

Attention

This November 2003 revision of Form 8609 is only to be used by housing credit agencies and building owners with respect to buildings placed in service before 2005, or in the case of buildings financed with tax-exempt bonds, bonds issued and buildings placed in service before 2005. A 2005 revision of Form 8609, to be used by housing credit agencies for 2005 and later, will be available shortly.

Low-Income Housing Credit Allocation Certification

OMB No. 1545-0988

▶ **The building owner must attach Form 8609 and
Schedule A (Form 8609) to its Federal income tax return.**

Attachment
Sequence No. **36**

Part I Allocation of Credit

Check if: Addition to Qualified Basis Amended Form

| | |
|--|--|
| A Address of building (do not use P.O. box) (see instructions) | B Name and address of housing credit agency |
| C Name, address, and TIN of building owner receiving allocation TIN ▶ | D Employer identification number of agency E Building identification number (BIN) |

| | | |
|---|-----------|---------|
| 1a Date of allocation ▶ b Maximum housing credit dollar amount allowable . | 1b | |
| 2 Maximum applicable credit percentage allowable | 2 | % |
| 3a Maximum qualified basis | 3a | |
| b Check here ▶ <input type="checkbox"/> if the eligible basis used in the computation of line 3a was increased under the high-cost area provisions of section 42(d)(5)(C). Enter the percentage to which the eligible basis was increased (see instructions) | 3b | 1 _ _ % |
| 4 Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-.) | 4 | % |
| 5 Date building placed in service ▶/...../..... | | |
| 6 Check the boxes that describe the allocation for the building (check those that apply): a <input type="checkbox"/> Newly constructed and federally subsidized b <input type="checkbox"/> Newly constructed and not federally subsidized c <input type="checkbox"/> Existing building d <input type="checkbox"/> Sec. 42(e) rehabilitation expenditures federally subsidized e <input type="checkbox"/> Sec. 42(e) rehabilitation expenditures not federally subsidized f <input type="checkbox"/> Not federally subsidized by reason of 40-50 rule under sec. 42(i)(2)(E) g <input type="checkbox"/> Allocation subject to nonprofit set-aside under sec. 42(h)(5) | | |

Signature of Authorized Housing Credit Agency Official—Completed by Housing Credit Agency Only

Under penalties of perjury, I declare that the allocation made is in compliance with the requirements of section 42 of the Internal Revenue Code, and that I have examined Part I of this form and to the best of my knowledge and belief, the information is true, correct, and complete.

| | | |
|----------------------------------|-----------------------------|------|
| Signature of authorized official | Name (please type or print) | Date |
|----------------------------------|-----------------------------|------|

Part II First-Year Certification—Completed by Building Owners with respect to the First Year of the Credit Period

| | | |
|---|--|-----------------------------|
| 7 Eligible basis of building (see instructions) | 7 | |
| 8a Original qualified basis of the building at close of first year of credit period | 8a | |
| b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 9a If box 6a or box 6d is checked, do you elect to reduce eligible basis under section 42(i)(2)(B)? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| b Do you elect to reduce eligible basis by disproportionate costs of non-low-income units (section 42(d)(3))? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 10 Check the appropriate box for each election: | | |
| a Elect to begin credit period the first year after the building is placed in service (section 42(f)(1)). | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| b Elect not to treat large partnership as taxpayer (section 42(j)(5)) | <input type="checkbox"/> Yes | |
| c Elect minimum set-aside requirement (section 42(g)) (see instructions) <input type="checkbox"/> 20-50 <input type="checkbox"/> 40-60 | <input type="checkbox"/> 25-60 (N.Y.C. only) | |
| d Elect deep-rent-skewed project (section 142(d)(4)(B)) (see instructions) | <input type="checkbox"/> 15-40 | |

Note: A separate **Schedule A (Form 8609)**, Annual Statement, for each building must be filed with the corresponding Form 8609 for each year of the 15-year compliance period.

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

Owners of residential low-income rental buildings are allowed a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 generally is used to obtain a housing credit allocation from the housing credit agency. A separate Form 8609 must be issued for each building in a multiple building project. Form 8609 and related **Schedule A (Form 8609)**, Annual Statement, are also used to certify certain information.

Housing credit agency. This is any state or local agency authorized to make low-income housing credit allocations within its jurisdiction.

Owner of building. Owners must file a completed Form 8609 and a separate Schedule A (Form 8609) with their returns even if an allocation of credit by a housing credit agency is not required. See **Specific Instructions** before completing Part II.

