

## Memorandum

**To:** Owners and Management Agents of Tax Credit Developments  
Management Agents of Multifamily Bond Developments

**From:** Mark Feilmeier, Manager, Program Compliance, Asset Management

**Subject:** Housing and Economic Recovery Act of 2008, HERA 3221  
Section 42 Utility Allowance Regulations Update (26 CFR, Part 1)

On July 30, 2008, President Bush signed into law the Housing and Economic Recovery Act of 2008 ("H.R. 3221" or the "Act") which includes substantial changes to the administration of the Housing Tax Credit Program (LIHTC). In addition, effective July 29, 2008, the IRS published the final regulation update for Utility Allowances. This memorandum provides a brief explanation of compliance monitoring changes and CHFA's policy related to these changes.

Below you will find links to H.R. 3221 and a summary of this new Act by CHFA and one provided by our national trade associate, NCSHA. There is also a link to the Utility Allowance regulation update.

H.R. 3221: [www.govtrack.us/congress/billtext.xpd?bill=h110-3221](http://www.govtrack.us/congress/billtext.xpd?bill=h110-3221)

CHFA H.R. 3221 summary: [www.chfainfo.com/news/HR\\_3221.icm](http://www.chfainfo.com/news/HR_3221.icm)

Tax-Exempt Housing Bonds and 2008 Housing Legislation:  
[http://www.irs.gov/irb/2008-40\\_IRB/ar10.html](http://www.irs.gov/irb/2008-40_IRB/ar10.html)

NCSHA H.R. 3221 summary:  
[http://www.ncsha.org/uploads/NCSHA%20HR%203221%20Summary%20FINAL\\_rev%208%206%2008.pdf](http://www.ncsha.org/uploads/NCSHA%20HR%203221%20Summary%20FINAL_rev%208%206%2008.pdf)

Utility Allowance Final Regulation Update:  
<http://edocket.access.gpo.gov/2008/pdf/E8-17268.pdf>

This memorandum is intended to address issues of immediate concern and it provides only a summary of the new policy changes. CHFA will provide additional memos with more detail regarding procedures and implementation as well as updates regarding the formulation of new H.R. 3221 and utility allowance policies. Additional information will also be available soon upon release of CHFA's revised LIHTC Compliance Manual.

### ■ **Elimination of Annual Recertifications of Household Income** (Sec. 3010)

Effective July 30, 2008, the Section 142(d)(3)(A) of the Internal Revenue Code ("Code") was modified to reflect one of the most significant changes in H.R. 3221. This change is the elimination of the requirement for annual recertification of household income for existing residents of projects with 100 percent Low Income Housing Tax Credits (i.e. projects with no market units) and Tax Exempt bond financed developments under 142 (d) of the Tax Exempt Bond Code. The amendment to the Code does not however change the owner's obligation to certify household income at move-in.

## **CHFA Policy:**

CHFA's policy will be to continue requiring first year anniversary recertifications by the owner or management agent.

This policy, based on first year tenant income recertifications, often uncovers substantial errors in the initial Tenant Income Certifications (TIC) at move-in that could be the result of tenant mistakes, management error, or fraud. The error(s) could result in a finding that a resident was "over-income at move-in," thereby making the unit ineligible for tax credits. The financial impact of this noncompliance could be costly for the LIHTC project owner.

In addition, while the Code changes eliminate the need for recertifications of household income, LIHTC development owners must continue to ensure compliance with the LIHTC student rule, changes in household composition, available unit rule, etc.

To help ensure on-going compliance and to enable CHFA to meet the requirements for collection of tenant data (see Tenant Data Collection section below), after the first year anniversary recertification is conducted, CHFA has established a policy requiring annual household self-certifications for each year after the first year anniversary recertification during the initial compliance period and throughout the extended use period.

### **First Year Anniversary Recertifications**

All new move-ins (after 7.30.08) and existing households (move-ins prior to 7.30.08) must undergo one annual tenant income recertification (TIC) upon the first anniversary of their tenancy. The annual recertification process must include third party verification of income and assets.

After the first annual recertification, it will no longer be necessary to conduct annual recertifications for residents that have been recertified at least once since move-in, if the following project criteria are met:

- all of the units in the project are restricted for low income occupancy (no market units in the project);
- all of the units are in compliance with applicable LIHTC compliance requirements (i.e. no "uncorrected" 8823 for the project).

### **Annual Self-Certification**

After the first year anniversary recertification is conducted, CHFA will require that the owner/management agent complete an annual self-certification form for each household, utilizing the Tenant Income Certification (TIC), and enter the self-certification and demographic data into the Web Compliance Management System (WCMS). The self-certification form collects the following data: household income, household composition information, student status, race and ethnicity. Collection of this data will ensure CHFA's ability to meet the H.R. 3221 Tax Credit tenant data collection requirements as discussed in the section "Tax Credit Tenant Data Collection".

### **Reinstatement of Annual Recertification Requirements**

CHFA reserves the right to require reinstatement of the annual recertification requirements if a pattern of noncompliance is identified with initial TICs or a project is out of compliance as a result of leasing a unit to a household that is not income-qualified.

#### **■ Tax Credit Tenant Data Collection (Sec. 2835)**

H.R. 3221 requires state housing finance agencies to annually collect tenant data for submission

to HUD. This data includes demographic information regarding the LIHTC residents residing at a development.

