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DATE: June 22, 2010
TO: CHFA Program Compliance Monitoring Staff
FROM: Mark Feilmeier, Manager, Program Compliance
RE: Understanding your 2010 Income Limits and Maximum Rents

History

Prior to 2008, all tax credit and tax exempt bond-finance projects used income and rent limits that were based on the Section 8 income for Very Low Income (50% AMI) limits. This created a problem for both Section 8 and tax credit/tax exempt properties. As income limits decreased across the country, HUD *froze* the limits, not allowing for a decrease in the applicable limits.

The pre-2009 calculation methodology resulted in the detriment to Section 8 properties as income limits were not reduced to coincide with economic trends. The freezing of limits for tax credit/tax exempt properties created problems in the underwriting process as projects were underwritten with an expectation of increased income potential.

Effective in 2009, HUD did away with the freezing methodology allowing for the potential decrease annually in the rent and income limits; however, with the passage of the Housing and Economic Reform Act (HERA) on July 30, 2008, the income and rent limits for existing tax credit/tax exempt projects it was determined that the existing rent and income limits would be subject to a Hold Harmless provision and the limits for tax credit and tax exempt bond properties would never decrease.

The end result in the change in rent and income calculation methodology is that projects in the same county, or even next door or built as part of a multiple phases may be operating under different income and rent limits.

Hold Harmless Provision / HERA Special Limits

HERA allowed for the determination of Area Median Gross Income to be no less than the median gross income for the same project in the prior year. For those projects affected by HUD's change in calculation methodology, the applicable limit for the project would be either:

- The HERA Special Limits calculated for the county, or
- The greater of the current year vs. the prior year's limits.

The **HERA Special Limits** would only be applicable to those developments placed in service on or before December 31, 2008.

If the project is part of a multiple building development, the applicable placed in service date would be the date the first building in the development was placed in service. Please note that the 8609's completed for the development and filed with the IRS must indicate in Part II, Line 8b that the building is part of a multiple building project.

The **Hold Harmless Provision** allows for no decrease in the applicable limit from the prior year to current year for the project. If the county has not been determined to be a HUD Hold Harmless County and HERA Special Limits have not been established, a project would be allowed to use the greater of:

- The current years established limit, or
- The limits established for the prior year.

The **Hold Harmless Provision** would only be applicable to those projects *Placed in Service*:

- On or before December 31, 2008, or
- On or after January 1, 2009 but before May 14, 2010.

Projects Placed in Service on or after May 14, 2010 are required to use the current May, 14 2010 limits.

The HERA Special limits **DO NOT** apply to HUD subsidized, Rural Development (RD), or HOME properties. Project Based Section 8 and other HUD program properties will continue to use the limits published by HUD for the Section 8 Program.

Example: Buildings 1 & 2 placed in service 12/1/2008 and Buildings 3 & 4 placed in service 2/1/2009. IRS Forms 8609 identified that all buildings were part of a multiple-building project and the attachment indicated that the multiple building project consisted of Buildings 1-4. All 4 buildings may use the HERA income limit if they are located in a HERA county.

If IRS Form 8609 identified that the buildings were not a part of a multiple building project and/or there was no attachment to identify the groupings, then only Buildings 1 & 2 may use the HERA income limit and Buildings 3 & 4 must use the Standard MTSP limits.

Gross Rent Floor

The gross rent floor is used in cases where the current income limit falls to a level below the limit determined to be in effect at the time the project was initially established.

The owner has the option of electing a minimum rent limit (Gross Rent Floor) which would ensure that the rents charged would not

fall below a specific level should the limits decrease over the life of the project.

The lowest rents an owner will be allowed to charge will be 1 of 2 elections:

1. The limits that were in effect when the building was allocated credits; or
2. 'At the election of the owner' the rent limits that were in effect at the time the building was *Placed in Service*.

The owner must notify the allocating agency of their choice in establishing this second election.

Projects historically have not had to consider the Gross Rent Floor as limits have traditionally stayed the same or increased on an annual basis.

Non-compliance with the gross rent floor does not occur as long as the current rents charged are at or below the maximum rents in effect at the time a household is certified. However, if the limits decrease, the maximum rent charged as well as the properties election of the Gross Rent Floor must be compared.

With a decrease in the limits, the implementation of the Gross Rent Floor requires a new applicant to meet the current lower income limit, but the rent charged will not be required to fall below the initial Gross Rent Floor pre-determined level.

Currently, the Gross Rent Floor calculation will only be applicable under the following circumstances:

- The development was or will be Placed in Service on or after May 14, 2010;
- The project was allocated credit prior to the May 14, 2010 effective date of the 2010 limits; and
- An optional election was not made to calculate the Gross Rent Floor as of the Placed in Service date.

Example

A project is allocated credit after March 19, 2009 (effective date of the 2009 rent and income limits) and places into service effective June 1, 2010. The 2010 income limits effective May 14, 2010 were less than the 2009 income limits. The owner did not elect to calculate the Gross Rent Floor as of the placed in service date.

The Gross Rent Floor applicable to the development will be the limits in place as of March 19, 2009.

Households must be qualified under income limits that went into effect as of May 14, 2010; however, the Gross Rent Floor

applicable would be the maximum rents allowable as of March 19, 2009.

Extended Use Projects

Extended Use Projects follow the same guidelines as projects in the initial 15 year compliance period. However, if the project receives an additional credit allocation on or after 1/1/2009, this begins a new credit period and the project must use the Standard MTSP income and rent limits. The project will follow and use the same income limits as if it were a new project.

If you do not find your county on the tables, check the "Other Non-Metro Counties" section on the last page which lists the counties in Colorado that share the same income and rent limits.

You must know you're placed in service date in order to use the correct income limits.

The HUD passbook savings rate remains at 2%.

IRS Revenue Ruling 94-57 allows taxpayers to rely on the old income limits and maximum rents until **45 days** after HUD has released the new income limits for that year. The new income and rent limits may be implemented immediately but they must be used no later than **June 28, 2010**.

Please note: If you are unsure of which rent and income limits are applicable to your project it is encouraged that you consult with your legal counsel for further confirmation.

If you have any questions, please contact your Asset Management Officer at CHFA or call Mark Feilmeier at (303) 297-7411 or (800) 877-2432, ext. 7411. In addition feel free to utilize the Rent and Income Limit Calculator at the Novogradac website. The calculator can be accessed at the following link:

<http://www.novoco.com/products/rentincome.php>