Building identification number (BIN). This number is assigned by the housing credit agency. The BIN initially assigned to a building must be used for any allocation of credit to the building that requires a separate Form 8609 (see **Multiple Forms 8609** on this page). For example, rehabilitation expenditures treated as a separate new building should not have a separate BIN if the building already has one. Use the number first assigned to the building.

Allocation of credit. For an owner to claim a low-income housing credit on a building (except as explained under **Tax-exempt bonds** below), the housing credit agency must make an allocation of the credit by the close of the calendar year in which the building is placed in service, unless:

- The allocation is the result of an advance binding commitment by the credit agency made not later than the close of the calendar year in which the building is placed in service (see section 42(h)(1)(C));
- The allocation relates to an increase in qualified basis (see section 42(h)(1)(D)); or
- The allocation is made:

1. For a building placed in service no later than the second calendar year following the calendar year in which the allocation is made if the building is part of a project in which the taxpayer's basis is more than 10% of the project's reasonably expected basis as of the end of that second calendar year; or

2. For a project that includes more than one building if (a) the allocation is made during the project period, (b) the allocation applies only to buildings placed in service during or after the calendar year in which the allocation is made, and (c) the part of the allocation that applies to any building is specified by the end of the calendar year in which the building is placed in service.

See sections 42(h)(1)(E) and 42(h)(1)(F) and Regulations section 1.42-6 for more details.

The agency can only make an allocation to a building located within its geographical jurisdiction. Once an allocation is made, the credit is allowable for all years during the 10-year credit period. A separate Form 8609 must be completed for each building to which an allocation of credit is made.

Multiple Forms 8609. Allocations of credit in separate calendar years require separate Forms 8609. Also, when a building receives separate allocations for acquisition of an existing building and for rehabilitation expenditures, a separate Form 8609 must be completed for each credit allocation.

Tax-exempt bonds. No housing credit allocation is required for any portion of the eligible basis of a qualified low-income building that is financed with tax-exempt bonds taken into account for purposes of the volume cap under section 146. An allocation is not needed when 50% or more of the aggregate basis of the building and the land on which the building is located (defined later) is financed with certain tax-exempt bonds for buildings placed in service after 1989. However, the owner still must get a Form 8609 from the appropriate housing credit agency (with the applicable items of Part I completed, including an assigned building identification number (BIN)).

Land on which the building is located. This includes only land that is functionally related and subordinate to the qualified low-income building (see Regulations sections 1.103-8(a)(3) and 1.103-8(b)(4)(iii) for the meaning of "functionally related and subordinate").

Filing Requirement

Housing credit agencies complete Part I of Form 8609 and issue a copy with instructions to the building owner. The agency keeps a copy and files the original Form 8609 with the IRS with **Form 8610**, Annual Low-Income Housing Credit Agencies Report.

For each tax year during the 15-year compliance period, the building owner must file Form 8609 with the building owner's tax return, by its due date (including extensions), following the instructions under either 1 or 2 below. Either method is acceptable.

Note: For each year after the first year of the credit period, the entries in Parts I and II must match those entered for the first year of the credit period.

1. If you file electronically, complete and file this Form 8609 (Rev. 11-2003). Complete the entries on Part I exactly as shown on the Form 8609 received from the housing agency (except for the signature section). Skip any entries (such as lines 6f and 6g) that are not included on the original Form 8609 received from the housing agency. Also complete all the entries in Part II, with respect to the first year of the credit period.

2. If you file a paper return, complete Part II of the Form 8609 issued to you by the housing credit agency with Part I already completed, and file a photocopy of it. For versions of Form 8609 prior to

November 2003, you do not have to complete the items in the taxpayer signature section, including the signature.

The building owner must also file Schedule A (Form 8609) for each year of the 15-year compliance period. The credit is claimed on **Form 8586**, Low-Income Housing Credit.

If a building is owned by a pass-through entity (partnership, S corporation, estate, or trust), only the entity is required to file Form 8609 and Schedule A (Form 8609). The entity will indicate on Schedule K-1 the amount of the credit the partner, shareholder, beneficiary, or trust is to claim on Form 8586.

Housing credit agency filing requirement. The housing credit agency may require you to submit a copy of Form 8609 with a completed Part II to the agency. You should contact the agency to obtain agency filing requirements.

Recordkeeping

The following items must be kept in the building owner's records for 3 years after the due date (including extensions) of the owner's tax return for the tax year that includes the end of the 15-year compliance period (unless this record keeping requirement is otherwise extended).

