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DATE: July 29, 2011
 TO: Low Income Housing Tax Credit Project Owners and Applicants
 FROM: Tax Credit Allocation Committee – Compliance Section
 RE: Gross Rent Floor Election

ADDITIONAL CLARIFICATION TO TCAC'S RENT AND INCOME MEMO

On July 6, 2011, TCAC posted a revised Rent and Income Memo due to the revision by HUD of several counties income limits. All information contained within that memo remains correct and current. This clarification is to address an issue that was only moderately explained in the July 6, 2011 Memo and TCAC is providing additional clarification as the gross rent floor election will impact potentially hundreds of projects going forward.

The Gross Rent Floor Election (GRFE) is made by the owner within the 1st year of receiving a credit reservation. For all projects, TCAC will determine the GRFE to be at carryover allocation for 9% tax credit projects or at preliminary reservation for 4% bond projects unless specific written notification is made by the owner to TCAC specifying the GRFE is to be at placed in service.

For all projects Placed in Service on or before 5/13/2010, a project's rent limit is **not** impacted by the GRFE selected by the owner, due to HUD's Hold harmless policy, as the limits were never less at placed in service than they were at carryover or preliminary reservation. Similarly, a project could not use HERA Special limits as their GRFE, since to qualify as a HERA Special project, the project must have been **placed in service** prior to 12/31/2008.

For all projects that Placed in Service on or after 5/14/2010, the owner and management company needs to be knowledgeable of the GRFE as the income limit in several counties decreased in 2009, 2010, or 2011. These counties are:

Alpine	Amador	Marin
Monterey	Orange	Plumas
Riverside	San Benito	San Bernardino
San Diego	San Francisco	San Joaquin
San Mateo	Santa Barbara	Santa Clara
Solano	Stanislaus	Ventura
Yolo		

For all projects that Placed in Service on or after 5/14/2010, located in the counties noted above, the correct Rent limit to use would be the greater of:

- A.) the limits in place at carryover allocation/preliminary reservation, or
- B.) the current rent limit at Placed in Service

The time frame for the Rent limit is driven by the Rent/Income release date by HUD. The following is a list of HUD release dates per calendar year as determined by HUD that may potentially affect projects placed in service on or after 5/14/2010.

- 2006 – on or after 3/8/2006 through 3/19/2007
- 2007 – on or after 3/20/2007 through 2/12/2008
- 2008 – on or after 2/13/2008 through 3/18/2009
- 2009 – on or after 3/19/2009 through 5/13/2010
- 2010 – on or after 5/14/2010 through 5/30/2011
- 2011 – on or after 5/31/2011

Example: Project CA-2009-750 is located in Amador County. The owner elects to have the GRFE at carryover (preliminary reservation), which was 10/31/2009. The project places in service on 7/15/2011. The Income Limits for the property would be those for properties placing in service on or after 5/31/2011. The Gross Rent Floor (GRF) limit would be the greatest of the limits for 2009 or 2011 as determined by HUD’s limit release date noted above.

In addition to knowing the GRFE (*carryover or PIS*) for all properties Placed in Service on or after 5/14/2010, the owner will need to know how the Line 8b election on the 1st year filing of the 8609 forms is treated or will be treated. Line 8b states:

Are you treating this building as part of a multiple building project for purposes of Section 42? Yes No

If the owner elects “Yes” and attaches the required statements to IRS Form 8609, all buildings are considered to be part of one project (*multi-building project*) and the GRFE will be applied to all buildings in the project based on the GRFE date of the 1st building to place in service. Expanding on the example noted above:

Example: Project CA-2009-750 is located in Amador County. The owner elects to have the GRFE at carryover. The project contains 5 buildings and the owner has elected “yes” on Line 8b of the 1st year filing of the 8609 forms, so all buildings are considered to be part of the same project. The five buildings will be placing in service in June 2011 through January 2012. The Income Limits for the property would be those for properties placing in service on or after 5/31/2011. The Rent Limit would be the higher of the GRF limits for 2009 (carryover), or the Rent Limits for Projects Placing in Service on or after 5/31/2011 since they were the rent limits in effect at the time the first building placed in service.

If the owner elects “No”, for IRS Section 42 purposes, each building is to be treated as its own project. The GRF will be applied individually to each building and there may be a different set of rent limits for each building based on the GRFE.

*Example: Project CA-2007-600 is located in Plumas County. The owner elects to have the GRFE at **Placed in Service**. The project contains 4 buildings A, B, C, and D. Each building contains only 2 bedroom units. The owner has elected “no” on Line 8b of the 1st year filing of the 8609 forms, so all buildings are considered their own project. Each building will place in service in a different year. The limits to use would be as follows:*

*Building A – Placed in Service 11/15/2008
Building B – Placed in Service 9/30/2009
Building C – Placed in Service 5/30/2010
Building D – will Place in Service 7/15/2011*

Income Limits:

*Building A – Projects Placed in Service on or before 12/31/2008 (including HERA Special Counties)
Building B – Projects Placed in Service from 1/1/2009 – 5/13/2010
Building C – Projects Placed in Service from 5/14/10 – 5/30/2011
Building D – Projects Placing in Service on or after 5/31/2011*

Rent Limit for a 2 bedroom unit:*

*2008 – on or after 2/13/2008 through 3/18/2009 - **\$805**
2009 – on or after 3/19/2009 through 5/13/2010 - **\$815**
2010 – on or after 5/14/2010 through 5/30/2011 - **\$810**
2011 – on or after 5/31/2011 - **\$800***

**numbers used in this example are for explanatory purposes only and may not reflect the actual limits posted for Plumas County. See the Rent Tables for actual numbers.*

In 2011:

*Building A – PIS 2008 where GRF is \$805. Even though there was a rent increase in 2009, in the current year (2011) the current rent limit for the building is \$800 which is **below** the GRF of \$805. The maximum gross rent than can be charged for units in this building is \$805.*

Building B – PIS 2009 where GRF is \$815. The GRF for this building is higher than the limits for the current year (2011). The maximum gross rent that can be charged for units in this building is \$815.

Building C – PIS 2010 where the GRF is \$810. The GRF for this building is higher than the limits for the current year (2011). The maximum gross rent that can be charged for units in this building is \$810.

Building D – PIS after 5/14/2010. The current year’s maximum gross rent limit is \$800. This amount also becomes the GRF for this building.

As noted in the example above, answering “no” on Part II - Line 8b of the 8609 form, may cause multiple buildings within the same project to have different Rent and Income limits. TCAC strongly recommends developing an internal tracking system and making sure

management is aware of the GRFE for each project in the portfolio, to ensure rents are being held at the correct limits. Over-charged rents are reportable on Form 8823 to the IRS.

If you have any questions on the 2011 Rent & Income limit or Gross Rent Floor Election guidance, please contact either **Ammer Singh or Shannon Nardinelli, Compliance Program Managers at (916) 654-6340.**