<u>Clarification for Monitoring the Available Unit Rule</u>

When a household recertifies annual income over 140% of the AMI, the household is identified as ñOver Income.ò Section 42 includes the Next Available Unit Rule (or ñAURò), which allows the Owner to continue claiming credits on the Over Income unit as long as all subsequent vacant units (that are comparable or smaller) are rented to income qualified households. If the Owner fails to rent the next comparable or smaller unit to qualified households, it brings all larger Over Income units in the building into noncompliance.

<u>100% HTC Projects</u>
Owner is no longer required to provide details on the Available Unit Rule for 100% HTC projects. The Recertification Exemption (effective 1/1/09) makes the status of a householdôs annual income unknown. Owner must perform due diligence in documenting files for initial income eligibility. If Owner is performing timely, accurate and thorough determinations of income eligibility and a unit is inadvertently rented to an unqualified household, the applicable fraction will be recomputed to decrease the allowable credit for the year by that unit. However, if an HTC is deliberately rented to a market rate household and Owner cannot demonstrate timely, accurate and thorough income determination procedures, the Owner risks the entire building being in violation of the Available Unit Rule and a reduction of the buildingôs qualified basis to zero.

<u>Mixed Use Projects</u>
At mixed use projects the AUR requires more attention when a household goes over income, and the Owner has options to handle compliance.

By requiring the Owner to rent the next available *smaller* unit, the AUR minimizes the reduction to project net income due to loss of higher rents charged when market units are converted to HTC status. For instance, if a 1-bedroom HTC becomes Over Income, it would be unfair to force the Owner to rent the next 3-bedroom market rate unit at the restricted HTC rents. However, despite possible loss of cash flow, Owners retain the option to replace an Over Income unit with the next comparable or LARGER available unit(s) by renting to HTC qualified household(s). At that point, the Owner will identify the larger unit(s) as the ñreplacement unit(s)ò for the Over Income unit for purposes of determining the Applicable Fraction and the project will remain in compliance.

Therefore, compliance monitoring of the AUR can be stated another way:

> As of the date that a household certifies annual income over 140% of the applicable AMI, if the Owner rents **ALL** subsequent vacancies in the building to HTC qualified households until the ***applicable fraction is restored to*** the percentage on which the credit is based, the building remains in compliance.

In mixed use projects, some Owners choose to maintain a few extra units with HTC qualified households. This practice is fine, but accurate reporting on the specific units used for calculating the applicable fraction is essential. For this reason, the status of units as shown on the Building Map (HTC-28) must match the status of the units shown on the Data Sheet (HTC-13). Owners must report <u>only</u> the number of HTC units to support the original tax credit basis and Applicable Fraction calculation reported on the Applicable Fraction tabs (ñY1 AFò or ñY2 AFò). If ñextraò HTC units are being maintained, and the Owner wants to use one of these as the Replacement Unit, the status of that unit on the Unit List and on the HTC-13 will change from ñMarketò (or ñMò) to ñHTCò (or ñLò) as of the effective date the household certifies their HTC eligibility.

Therefore, if the AUR is triggered, the owner must report on which subsequent unit(s) are being used to satisfy the rule. In the User Notes column of the HTC-13, one of the following notes should be entered on the corresponding lines for both the Over Income household and for subsequent move-ins that occur in the same building:

Scenario A: **HTC household went over income, and a qualified HH has been identified and has moved into a replacement unit.** Examples for User Notes:

For the Over Income unit: *"AUR: Unit # XX was determined to be HTC eligible as of XX/XX/XXXX (move-in or re-cert date) in order to restore the building's applicable fraction to XX.XXX%"*

For the subsequent Replacement unit(s): *"AUR: This unit is a Replacement Unit for #_______."*

Scenario B: **HTC household went over income, and no units have yet become available in the building.** Examples for User Notes:

For the Over Income unit: *"AUR: Unit is rent restricted and continues to be treated as HTC qualified until a replacement unit becomes available."*

For subsequently rented units which were not ñavailableò because a binding reservation was in place as of the effective date of the Over Income householdôs re-certification: *"AUR: This unit was not eligible to satisfy the Available Unit Rule as it was reserved under a binding contractual agreement as of: _____ (date)."*

On the HTC 28 Building Map, the status of an Over Income unit is swapped with the Replacement Unit (previously reported as Market) in the month that the replacement household moves in or otherwise becomes HTC eligible.

AHC does not monitor the amount of credits claimed by Owners each year but reviews and reports on the Ownersô compliant treatment of Over Income households with the AUR.

Terms and Abbreviations

- ñAURò = Available Unit Rule
- ñHHò = Household
- ñNAUò = Next Available Unit
- Over-income = Over 140% of AMI
- ñQVUò = Qualified Vacant Unit
- Binding Reservation = Unit is not available because of binding written agreement with an applicant.
- Applicable Fraction: In any HTC building, this is a percentage of HTC qualified units (or floor space) based upon that which tax credits were originally claimed.

