



STATE OF MICHIGAN

JENNIFER M. GRANHOLM
GOVERNOR

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
LANSING

KEITH MOLIN
EXECUTIVE DIRECTOR

MEMORANDUM

TO: Owners and Management Agents of Tax Credit Developments
Management Agents of Multifamily Bond Developments

FROM: Sherri Davio, Compliance Manager
Office of Legal Affairs

DATE: October 10, 2008

SUBJECT: H.R. 3221, Housing and Economic Recovery Act of 2008
Section 42 Utility Allowance Regulations Update (26 CFR, Part 1)

The Housing and Economic Recovery Act of 2008 (“H.R. 3221” or the “Act”) was signed into law on July 30, 2008 and includes substantial changes to the administration of the Housing Tax Credit Program (“tax credit” or “LIHTC”) (See links to H.R. 3221 and NCSHA summary below). In addition, effective July 29, 2008, the IRS published the final regulation update for Utility Allowances (See link below). This Memorandum provides a brief explanation of compliance monitoring changes and MSHDA’s policy and implementation guidance related to these changes.

This Memorandum is intended to address issues of immediate concern and it provides only a summary of the new policy changes. MSHDA 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 MSHDA’s revised LIHTC Compliance Manual.

Link to H.R. 3221: <http://www.govtrack.us/congress/billtext.xpd?bill=h110-3221>

Link to NCSHA H.R. 3221 summary:

http://www.ncsha.org/uploads/NCSHA%20HR%203221%20Summary%20FINAL_rev%208%206%2008.pdf

Link to the Utility Allowance Final Regulation Update:

<http://edocket.access.gpo.gov/2008/pdf/E8-17268.pdf>

- **ELIMINATION OF ANNUAL RECERTIFICATIONS OF HOUSEHOLD INCOME**

One of the most significant changes in H.R. 3221 (Sec. 3010) is the elimination of the requirement for annual recertification of household income for existing residents of projects with 100% Low-Income Housing Tax Credits (i.e. projects with no market units). Effective July 30, 2008, the Section 142(d)(3)(A) of the Internal Revenue Code (“Code”) was modified to reflect this change. The amendment to the Code does not change the owner’s obligation to certify household income at move-in.

MSHDA Policy and Implementation Guidance

First year tenant income recertifications often uncover 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” and thereby make the unit ineligible for tax credits. The financial consequences of this type of noncompliance could be very costly for the LIHTC project owner. To help ensure that owners are in compliance with federal regulations, MSHDA has established a policy requiring **first year anniversary recertifications** by the owner or management agent.

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 MSHDA to meet the requirements for collection of tenant data (see Tenant Data Collection section below), after the first year anniversary recertification is conducted, MSHDA has also 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.

IMPORTANT NOTES:

Owners must request MSHDA’s approval to eliminate recertification requirements prior to implementing this change. The **Request to Eliminate Recertifications** form (to be posted on the MSHDA website by 10/15/08) must be completed and submitted to MSHDA Compliance, Attention Audriene Patterson, by mail. Forms must be signed by the development Owner. Forms signed by management agents are not acceptable.

The annual recertification changes established by H.R. 3221 are **not** retroactive. They apply only to recertifications due **after** the legislation’s effective date of July 30, 2008.

The change in recertification requirements applies to LIHTC developments only and includes properties with current Recertification Waivers and properties in the extended use period (post-year 15 properties). H.R. 3221 does not eliminate the recertification requirements imposed by other federal housing programs such as Section 8, Section 236, HOME, or Rural Housing or for projects financed with tax-exempt bonds subject to a Regulatory Agreement that mandates recertifications. LIHTC projects with other sources of federal funding must continue to satisfy the recertification requirements imposed by those programs, but may be eligible to eliminate the LIHTC recertification.

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 3rd party verification of income and assets. The “Under \$5,000 Asset Certification” form may **not** be used for initial (move-in) TICs **or** the first year anniversary recertifications.

The first year anniversary recertification is required of any residents that have move-in dates within the last year and for all future move-ins. 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 in the project 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, MSHDA will require that the owner/management agent complete an annual self-certification form for each household, utilizing a MSHDA-approved certification form. The self-certification form collects the following data: household income, household composition information, student status, race and ethnicity. Collection of this data will ensure MSHDA’s ability to meet the H.R. 3221 Tax Credit tenant data collection requirements as discussed in the section “Tax Credit Tenant Data Collection”.

