

**CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE**

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March 9, 2009

**POLICY MEMO 09-01**

**REVISED 7/1/09**

TO: Low Income Housing Tax Credit Property Owners and Managers

FROM: The California Tax Credit Allocation Committee (CTCAC) Compliance Section

RE: New Policies and Program Requirements for 2009

Dear Housing Credit Participant:

The purpose of this memo is to notify you of new policy changes resulting from the passage of federal legislation known as The Housing and Economic Recovery Act of 2008, or simply as HR 3221. This legislation changed several provisions of the low income housing tax credit program, including a major change on the compliance end of the program. In addition to changes stemming from HR 3221, The Internal Revenue Service (IRS) published Final Regulations on July 29, 2008, which amended the previous long standing rules for acceptable Utility Allowances for the Low Income Tax Credit Program. The Final Utility Allowance Regulations added three new additional acceptable methods to use in calculating utility allowances. These changes are detailed below.

**HR 3221 – Requirement to perform annual income recertification's for 100% tax credit projects**

With the passage of HR 3221 on July 30, 2008, the requirement for continuance of annual income recertifications for owners of 100% tax credit projects, beyond initial move-in income certification was abolished. However, please note on February 25, 2009, The California Tax Credit Allocation Committee (CTCAC), passed final state regulations requiring one additional income annual recertification after initial move-in (1<sup>st</sup> annual income recertification) for owners of 100% tax credit properties in California.

After February 25, 2009, any tax credit project not performing one additional income recertification beyond initial move-in certification will be noted as out of compliance and the owner and management agent will be assessed negative points in future tax credit allocation rounds if the noncompliance is not corrected within the "correction period" given the owner in the findings report sent after the monitoring visit.

Please note, the provision to not perform annual recertification's is only for 100% Tax Credit projects with either tax credit only (9%) or tax credit and tax exempt bond financing (4%), prior to ceasing with annual recertification's management agents should check with their project owner and tax credit investor to ensure they want you to discontinue recertification's. If your project has funding from other entities, in addition to tax credits, those entities still require the performance of annual recertifications such as HUD, or RD developments, HR 3221 did not change the requirement for recertifications for those programs.

HR 3221 also modified the IRS Full-Time Student Rule, to allow one additional exception:

Individuals who previously received foster care assistance and who currently attend school full-time, if income eligible, can also qualify a tax credit unit. In California, CTCAC is capping the age of qualification at between ages 18-24

Lastly, HR 3221 did not change any requirements for mixed-use tax credit projects (projects that have tax credit and market rate units). Mixed-use tax credit projects must continue to perform complete annual income recertifications for all tax credit units, each year on an annual basis throughout the tenancy of a household and the entire compliance period.

The New Monitoring Procedure for 100% tax credit Projects

Beginning June 1, 2009, tenant files should contain the following:

1. In year 1 - complete initial move-in certification with all required 3<sup>rd</sup> party verification of income and assets, VOE and pay stubs for wage earners and all CTCAC required forms
2. In year 2 - 1<sup>st</sup> annual income recertification with all required 3<sup>rd</sup> party verification of income and assets, VOE for wage earners and all CTCAC required forms
3. In year 3 and thereafter – CTCAC required new “Household Information Form” to be completed, signed and dated by management and all adults in household – please note that in year 3 and thereafter – for tax credit purposes only, it will no longer be necessary to obtain 3<sup>rd</sup> party income or asset verification for any household with continued tenancy and with exception of student verification forms, all TCAC required forms will no longer be necessary
4. For every year of tenancy –IRS will continue to require owners of tax credit properties to ensure that if, a tax credit unit is comprised of all full-time students, then the household must meet one of the 5 IRS Full-Time Student Exceptions in order for owner to claim tax credits on said unit. Tenant files must contain 3<sup>rd</sup> party verification from the college, university or trade school for all households comprised of full-time students – CTCAC will continue to check and enforce compliance of the Full-time Student Rule. CTCAC has one additional new form to verify Foster Care eligibility for purposes of verification of the Full-time Student Rule exception

For more guidance on 1-4 above, as well as CTCAC compliance forms, please refer to CTCAC's Compliance Manual which has been updated to include all compliance changes. The manual can be downloaded on our website at: [www.treasurer.ca.gov/ctcac/compliance.asp](http://www.treasurer.ca.gov/ctcac/compliance.asp)