References

- Low Income Housing Credit Newsletter #32, October 2008
- AHCôs website: www.ahcinc.net
- 8823 Guide:
  - AUR: Chapter 14
- IRS Revenue Ruling 2003-82 on safe harbor during first year of compliance period
- Suballocator Compliance Manual:
  - AUR: Page 6-6

Clarification for Monitoring the Vacant Unit Rule

Annual Owner reports for the HTC Program are completed with information as of year-end. AHCôs review of these reports includes the tracking of vacant units in accordance with Section 42 Vacant Unit Rule (ñVURò). The following guidance will assist Owners and their agents to provide complete and accurate reporting on the ERP (Electronic Reporting Program) to avoid findings of noncompliance.

100% HTC Projects

Units that are vacant at year end must show the most recent data for the previously qualified household, including the move-in information and the last re-certification performed, even if this was for a previous reporting year. This will usually result in the unit having the status of Qualified Vacant Unit (ñQVUò) unless other noncompliance exists or long term vacancy calls into question the unit being suitable for occupancy. Since every HTC unit must have information reported, it is essential that all details for the previously qualified household are shown on the ERP.

On the HTC-13 in the User Notes column, the Owner can also provide information related to the current status of a QVU, such as the pending move-in date of an approved applicant, the status of repairs or rehab being done in the unit, or Owner actions taken to address long-term vacancy issues. If this information is not provided, the unit will be tracked in the following year for compliance with the VUR.

Mixed Use Projects (HTC and Market Rate units)

Vacant Units in a mixed use project are very important for Owners to monitor, as any Over Income units in the building will trigger the Available Unit Rule at the point of any vacancy and Owners must adhere to the Vacant Unit Rule at all times. The riskiest scenarios in a mixed use project stem from renting a Market Rate unit in violation of the VUR or the AUR, or otherwise resulting in a failure to maintain the buildingôs applicable fraction.

AHC requests Owners to provide User Notes on the HTC-13 to clarify the current status of vacant units (even after year-end) regarding these areas of compliance. Details from the Owner are necessary to properly monitor the VUR, because AHC cannot determine which units are truly ñavailableò (i.e., no binding agreement for reservation is present for a pending applicant). Additionally, AHC can not anticipate whether any other HTC units have gone Over Income and triggered the AUR since year end. An Over Income unit disallows an Ownerôs option to rent the next available vacant unit to an unqualified household.

The following examples provide adequate information in the User Notes column:

Scenario A: **Market Rate unit was vacant at year-end and remains vacant. There are no over income units in the BIN.** Example for User Notes:

> *"VUR: Unit vacant as of year-end. There are no over income units in this BIN. Marketing unit to Mkt Rate applicants."*

Scenario B: **Market Rate unit was vacant at year-end BUT has since been rented to Market Rate Household. There are no over income units in the BIN.** Example for User Notes:

> *"VUR: Mkt Rate HH vacated unit. Rented to Mkt Rate HH on mm/dd/yy. Applicable Fraction was maintained."*

Scenario C: Market Rate unit was vacant at year-end and has since been rented to HTC Household because another HTC household went over income. Example for User Notes:

> *“VUR: Mkt Rate HH vacated unit. Rented to HTC qualified HH as NAU replacement unit for #____, which went over income on <u>mm/dd/yyyy</u>.“*

* User Notes should also be provided on the line belonging to the over income unit to conform to the AUR.

Scenario D: HTC unit was vacant at year-end.
At mixed use projects, a QVU should be noted as such, and would typically be re-rented to another qualified household. If an HTC unit changes status to a Market Unit, Owner must provide details in the User Notes about the Applicable Fraction.

Any change in a unitõs status (from ñLò to ñMò or vice versa) must also be recorded on the Building Map (HTC-28) so that the building map matches the Data tab of the ERP at year end. Also, Owners can <u>only</u> report the number of HTC units needed to support the original tax credit basis and applicable fraction for each building, and this must also match the ñY1 AFò or ñY2 AFò Applicable Fraction tab of the ERP.

At a mixed use project, Section 42 requires that Owners make reasonable attempts to rent low-income units to qualified households **before** renting to unqualified households. See references below for more detail on this aspect of the Vacant Unit Rule. Important Note: the Vacant Unit Rule is a project wide rule, whereas the Available Unit Rule is applied on a building basis.

<u>Terms and Abbreviations</u>

- ñAURò = Available Unit Rule
- ñVURò = Vacant Unit Rule
- ñHHò = Household
- ñNAUò = Next Available Unit
- Over-income = Over 140% of the applicable AMI
- ñQVUò = Qualified Vacant Unit
- Binding Reservation = Unit is not available because of binding written agreement with an applicant.
- Applicable Fraction: In any HTC building, this is a percentage of HTC qualified units (or floor space) based upon that which tax credits were originally claimed.

<u>References</u>

- On AHCõs website: www.ahcinc.net
- 8823 Guide:
  - AUR: Chapter 14
  - VUR: Chapter 15
- IRS Revenue Ruling 2004-82 (see question #8,#9, and #10)
- Suballocator Compliance Manual:
  - VUR: Page 5-8
  - AUR: Page 6-6