<u>Clarification for Monitoring the Available Unit Rule ("AUR")</u>

When a household's recertified annual income is over 140% of the income limit for the household size, the household is identified as "Over Income." Section 42 includes the Available Unit Rule (or "AUR"), which allows the Owner to continue claiming credits on the Over Income unit as long as <u>**all subsequent vacant units**</u> (that are comparable or smaller) are rented to qualified households, until the required Applicable Fraction is restored. If the Owner fails to rent comparable or smaller units to qualified households, it brings all larger Over Income units in the building into noncompliance.

<u>100% HTC Projects</u>
Since Income Recertifications are not required at 100% HTC Projects (after Suballocator has determined the project to be eligible for exemption as a result of monitoring the first year of compliance), Owner will be unaware if an existing household goes over income. Therefore, it is not necessary to report on compliance with the Available Unit Rule for 100% HTC Projects. <u>Reminder</u>: it is absolutely essential that each initial certification in a 100% low-income project be done very carefully and thoroughly. If an initial tenant income certification has insufficient documentation of gross annual household income, or it is determined for any reason that one or more households do not qualify, the owner must resume conducting annual income recertifications until 100% of the units are back in compliance.

<u>Mixed Income Projects</u>
At mixed income projects the AUR requires detailed compliance reporting when a household goes over income, and the Owner has options to handle compliance. Owners must provide User Notes on the HTC-13 to clarify the current status of the Available Unit Rule (even after year-end) for any units that have been rented after a household has gone over income. Details from the Owner are necessary to properly monitor the AUR, because AHC cannot determine which units are truly "available" (i.e., no binding agreement for reservation is present for a pending applicant).

By requiring the Owner to rent subsequently vacant *smaller* units, the AUR minimizes the reduction to a project's 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 "replacement unit(s)" 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's recertified annual income is over 140% of the applicable limit, 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 income projects, some Owners choose to maintain a "cushion" of a few extra units with HTC qualified households. This practice is fine, but <u>accurate reporting on the specific units used for calculating the applicable fraction is essential</u>. 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) at year-end. Owners must report <u>***only*** those HTC units included in the Applicable Fraction calculation reported on the Applicable Fraction tabs ("Y1 AF" or "Y2 AF").</u> If "extra" 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 "Market" (or "M") to "HTC" (or "L") as of the effective date the household certifies their HTC eligibility, and the additional information required for HTC ("L") households must be reported.

Therefore, if the AUR is triggered, the owner must report on which subsequent unit(s) is/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 moved into a replacement unit.** Examples for User Notes:

> For the Over Income unit: *"AUR: Unit #_____ HTC eligible as of XX/XX/XXXX (move-in or re-cert date): App Fraction now XX.XXX%"* Remember: more than one unit may need to be identified as new HTC units.
>
> 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 rent restricted, treated as HTC until replacement available."*
>
> For subsequently rented "M" units (rented after effective date of OI Recert) which were not "available" because a binding reservation was in place as of the effective date of the Over Income household's re-certification: *"AUR: Unit was not eligible to satisfy the AUR, was reserved as of: _____ (date)."*

On the Building Map, the status of the 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 dollar amount of credits claimed by Owners each year. Therefore, as monitoring agent, we simply need to know how the Owner is treating the situation in a building with an Over Income household to remain in compliance with the AUR.

Terms and Abbreviations

- "AUR" = Available Unit Rule
- "HH" = Household
- "NAU" = Next Available Unit
- "OI" = Over-income = Over 140% of AMI
- "QVU" = Qualified Vacant Unit
- Binding Reservation = Unit is not available because of binding written agreement with an applicant.
- "A/F" 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

- On AHC's website: www.ahcinc.net
- 8823 Guide:
  - AUR: Chapter 14
  - VUR: Chapter 15
- IRS Revenue Procedure 2003-82 on safe harbor during first year of compliance period
- Suballocator Compliance Manual: Chapter 6