## **IRS Final Regulations for allowable Utility Allowances for tax credit developments passed July 29, 2008**

The IRS published Final Regulations on July 29, 2008, which modified the Section 42 Utility Allowance Regulations by adding three new methods to calculated Utility Allowances, bringing the acceptable methods from four to seven:

1. RHS Financed Project – Use the RHS utility allowances
2. HUD Project-Based Subsidy Regulated Buildings – Use HUD approved utility allowances
3. Individual Apartment Occupied by Residents who receive HUD assistance (Section 8 Existing, etc.) – Use the HUD utility allowances as given by the Public Housing Authority (PHA) administering the assistance for those tenants only
4. Buildings without RHS or HUD Assistance – Use the PHA utility allowance. An interested party may request the utility company's estimate utility cost for each unit of similar size or construction in the building's geographic area. Such an estimate must be in writing, signed by a local utility company official, prepared on the utility company's letterhead, and maintained in the Development File for the project. Use of the actual utility rates, whether higher or lower, is required once they have been requested.
5. Energy Consumption Model (California Utility Allowance Calculator)
6. HUD Utility Allowance Model
7. Agency Estimate – **please note:** CTCAC will not be implementing the Agency Estimate Model

For more detailed information on all methods noted above, see Section V, Part-530E of our Compliance Manual. Utility Allowance number 5 above (Energy Consumption Model) is the preferred method endorsed by CTCAC and is for use with New Construction Developments only. Additionally, the Energy Consumption Model can only be calculated by a person who is either a properly licensed electrical or mechanical engineer or a qualified professional HERS rater **and** a Certified Energy Plans Examiner (CEPE). If you want to download the CUAC model you can do so at the following address:

[http://www.gosolarcalifornia.org/affordable\\_housing/cuac.html](http://www.gosolarcalifornia.org/affordable_housing/cuac.html)

The IRS plans on releasing major revisions to the 8823 Guide **by end of year** 2009. At that time depending on further guidance from the service, CTCAC may make changes to the above policies, as well as those noted in the sections below which were incorporated in 2008, following changes made by IRS in 2007. In the meantime, all policies noted below are still in effect until further notice.

### **2008 Policies:**

The following policy changes are in effect:

#### ***I. Low Income Units Occupied by Nonqualified Full-Time Students***

In the past, CTCAC has not considered K-12 as full-time students when determining whether a household was comprised entirely of full-time students. This policy was initiated in the December 15, 2000 Memorandum *Compliance Recommended Practices*.

The 2007 IRS guidelines include K-12 schools in their definition of educational organizations, thereby requiring states to include the K-12 students when determining whether a household is comprised entirely of full-time students.

The IRS 8823 Guidelines read as follows:

*An educational organization, as defined by IRC 170(b)(1)(A)(ii), is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term "educational organization" includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. It does not include on-the-job training courses.*

In 2007, as CTCAC monitored throughout the state, we gave written notice in our findings letters to owners of this policy change and noted that there would be no consequences for any households established under the old CTCAC policy of not considering K-12 full-time students. However, beginning in January of 2008, all new move-in households must meet the criteria of the newly adopted policy. CTCAC will begin noting this issue as a noncompliance issue beginning July 1<sup>st</sup>, 2008. The five IRS exceptions to the full-time student rule remain in effect and are as follows:

1. Receiving assistance under Title IV of the Social Security Act (AFDC, TANF);
2. Enrolled in a job training program receiving assistance under the Work Force Investment Act (WIA), (formerly the Job Training Partnership Act) or under another similar federal, state, or local laws;
3. Single parents with minor children, all of whom are full-students and such parents and children are not dependents of another individual. **Please note:** *in January 2008, there was a change to the IRS code for this exception – children in household can be claimed as dependents on either parent's tax return. To comply with this exception, CTCAC will require **either** the 1040 Tax Return showing dependent status **or** the CTCAC created Single Parent Full-time Student Self-Affidavit at the time of move-in and for all subsequent recertifications;*
4. **All** members of household are married and have filed or are entitled to file a joint tax return. **Please note:** *CTCAC will require a copy of the marriage certificate to be in tenant file;*
5. At least one member of the household has exited the Foster Care system. **Please note** – *CTCAC has determined that in California, this exception will apply only to persons age 24 or under and who have exited the Foster Care system within the previous 6 years.*

## **II. Transfers to Different Buildings, With-in Same Low-income Project – only applies to mixed-Use Tax Credit Properties**

For Mix-use tax credit properties, the IRS allows transfers between buildings without qualifying the household as an original move-in, so long as the household's income does not exceed 140% of their current income limit. The household takes its tax credit status, their lease, income certification including its effective date, to the new unit. The old unit assumes the status of their new unit just prior to the transfer. Extra caution needs to be taken when transferring units in mixed-use properties. Management must keep detailed records of how transfers are being performed to ensure compliance with next available unit rule and square footage requirements.

