

Clarification for Monitoring the Vacant Unit Rule

Annual Owner reports for the HTC Program are completed with information as of year-end. AHC's review of these reports includes the tracking of vacant units in accordance with Section 42 Vacant Unit Rule ("VUR"). 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), and the move-out date. This will usually result in the unit having the status of Qualified Vacant Unit ("QVU") 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 should 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, it will be requested in AHC's Initial Review and the unit will be tracked in the following year for compliance with the VUR.

Mixed Income Projects (HTC and Market Rate units)

As with 100% HTC projects, all units that are vacant at year end must show the most recent data for the previous household, including the move-in information and if HTC, the last re-certification performed (even if this was for a previous reporting year), and the move-out date. This will usually result in an HTC unit having the status of Qualified Vacant Unit ("QVU") unless other noncompliance exists or long term vacancy calls into question the unit being suitable for occupancy.

Vacant Units in a mixed income project are very important for Owners to monitor, as any Over Income units in the building will trigger the Available Unit Rule, even if vacated after going Over Income. AHC's compliance monitoring includes tracking both the Available Unit Rule and the Vacant Unit Rule. Vacant units are included in the report to Suballocator, and are tracked from year to year. The riskiest scenarios in a mixed income project stem from renting a unit to an unqualified, Market Rate tenant in violation of the VUR or the AUR, resulting in a failure to maintain the building's 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 "available" (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 Owner's option to rent subsequent vacant units to an unqualified (Market) household until the Applicable Fraction has been restored.

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

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

"VUR: Unit vacant as of 12/31. No OI units in BIN: Marketing to Mkt 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, vacant as of 12/31. Rented to Mkt HH on mm/dd/yy. A/F 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 AUR replacement unit for #____, which went OI on mm/dd/yyyy”

* 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 income projects, a QVU should be noted as such, and would typically be marketed and 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 how the Applicable Fraction was affected and/or maintained.

Any change in a unit’s status (from “L” to “M” or vice versa) must also be reflected on the Building Map (HTC-28) so that the building map matches the Data tab of the ERP at year end. Also, Owners must report only those HTC units included in the Applicable Fraction calculation reported on the Applicable Fraction tabs (“Y1 AF” or “Y2 AF”). 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 accurate reporting on the specific units used for calculating the Applicable Fraction is essential.

Finally, in a mixed income project, Section 42 requires that Owners make reasonable attempts to rent low-income units to qualified households **before** renting to unqualified (Market) 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.

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 Ruling 2004-82 (see question #8,#9, and #10)
- Suballocator Compliance Manual:
 - VUR: Chapter 5
 - AUR: Chapter 6