Transfers Between Buildings in a Project

Households transferring to another building in a project must complete an initial certification with 3rd party verification of income and assets to determine eligibility. If eligible for the transfer, a first year anniversary recertification must be conducted after the first year and annual self-certifications for each year thereafter.

Reinstatement of Annual Recertification Requirements

MSHDA 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

H.R. 3221 (Sec. 2835) requires state housing finance agencies to annually collect tenant data for submission to HUD. This data includes certain demographic information regarding the LIHTC residents.

MSHDA Policy and Implementation Guidance

MSHDA’s policy regarding collection of tenant data will continue through already established policies and procedures via the on-line data collection application located on MSHDA’s website. Policies, procedures and the specific data collected are subject to change by HUD and/or MSHDA.

- **NEW STUDENT EXCEPTION - FOSTER CARE**

Tax credit student rule exemptions have been expanded (H.R. 3221, Sec. 3004) (Section 42(i)(3)(D)) of the Code) to include adult 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.

MSHDA Policy and Implementation Guidance

To claim the exception, an applicant or resident should 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.

- **BOND DEVELOPMENTS – CHANGE IN STUDENT RULE & AVAILABLE UNIT RULE**

H.R 3221, (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".

MSHDA Policy and Implementation Guidance

This change is effective July 30, 2008.

- **EXCLUSION OF MILITARY BASIC PAY**

H.R. 3221 (Sec. 3005) contains a provision excluding military basic pay from the income calculation for residents at projects located near certain military bases.

MSHDA Policy and Implementation Guidance

As of the date of this Memo, MSHDA has not identified a military facility in Michigan or adjacent counties in other states that meets the criteria established in H.R. 3221.

- **REPEAL OF BOND POSTING REQUIREMENTS**

H.R 3221, (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.

MSHDA Policy and Implementation Guidance

MSHDA will continue to report dispositions of projects to the IRS as required. When notifying MSHDA of the intent to sell a tax credit project, the current owner should include

the buyer's contact information and whether or not the buyer intends to continue operating the project as an LIHTC development.

- **GENERAL PUBLIC USE RULE**

H.R. 3221, (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:

1. tenants with special needs;
2. 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
3. tenants involved in artistic or literary activities.

- **RULE CHANGES TO AREA MEDIAN GROSS INCOME**

The following two amendments modified the applicable rules for determination of AMGI for tenant income and rent limits:

1. **INCOME – NON-METRO (RURAL PROJECTS)**

Applies to: LIHTC units only - for certifications (TICs) after July 30, 2008

H.R. 3221, (Sec. 3004) amends Section 42(i) to allow 9% housing credit developments located in a designated rural area (as defined by Section 520 of the U.S. Housing Act of 1949) to utilize income and rent limits based on the greater of:

- HUD county AMGI; or
- Federal National Non-Metropolitan median income for rent and income determinations (2008 - \$49,300)

MSHDA Policy and Implementation Guidance

Currently, the AMGI for all Michigan counties is above the national non-metropolitan median income. MSHDA will monitor for this provision as revised income limits are released by HUD and will notify owners and agents if the AMGI falls below the national non-metropolitan median income.

2. **HUD HOLD HARMLESS POLICY FOR REDUCTIONS IN AMGI**

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

HUD typically releases its calculation of AMGI early each year and has historically used the most recent census data and updated it with other income, employment and earnings data. In 2006, HUD modified its methodology to include additional data from the American Community Survey ("ACS") in the calculation of AMGI. The new methodology resulted in significantly lower AMGI in a number of areas nationwide. 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, (Sec. 3009) 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, ie. 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).

MSHDA Policy and Implementation Guidance

In Michigan, this currently applies to all counties, except Isabella, Kalamazoo and Van Buren.

This change will not be effective until the next income limit change in early 2009. When HUD publishes the revised income limits in 2009, MSHDA 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.

MSHDA Policy and Implementation Guidance

MSHDA 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.

This Memorandum is only a summary of the new policy changes. Additional Memorandums will provide more detail regarding implementation of these policies. If you have any questions, please contact Compliance staff at 517.241.2560.