#### **CHFA Policy:**

CHFA's policy regarding collection of tenant data will continue by previously established policies and procedures. The collection of this data is via WCMS, the online data collection application located on CHFA's website.

#### ■ **Exclusion of Military Basic Pay (Sec. 3005)**

H.R. 3221 contains a provision excluding military basic pay from the income calculation for residents at projects located near certain military bases.

Basic military allowance is excluded in any county and adjacent county in which is located a qualified military installation to which the number of members of the Armed Forces of the United States assigned to units based out of such qualified military installation, as of June 1, 2008, has increased by no less than 20 percent, as compared to such number on December 31, 2005. (Qualified military installation is a base with a minimum of 1,000 Armed Forces Personnel.)  
\*Ending date of December 31, 2011 applies.

#### **CHFA Policy:**

The U.S. Air Force Academy in El Paso County has been determined to be a qualified military installation for purposes of the new legislation. As a result, Basic Allowance for Housing (BAH) is to be excluded in the determination of income eligibility for the following Colorado counties: El Paso, Douglas, Elbert, Lincoln, Pueblo, Fremont, and Teller. The effective date of this provision is July 31, 2008 through December 31, 2011.

This law applies only to those developments which have been financed with tax exempt residential bonds issued under Section 142(a)(7) and Low Income Housing Tax Credits under Section 42 of the Internal Revenue Code.

#### ■ **New Student Exception – Foster Care (Sec. 3004)**

Tax credit student rule exemptions have been expanded to include household member(s) who were previously under the care and placement of the state or local county children's services agency. For the purposes of the tax credit student rule, such residents or applicants are not considered full time students.

#### **CHFA Policy:**

An applicant or resident is required to present documentation from the state or local children's services agency indicating they are currently assisted by a foster care program, are transitioning out of such a program, or were previously in foster care in order to claim the exception.

#### ■ **Bond Developments – Change in Student Rule & Available Unit Rule (Sec. 3008)**

The student rule exceptions provided in Section 42 of the Code, are now applicable to residents in tax exempt bond financed developments. The multifamily bond program Available Unit Rule (AUR) has been changed from a "project rule" to a "building rule".

#### **CHFA Policy:**

This change is effective July 30, 2008.

#### ■ **Repeal of Bond Positioning Requirements** (Sec.3004)

Owners of developments sold before the end of the compliance period will no longer be required to obtain a recapture bond, if the project "is reasonably expected" to be operated as a tax credit project and owners agree to extend the statute of limitations on their tax returns.

#### **CHFA Policy:**

When notifying CHFA of the intent to sell a tax credit project, the current owner must include the buyer's contact information and whether or not the buyer intends to continue operating the project as an LIHTC development. CHFA will continue to report dispositions of projects to the IRS as required.

#### ■ **General Public Use Rule** (Sec. 3004)

To be eligible for LIHTC, residential units must be available for use by the general public. A project is considered available for general public use if the leasing and rental process associated with the unit is in compliance with the Fair Housing Act (42 U.S.C. 3601) and if the project does not restrict occupancy based on membership in a social organization or employment by specific employers.

A clarification of the General Public Use rule was provided in H.R. 3221 stating that a project that otherwise meets the general public use requirements as noted above will not be out of compliance solely because of occupancy restrictions or preferences that favor:

- tenants with special needs;
- tenants who are members of a specified group under a federal or state program or policy that supports housing for such a specified group; or
- tenants involved in artistic or literary activities.

#### ■ **Rule Changes to Area Median Gross Income** (Sec. 3009)

The following amendment was made that modified the applicable rules for determination of AMGI for tenant income and rent limits:

##### **HUD Hold Harmless Policy for Reduction in AMGI**

Applies to: LIHTC units and tax exempt bond-financed units

In 2006, HUD modified its methodology for calculation of AMGI to include additional data from the American Community Survey ("ACS") in the calculation of AMGI. In a number of areas nationwide this new methodology resulted in significantly lower AMGI. As a result, HUD instituted the Hold Harmless Policy and caused the tenant income and rent limits to be "frozen" for many counties.

H.R. 3221 amends Section 142(d) by implementing two changes to the determination of AMGI.

- 1) Applies to: All LIHTC and tax exempt bond financed properties. Income determinations for multifamily bond financed and LIHTC developments may not decrease the AMGI for any year after 2008, i.e. AMGI will not be less than the AMGI for the same project in the prior year.

- 2) Applies to: Projects that were impacted by the HUD Hold Harmless Policy. Income and rent limits will be the greater of current AMGI; or 2008 AMGI (as determined under the HUD Hold Harmless Policy) plus the increase from the 2008 AMGI to the current year AMGI (as determined without regard to the HUD Hold Harmless Policy).

**CHFA Policy:**

This change will not be effective until the next income limit change in early 2009. When HUD publishes the revised income limits in 2009, CHFA will publish two sets of income limit tables and will notify the developments affected by the HUD Hold Harmless policy that an alternative income limit table must be utilized.

■ **IRS Treasury Regulation 1.42-10 Utility Allowances**

The IRS issued revisions to Treasury Regulation 1.42-10. The revised regulation allows for several new alternatives for calculating utility allowances.

**CHFA Policy:**

CHFA is currently reviewing the regulation and will issue additional guidance as soon as possible. Until further guidance is issued, only utility allowance methods previously approved should be used.

As mentioned above, this memorandum is only a summary of recent policy changes. Additional information regarding any further policy changes will be provided as necessary. If you have any questions, please contact your Asset Management Program Compliance Officer.