Sections 1.42-6(d)(2) and (d)(4) of the regulations specify the items of information that must be included in a valid carryover allocation and the recordkeeping requirements imposed on the taxpayers and the housing credit agencies.

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|--|--------------|
| Reporting respondents                        | 2,000        |
| Number of responses per respondent (average) | <u>x 1.0</u> |
| Total number of responses                    | 2,000        |
| Time per response                            | <u>x .75</u> |
| Reporting burden                             | 1,500        |

|                       |              |
|-----------------------|--------------|
| Recordkeepers         | 2,000        |
| Time per recordkeeper | <u>x .10</u> |
| Recordkeeping burden  | 200          |

Verification of basis and ownership

Section 1.42-6(c) of the regulations requires a housing credit agency that makes a carryover allocation to a taxpayer to verify that, as of the close of the calendar year of the allocation, the taxpayer (1) owns land or depreciable real property that is expected to be part of the project, and (2) has incurred more than 10 percent of the reasonably expected basis in the project (land and depreciable basis). A housing credit agency may verify these requirements obtaining from the taxpayer a written certification along with supporting documentation, or by obtaining the written legal opinion of an attorney (as to the ownership requirement) or the written certification of

an attorney or certified public accountant (as to the basis requirement).

|  |              |
|--|--------------|
| Reporting respondents                        | 2,000        |
| Number of responses per respondent (average) | <u>x 1.0</u> |
| Total number of responses                    | 2,000        |
| Time per response                            | <u>x 1.0</u> |
| Reporting burden                             | 2,000        |

Utility company estimate

Section 1.42-10(b)(4)(ii)(B) of the regulations provides a procedure for determining the correct local utility company estimate to utilize in calculating the rent of rent-restricted units.

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| Reporting respondents                        | 30           |
| Number of responses per respondent (average) | <u>x 1.0</u> |
| Total number of responses                    | 30           |
| Time per response                            | <u>x .50</u> |
| Reporting burden                             | 15           |
| Recordkeepers                                | 30           |
| Time per recordkeeper                        | <u>x .10</u> |
| Recordkeeping burden                         | 3            |

Total reporting and recordkeeping burden 4,008 hours.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our **Federal Register** notice dated August 30, 2010, 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 regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the 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.

