

## SECTION VIII – LEGISLATIVE CHANGES

In the latter part of 2008 and the beginning of 2009, Congress enacted a number of legislative policies that impacted the Low Income Housing Tax Credit (LIHTC) program in substantial ways.

### **Part 810      Housing Economic Recovery Act of 2008 (HERA) – HR 3221**

In July of 2008 Congress enacted federal legislation HR 3221 known as The Housing Economic Recovery Act of 2008 (HERA). This legislation changed several provisions of the Low Income Housing Tax Credit Program (LIHTC) including changes to the compliance monitoring practices of CTCAC.

#### **A.      Requirement to Perform Annual Recertifications**

HR 3221 changed the requirement for 100% Tax Credit properties to no longer require annual recertifications beyond the initial move-in. This legislation was enacted on July 30, 2008.

Upon internal review of the legislation by CTCAC it was determined that a minimum of one additional recertification was needed to accurately determine income eligibility. On February 25, 2009 CTCAC passed final state regulations requiring 100% Tax Credit properties in California to complete one additional recertification beyond move-in. Failure to do so will be noted as noncompliance and both the Owner and Management Agent will be subject to Negative Points in future tax credit allocation funding rounds, if the noncompliance is not corrected within the correction period noted in the findings letter.

*Please Note: HR 3221 eliminated the requirement for recertifications 100% Tax Credit (9%) or Tax Exempt Bond (4%) deals, but did not, however, change the Full-time Student Status requirement – any full-time student households must meet one of the five IRS exceptions at any point during the tenancy.*

For Year 3 and beyond, CTCAC has created the Tenant Household Information Form (THIF) which speaks to the Student Status and Rent Restrictions for the household. It does not require any income calculations or third party verifications. If the household is a qualifying full-time student household then there must be a Student Status verification accompanying the THIF form. Additionally, if your project has additional funding layers beyond Tax Credits (such as RD or HUD), annual recertifications are still required by those programs. If the property is strictly Tax Credit, the owner/investor may elect to continue with full recertifications for various reasons including increased knowledge of tenant population for Deeper Targeting requirements or for Rent increases. CTCAC strongly recommends checking with all financing sources before discontinuing annual recertifications.

#### **B.      Former Foster Care Student**

HR 3221 modified the IRS Full-time Student Rule to allow an additional exception, bringing the total number of IRS exceptions to five. This fifth exception allows Individuals who previously received foster care assistance, if income eligible, to qualify a tax credit unit.

In California, CTCAC is capping the age limit to those who are ages 18-24 and have exited the foster care system up to 6 years prior to move-in.

### **C. HERA Special Income and Rent Limits 2009**

Section 3009 (a) of the Housing and Recovery Act of 2008 (HR-3221) included provisions for increases in the Income Limits and Rents in certain counties impacted by HUD's "Hold Harmless" Rule. As a result, HUD published the "HERA Special Income Limits" for all HUD "hold harmless impacted projects." In California, only seven counties are affected by this legislation change. These counties are;

Marin  
Nevada  
San Francisco  
San Mateo  
Santa Clara  
Solano  
Ventura

HERA Special Income limits are applicable to all properties currently Placed-in-Service in those counties, which used the previous year's (2008) HUD Rent and Income limits. It also will apply to all properties in the above counties that Placed-in-Service in calendar year 2008.

For all properties that place-in-service after January 1, 2009, CTCAC has published Non-HERA (MTSP Multifamily Tax Subsidy Program or HUD Standard) income limits as well as HERA limits for the counties noted.

***Please note:** For properties that were in the process of initial lease-up from May 20, 2009 through the May 13, 2010, CTCAC published separate limits (HERA and Non-HERA). The 2009 HUD Standard limits only applied to projects leasing-up in 2009 with an anticipated Place in Service date of 2009 or later.*

### **D. Rent and Income Limits 2010**

On May 14, 2010, the U.S. Department of Housing and Urban Development (HUD) published 2010 Income Limits applicable to low income housing funded with Low Income Housing Tax Credits (LIHTC) and projects financed with tax-exempt housing bonds, both are referred to by HUD as Multifamily Tax Subsidy Projects (MTSPs).

The Housing and Economic Recovery Act (HERA) of 2008 made statutory changes to how income limits are calculated for MTSPs (LIHTC and bond-financed properties). The legislation provides for immediate holding harmless of "area median gross income" for MTSP income limits. As a consequence of this legislation, beginning in 2010, HUD will no longer hold its Section 8 income limits harmless.