- A copy of the original Form 8609 received from the housing agency and all related Schedules A (Form 8609), Forms 8586, and any **Forms 8611**, Recapture of Low-Income Housing Credit.
- If the maximum applicable credit percentage allocated to the building in Part I, line 2, reflects an election under 42(b)(2)(A)(ii), a copy of the election statement.
- If the binding agreement specifying the housing credit dollar amount is contained in a separate document, a copy of the binding agreement.
- If the housing credit dollar amount allocated in Part I, line 1b, reflects an allocation made under section 42(h)(1)(F), a copy of the allocation document.

Specific Instructions

Part I—Allocation of Credit Completed by Housing Credit Agency Only

Addition to qualified basis. Check this box if an allocation relates to an increase in qualified basis under section 42(f)(3). Enter only the housing credit dollar amount for the increase. Do not include any portion of the original qualified basis when determining this amount.

Amended form. Check this box if this form amends a previously issued form. Complete all entries and explain the reason for the amended form. For example, if there is a change in the amount of initial allocation before the close of the calendar year, file an amended Form 8609 instead of the original form.

Item A. Identify the building for which this Form 8609 is issued when there are multiple buildings with the same address (e.g., BLDG. 6 of 8).

Line 1a. Generally, where Form 8609 is the allocating document, the date of the allocation is the date the Form 8609 is completed, signed, and dated by an authorized official of the housing credit agency during the year the building is placed in service.

However, if an allocation is made under section 42(h)(1)(E) or 42(h)(1)(F), the date of allocation is the date the authorized official of the housing credit agency completes, signs, and dates the section 42(h)(1)(E) or 42(h)(1)(F) document used to make the allocation. If no allocation is required (i.e., 50% or greater tax-exempt bond financed building), leave line 1a blank.

Line 1b. Enter the housing credit dollar amount allocated to the building for each year of the 10-year credit period. The amount should equal the percentage on line 2 multiplied by the amount on line 3a. As the housing credit agency is required to allocate an amount that is only necessary to assure project feasibility, the percentage on line 2 and the amount on line 3a can be adjusted by the housing agency. For tax-exempt bond projects for which no allocation is required, enter the housing credit dollar amount allowable under section 42(h)(4).

Line 2. Enter the maximum applicable credit percentage allowable to the building for the month the building was placed in service or, if applicable, for the month determined under section 42(b)(2)(A)(ii). This percentage may be less than the applicable percentage published by the IRS.

If an election is made under section 42(b)(2)(A)(ii) to use the applicable percentage for a month other than the month in which a building is placed in service, the requirements of Regulations section 1.42-8 must be met. The agency must keep a copy of the binding agreement. The applicable percentage is published monthly in the Internal Revenue Bulletin. For new buildings that are not federally subsidized under section 42(i)(2)(A), use the applicable percentage for the 70% present value credit. For new buildings that are federally subsidized, or existing buildings, use the applicable percentage for the 30% present value credit. See the instructions for line 6 for the definition of "Federally subsidized." A taxpayer may elect under section 42(i)(2)(B) to reduce eligible basis by the principal amount of any outstanding below-market Federal loan or the proceeds of any tax-exempt obligation in order to obtain the higher credit percentage (see Part II, line 9a).

For allocations to buildings for additions to qualified basis under section 42(f)(3), do not reduce the applicable percentage even though the building owner may only claim a credit based on two-thirds of the credit percentage allocated to the building.

Line 3a. Enter the maximum qualified basis of the building. However, in computing

qualified basis, the housing credit agency should use only the amount of eligible basis necessary to result in a qualified basis which, multiplied by the percentage on line 2, equals the credit amount on line 1b. To figure this, multiply the eligible basis of the qualified low-income building by the smaller of:

1. The fractional amount of low-income units to all residential rental units (the "unit fraction") or
2. The fractional amount of floor space of the low-income units to the floor space of all residential rental units (the "floor space fraction").

Generally, a unit is not treated as a low-income unit unless it is suitable for occupancy and is used other than on a transient basis. Section 42(i)(3) provides for certain exceptions (e.g., units that provide for transitional housing for the homeless may qualify as low-income units). See sections 42(i)(3) and 42(c)(1)(E) for more information.

Except as explained in the instructions for line 3b below, the **eligible basis** for a new building is its adjusted basis as of the close of the first tax year of the credit period. For an existing building, the eligible basis is its acquisition cost plus capital improvements through the close of the first tax year of the credit period. See the instructions for line 7b and section 42(d) for other exceptions and details.

Line 3b. Special rule to increase basis for buildings in certain high-cost areas.

If the building is located in a high-cost area (i.e., a "qualified census tract" or a "difficult development area"), the eligible basis may be increased as follows.