## **III. Tenant Income Certification Effective Date**

The new policy for tenant income certifications is they can now be dated and signed within 120 days of the effective date of the certification for both the move-in year and all subsequent recertification's. This includes pay-stubs and third party documentation of income and assets.

The IRS Guidelines read as follows:

*The effective date of the tenant's income certification is the date the tenant actually moves into the unit. All adult members of the household should sign the certification. If the certification is more than 120 days old, a new certification must be provided in file.*

**Please note:** CTCAC will continue to allow mass recertification's as long as they are completed at the same time period each year.

## **IV. Changes in Family Size**

The 8823 Guide stipulates that any addition of a new member(s) to an existing low-income household must be accompanied by a new income certification including third party verification of income and assets. If the addition of the new household member(s) increases the income of the household to over 140% of the income limitation, then the next available unit rule applies.

The 8823 Guide further states that a household may continue to add members as long as at least one member of the original low-income household continues to live in the unit. Once all original household members have moved out of the unit, the remaining tenant(s) must be certified as a new income-qualified household. Keep in mind the full-time student rule when adding new members to an existing household.

## **V. 2006 Change from HUD regarding: Financial Aid/Scholarships**

Any financial aid assistance, in excess of amounts received for tuition, received under the Higher Education Act of 1965 (20 U.S.C. 1001 et.seq.), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C.

1002)), shall be considered income except for persons over the age of 23 with dependent children.

The financial assistance a student receives while residing with a parent or guardian is excluded from annual income. *CTCAC will require a copy of the parent/guardian 1040 tax return be on file* to prove dependent status of the student

**Please note:** this rule applies to all tax credit properties and applies whether the student attends school on a part-time or full-time basis.

**Revision:** In June 2009, at the annual NCSHA Housing Credit Conference, the IRS made a statement that the HUD financial aid income calculation was intended for those tenants receiving Section 8 assistance only (*either through vouchers or those living in a project-based Section 8 property*) and not for all participants in the LIHTC program. This change is to be noted in the upcoming revision to the IRS Guide to Form 8823 due out late 2009.

As of July 1, 2009, CTCAC will immediately cease to calculate any financial aid income for qualified students, except in the instances where Section 8 assistance is received. If Section 8 assistance is received, then the guidelines and exceptions noted in HUD Handbook 4350 Rev. 2, Chapter 5 (*and as noted above*), will be in effect.

## **VI. Compliance Monitor Inspector Contract**

CTCAC has contracted with Spectrum Enterprises to conduct compliance monitoring inspections in order to meet our federal mandate for property compliance monitoring in calendar year 2008 and 2009. Spectrum started conducting inspections in the Southern part of the state beginning in late 2007. If your property is chosen to be inspected by Spectrum, you are to give them the same courtesies and cooperation as you do the CTCAC staff.

**VII. CTCAC's Policy Memo 04-01 dated January 27, 2004 regarding compliance policies is still in effect and can be found on our website at:**  
[www.treasurer.ca.gov/ctcac/compliance.asp](http://www.treasurer.ca.gov/ctcac/compliance.asp)

## **VIII. CTCAC's 2009 Monitoring List on Website**

On April 16, 2008, CTCAC began posting our current year monitoring inspection list on the website for informational purposes only. The list has been updated for 2009 and will be updated quarterly as newly placed in-service developments are added to the list.

## **IX. CTCAC Compliance Manual on Website**

On May 9, 2008, a copy of our CTCAC Compliance Manual was posted to website for the first time, along with along with a copy of the IRS Guide for Completing Form 8823, a copy of HUD Handbook 4350.3 REV-2 –Chapter 5 and a copy of this memo for information and guidance.

***Please note on March 10, 2009, the most current version of our compliance manual will posted on our website.***

Please refer to these materials for additional clarifications, and keep an eye on the CTCAC website for any future policy updates regarding any new changes.

Thank you for your continued cooperation with the implementation of these policies. CTCAC looks forward to a productive and positive working relationship in the coming year. If you have any question regarding the change in policies, you may reach the Program Managers at (916) 654-6340.