#### **Impacted and Non-Impacted MTSP projects:**

- **Impacted Project** – An Impacted MTSP is any project (*including HERA Special*) which had area median gross income determined in 2007 or 2008 under the HUD Hold Harmless policy. These include:

1. Any single building project that Placed in Service on or before 12/31/2008.
  2. Any Multi-building project that had at least one building Place in Service on or before 12/31/2008.
  3. Any acquisition/rehab project that has the date of acquisition on or before 12/31/2008.
- **Non-Impacted** – Non-Impacted MTSPs are projects that were not subject to the HUD Hold Harmless policy in 2008 or Placed in Service on or after January 1, 2009.
    1. For existing non-Impacted projects where the placed in service date is 1/1/2009 – 5/13/2010 (*eligible for HERA Hold Harmless*), you would use the greater of the 2009 or the 2010 rent limits.
    2. For non-Impacted projects which are placed in service on or after the effective date of 2010 MTSP income limits - **May 14, 2010:**
      - a. The Income limits will be the MTSP/Section 8 limits as determined by HUD.
      - b. The Rent limit will be the greater of the current rent limits as published by HUD or the **owner's gross rent floor election**<sup>1</sup>. TCAC will determine the gross rent floor election to be at carryover allocation for 9% tax credit projects. The gross rent floor election for 4% tax exempt bond projects will be determined at preliminary reservation unless specific written notification is made by the owner to TCAC specifying the gross rent floor election is to be at placed in service.

Going forward, HUD will allow the Section 8 income limits to fluctuate with the area median income for each county. However, HUD has established a maximum and minimum amount that the AMI can change. The income limits issued for the Section 8 and MTSP program will not increase more than 5% or twice the national change in AMI (whichever is greater), nor will the limits decrease more than 5%.

Each non-Impacted project will be subject to the current year's rent and income limits and will be held harmless at the highest income limit the property has achieved since it was placed in service should the income limits decrease in following years (*HERA Hold Harmless*). HUD will publish historical data on income limits, but each owner should retain a file evidencing their project's income limits and rents since placing the project into service.

Based on the changes enacted by HUD, TCAC has revised the format of the published Income and Rent limits to reflect the hold harmless policy as enacted by the 2008 HERA legislation. Therefore, three (3) income limit tables and four (4) rent limit tables are posted on the TCAC website. These are:

2010 Income Limits for Projects Placed in Service on or before 12/31/2008 (*including HERA Special Projects*)

2010 Income Limits for Projects Placed in Service from 1/1/09 – 5/13/2010

2010 Income Limits for Projects Placing in Service on or after 5/14/2010

2010 Rent Limits for Projects Placed in Service on or before 12/31/2008 (*post 1989*)

2010 Rent Limits for Projects Placed in Service on or before 12/31/2008 (*prior to 1990*)

2010 Rent Limits for Projects Placed in Service from 1/1/09 – 5/13/2010

2010 Rent Limits for Projects Placing in Service on or after 5/14/2010

**Please see the 2010 Rent and Income Limits Policy Memo as well as the links for the 2010 Rent and Income Limits at:**

**<http://www.treasurer.ca.gov/ctcac/2010/supplemental.asp>**

#### **E. Tenant Collection Data**

The HERA legislation added an additional requirement that starting in 2010, all LIHTC properties were to require the collection of certain race and ethnicity data on an annual basis. This data would be reported to the state allocating agency, which in turn would forward the information to HUD.

At this time, HUD is still reviewing the beta testing methodology and mechanics of this requirement. A preliminary submission of data will be submitted by the states to HUD by September 30, 2010.

CTCAC will start collecting specific data starting January 1, 2011. CTCAC will post guidance and requirement information as soon as the final procedure is completed by HUD.

### **Part 820 American Recovery and Reinvestment Act of 2009 (ARRA)**

On February 17, 2009 President Obama signed into law the American Recovery and Reinvestment Act of 2009. ARRA was designed to be a sweeping economic stimulus bill that would provide resources to many different programs with the intent of reinvigorating the nation's economy. The LIHTC program was one of the programs to receive funds under ARRA to stimulate the production of affordable housing.

#### **A. Credit Exchange Program (Section 1602)**

- Subject to IRS Section 42 Compliance Monitoring Regulations
- Subject to Asset Management fees and Asset Management monitoring
- Designed to be a full exchange of credits for cash or a gap-filler for projects that have some tax credits and an equity investor
- Offered as a 15 year conditional grant with 0% interest, but with a 55 year compliance period
- Has a recorded Regulatory Agreement for 55 years

**B. HUD Tax Credit Assistance Program**

In July 2008, the Department of Housing and Urban Development (HUD) created the Tax Credit Assistance Program (TCAP) to provide additional grant funding for capital investment in Low Income Housing Tax Credit properties based on a formula-based allocation to the State allocating agencies. These funds are to be distributed competitively.

- Subject to IRS Section 42 Compliance Monitoring Regulations
- Subject to Asset Management fees and Asset Management monitoring
- The projects will retain a minimum of \$100 in Federal tax credits
- Subject to Davis-Bacon wage requirements
- Subject to a NEPA environmental review
- 55 year loan terms
- Has a recorded Regulatory Agreement

For compliance monitoring purposes, all existing CTCAC forms, policies, procedures, and requirements remain in effect. CTCAC will treat any ARRA funded projects in the same manner as the regular LIHTC portfolio.