- For new buildings, the eligible basis may be up to 130% of such basis determined without this provision.
- For existing buildings, the rehabilitation expenditures under section 42(e) may be up to 130% of the expenditures determined without regard to this provision.

Enter the percentage to which eligible basis was increased. For example, if the eligible basis was increased to 120%, enter "120." See section 42(d)(5)(C) for definitions of a qualified census tract and a difficult development area, and for other details.

Note: Before increasing eligible basis, the eligible basis must be reduced by any Federal subsidy, which the taxpayer elects to exclude from eligible basis, and any Federal grant received.

Line 4. Enter the percentage of the aggregate basis of the building and land on which the building is located is financed by certain tax-exempt bonds. If this amount is zero, enter zero (do not leave this line blank).

Line 5. The placed-in-service date for a residential rental building is the date the first unit in the building is ready and available for occupancy under state or local law. Rehabilitation expenditures treated as a separate new building under section 42(e) are placed in service at the close of any 24-month period over which the expenditures are aggregated, whether

or not the building is occupied during the rehabilitation period.

Line 6. Generally, a building is treated as federally subsidized if at any time during the tax year or any prior tax year there is outstanding any tax-exempt bond financing or any below-market Federal loan, the proceeds of which are used (directly or indirectly) for the building or its operation.

However, under section 42(i)(2)(E) buildings receiving assistance under the Home Investment Partnership Act (as in effect on August 10, 1993) or the Native American Housing Assistance and Self-Determination Act of 1996 (as in effect on October 1, 1997) are **not** treated as federally subsidized if 40% or more of the residential units in the building are occupied by individuals whose income is 50% or less of the area median gross income. Buildings located in New York City receiving this assistance are not treated as federally subsidized if 25% or more of the residential units in the building are occupied by individuals whose income is 50% or less of the area median gross income.

Not more than 90% of the state housing credit ceiling for any calendar year can be allocated to projects other than projects involving qualified nonprofit organizations. A qualified nonprofit organization must own an interest in the project (directly or through a partnership) and materially participate (within the meaning of section 469(h)) in the development and operation of the project throughout the compliance period. See section 42(h)(5) for more details.

Generally, no credit is allowable for acquisition of an existing building unless substantial rehabilitation is done. See sections 42(d)(2)(B)(iv) and 42(f)(5). **Do not** issue Form 8609 for acquisition of an existing building unless substantial rehabilitation under section 42(e) is placed in service.

Part II—First-Year Certification

Completed by Building Owner With Respect to the First Year of the Credit Period



By completing Part II, you are certifying the date the building is placed in service corresponds to the date on line 5. If the Form 8609 issued to you contains the wrong date or no date, obtain a new or amended Form 8609 from the housing credit agency.

Note: For years after the first year of the credit period, report the same information as entered for the first year.

Line 7. Enter the eligible basis (in dollars) of the building. Determine eligible basis at the close of the first year of the credit period (see sections 42(f)(1), 42(f)(5), and 42(g)(3)(B)(iii) for determining the start of the credit period).

For new buildings, the eligible basis is generally the cost of construction or rehabilitation expenditures incurred under section 42(e).

For existing buildings, the eligible basis is the cost of acquisition plus rehabilitation expenditures not treated as a separate new building under section 42(e) incurred by the close of the first year of the credit period.

If the housing credit agency has entered an increased percentage in Part I, line 3b, multiply the eligible basis by the increased percentage and enter the result.

Residential rental property may qualify for the credit even though part of the building in which the residential rental units are located is used for commercial use. Do not include the cost of the nonresidential rental property. However, you may generally include the basis of common areas or tenant facilities, such as swimming pools or parking areas, provided there is no separate fee for the use of these facilities and they are made available on a comparable basis to all tenants in the project. You must reduce the eligible basis by the amount of any Federal grant received. Also reduce the eligible basis by the entire basis allocable to non-low-income units that are above the average quality standard of the low-income units in the building. You may, however, include a portion of the basis of these non-low-income units if the cost of any of these units does not exceed by more than 15% the average cost of all low-income units in the building, and you elect to exclude this excess cost from the eligible basis by checking the "Yes" box for line 9b. See section 42(d)(3).

You may elect to reduce the eligible basis by the principal amount of any outstanding below-market Federal loan or the proceeds of any tax-exempt obligation to obtain a higher credit percentage. To make this election, check the "Yes" box in Part II, line 9a. Reduce the eligible basis by the principal amount of such loan or obligation proceeds before entering the amount on line 7. You must reduce the eligible basis by the principal amount of such loan or obligation proceeds, or any Federal grant received, before multiplying the eligible basis by the increased percentage in Part I, line 3b.

