

M E M O R A N D U M

TO: Owners and Managers of Tax Credit Properties

FROM: Kimberly A. Roy, Assistant Director, MF Programs

DATE: October 7, 2008

RE: Changes to the Low Income Housing Tax Credit Program and the Multifamily Bond Program as a result of HR 3221 - The Housing and Economic Recovery Act of 2008

Section 42 Utility Allowance Regulations Update (TD 9420)

On July 30, 2008, the President signed the Housing and Economic Recovery Act of 2008 (Act).

Below I have highlighted the important changes to the LIHTC program and the Tax Exempt Bond program as they relate to compliance monitoring. Please note in most cases the changes are effective after the date of enactment or July 30, 2008, unless otherwise noted.

- **General Public Use:** Projects receiving tax credits must be available for occupancy by the general public. The legislation clarifies that if occupancy is restricted to tenants with special needs, or tenants who share a common occupation or interest, or a member of a specific group (based on federal, state, or local programs or requirements), that this will not violate the general use rules. Farm worker housing and artist cooperative housing are two types that have been controversial in the past, but now are acceptable under the tax credit program.
- **Data Collection Requirement:** Housing credit allocating agencies are required to report tax credit tenant data to HUD annually. The following information is required:
 - race;
 - ethnicity;
 - family composition;
 - age;
 - income;
 - rental assistance status;
 - disability status; and
 - monthly rental payments.

- **Annual Recertification Waiver:** Households living in tax credit units need to certify their income and then annually recertify it. The legislation waives the annual recertification requirement for 100% low-income projects for both tax credit and bond projects, yet other funding sources such as Section 8, HOME and RD will still require an annual recertification. VHFA will require that each 100% project do initial certifications and recertify on the tenant's 1st anniversary to ensure the tenant was initially eligible and to review any changes in household composition, and after that allow the waiver. Please note although the verification process is waived, an annual resident self certification which includes resident income, student status and household composition is required. This information needs to be collected in order to apply the available unit rule. Since the available unit rule is statutory, it doesn't go away when applying the waiver. Attached is a sample of the Self Certification for your review.

Please note that VHFA is still required to review that status report, review tenant files and perform inspections even with the implementation of the annual waiver.

- **Students:**
Units occupied entirely by full-time students are generally ineligible to qualify for tax credits. The Act expands the exemptions to include students who were formerly in foster care.
- **Area Median Income for Rural Properties:**
For rural properties with allocated credit (9% properties only), area median income is defined as the greater of area median income and national non-metropolitan median income.
- **Basic Housing Allowance:**
The basic housing allowance is excluded from income paid to military personnel located in certain counties where there is a military installation that has experienced personnel growth of more than 20% between 12/31/2005 - 6/1/2008. This does not apply in Vermont.
- **Coordinating LIHTC and tax exempt bond rules:**
The tax exempt bond rules are now consistent with the LIHTC rules with respect to the next available unit rule (both building rules now), the definition of full-time student; and single room occupancy units.
- **Hold Harmless for Reductions in Area Median Gross Income:**
Modifies HUD's income limit methodology for calendar years after 2008 to require HUD to increase applicable area median incomes by the amount the area median income rise, even if the HUD-determined area median income would be frozen under HUD's 2007 and 2008 income limit methodology.

On July 29, 2008, the IRS issued final regulations in the Federal Register amending the requirements for determining utility allowances under the tax credit program. This final rule applies to properties with taxable years beginning after July 29, 2008.

- If utilities are paid directly by the tenant, then you must include a utility allowance in gross rent. Please note that telephone, cable TV and internet costs are not included in the utility allowance. Also, utility allowances are not available if tenant payments for utilities are made by or through the owner. This includes sub-metering, where the owner pays the utility company and bills the tenant for the usage.
- There is often a lot of confusion about which procedures are acceptable when determining the proper utility allowances for any housing credit property. The following are the utility allowance guidelines:
 - For Rural Development (RD) units, you must use the RD utility allowance schedule.
 - For Section 8 project-based units, you must use the HUD utility allowance schedule.
 - For Section 8 certificate or vouchers units, you must use the local public housing authority utility allowance schedule.
 - For all other units there are five options, the owner must:
 - 1) use the local PHA utility allowance schedule; or
 - 2) obtain a utility company estimate; or

(Please note the next 3 options are new as of 7/29/08)

- 3) obtain a housing credit agency utility cost estimate provided the agency agrees to provide the estimate (this option may be obtained anytime during the extended use period); or
 - 4) calculate the utility estimate using HUD's Utility Schedule Model (Exhibit 4-1, at Website: Click on HUD Utility Model); or
 - 5) hire an unrelated qualified professional (approved by the credit agency) to calculate utility estimate using an energy consumption model.
- For options 2-5 above, please note that the owners are required to provide copies of the proposed new utility allowances to the tenants 90 days before the date the new utility allowances will become effective. Also, owners must provide a copy of the proposed utility allowances to the housing credit agency.

- o Property owners are required to pay for all costs associated with obtaining estimates in options 2-5.
- o The final rule (7/29/08) makes allowances for new buildings. The reviews, updates and initial implementation of utility allowances aren't required until the earlier of:
 - the date the building is 90% occupied for 90days;
or
 - the end of the first year of the tax credit period.

The VHFA Low Income Housing Tax Credit Compliance Manual is currently being updated and should be completed by the end of October. Please check the VHFA website at www.vhfa.org for this update that incorporates all of the new changes.

Resident Annual Self Certification

Effective date of Certification: _____

Project Name: _____

Unit Number: _____

Resident: _____

I (We) certify that:

Annual Household Income: \$ _____

Current Rent: \$ _____

Number of People in Household: _____

Student Status:

Are all household members, 18 years or older full-time students?
Yes No

I have been made aware of the provisions of Section 1001 of Title 18 of the U.S. Code. I understand that it is a criminal offense, punishable by a \$10,000 fine or 5 years imprisonment or both, to intentionally make false or inaccurate statements to any department or agency of the United States about any matter within its jurisdiction.

Resident's Signature
Head of Household

Date

Resident's Signature
Head of Household

Date