Line 8a. Multiply the eligible basis of the building shown on line 7 by the smaller of the unit fraction or the floor space fraction as of the close of the first year of the credit period and enter the result on line 8a. Low-income units are units occupied by qualifying tenants, while residential rental units are all units, whether or not occupied. See the instructions for Part I, line 3a, on page 3.

Line 8b. Each building is considered a separate project under section 42(g)(3)(D) unless, before the close of the first calendar year in the project period (defined in section 42(h)(1)(F)(ii)), each building that is (or will be) part of a multiple building project is identified by attaching a statement to your tax return (as required in the instructions for Form 8586, line 1) that includes (a) the name and address of the project and each building in the project, (b) the building identification number (BIN) of each building in the project, (c) the aggregate credit dollar amount for the

project, and (d) the credit allocated to each building in the project.

Two or more qualified low-income buildings may be included in a **multiple building project** only if they (a) are located on the same tract of land (unless all of the dwelling units in all of the buildings being aggregated in the multiple building project are low-income units—see section 42(g)(7)), (b) are owned by the same person for Federal tax purposes, (c) are financed under a common plan of financing, and (d) have similarly constructed housing units. A qualified low-income building includes residential rental property that is an apartment building, a single-family dwelling, a town house, a row house, a duplex, or a condominium.

Line 9a. You may elect to reduce the eligible basis by the principal amount of any outstanding below-market Federal loan or the proceeds of any tax-exempt obligation and claim the 70% present value credit on the remaining eligible basis. However, if you make this election, you may not claim the 30% present value credit on the portion of the basis that was financed with the below-market Federal loan or the tax-exempt obligation.

Line 9b. See the instructions for Part II, line 7, on page 3.

Line 10a. You may elect to begin the credit period in the tax year after the building is placed in service. Once made, the election is irrevocable.

Note: Section 42(g)(3)(B)(iii) provides special rules for determining the start of the credit period for certain multiple building projects.

Line 10b. Partnerships with 35 or more partners are treated as the taxpayer for purposes of recapture unless an election is made not to treat the partnership as the taxpayer. Check the "Yes" box if you do not want the partnership to be treated as the taxpayer for purposes of recapture. Once made, the election is irrevocable.

Line 10c. You must meet the minimum set-aside requirements under section 42(g) for the project by electing one of the following tests.

1. 20-50 Test: 20% or more of the residential units in the project must be both rent restricted and occupied by individuals whose income is 50% or less of the area median gross income or

2. 40-60 Test: 40% or more of the residential units in the project must be both rent restricted and occupied by individuals whose income is 60% or less of the area median gross income.

Once made, the election is irrevocable.

Note: Owners of buildings in projects located in New York City may not use the 40-60 test. Instead, they may use a **25-60 Test:** 25% or more of the residential units in the project must be both rent restricted and occupied by individuals whose income is 60% or less of the area median gross income (see also section 142(d)(6)).

Caution: The minimum set-aside requirement must be met by the close of the first year of the credit period in order to

claim any credit for the first year or for any subsequent years.

Line 10d. The deep-rent-skewed 15-40 election is not an additional test for satisfying the minimum set-aside requirements of section 42(g). The 15-40 test is an election that relates to the determination of a low-income tenant's income. Generally, a continuing resident's income may increase up to 140% of the applicable income limit (50% or less or 60% or less of the area median gross income under the minimum set-aside rules in **Line 10c** above). When the deep-rent-skewed election is made, the income of a continuing resident may increase up to 170% of the applicable income limit. If this election is made, at least 15% of all low-income units in the project must be occupied at all times during the compliance period by tenants whose income is 40% or less of the area median gross income. A deep-rent-skewed project itself must meet the requirements of section 142(d)(4)(B). Once made, the election is irrevocable.

Paperwork Reduction Act Notice. We ask for the information on these forms to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file the following forms will vary depending on individual circumstances. The estimated average times are:

Form 8609

- Learning about the law or the form** 4 hr., 10 min.
- Recordkeeping** 7 hr., 53 min.
- Preparing and sending the form to the IRS** 4 hr., 28 min.

Schedule A (Form 8609)

- Learning about the law or the form** 1 hr., 23 min.
- Recordkeeping** 7 hr., 24 min.
- Preparing and sending the form to the IRS** 1 hr., 32 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making these forms simpler, we would be happy to hear from you. You can write to the Internal Revenue Service at the address listed in the instructions for the tax return with which these forms are filed.

