

# Novogradac Journal of Tax Credits

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## Q&A Housing and Economic Reform Act Special Rent Limits

By Rodney C. Sommers, CPA, Novogradac & Company LLP

**Q**uestion: After the end of the 15-year compliance period, can a low-income housing tax credit (LIHTC) property using the Housing and Economic Reform Act of 2008 (HERA) special income limits still use the HERA special income limits if a new allocation of credits is received?

**A**nswer: No, the HERA special income limits cannot be used after the new credit allocation is received. The normal multifamily tax subsidy project (MTSP) income limits are used after the new credit allocation is received.

HERA introduced a “hold harmless” policy that prevents a change in the method of determining area median gross income (AMGI) from resulting in a reduction in the AMGI determined with respect to certain projects placed in service in calendar years 2007 and 2008.

In order to qualify for the HERA special income limits under the hold harmless policy, the project must meet two requirements

1. the project relied on the income limits in 2007 or 2008 and
2. the MTSP tables for 2009 indicate whether the area in which the project is located is an area affected by the hold harmless policy.

On March 19, 2009, under the new MTSP plan, HUD published an income limit for projects that do and do not qualify for HERA’s special income limit. According to HERA, projects whose income for 2007 or 2008 was determined under the HUD hold harmless policy are eligible for the

HERA special income limit. The project must have been in service as of December 31, 2008 to be eligible.

According to the IRS Low Income Housing Credit Newsletter, Issue #35, the HERA special income limits are applicable to a project even after the end of

the 15-year compliance period during which the credits are subject to recapture. However, if a new allocation of credits and a new credit period begin after the 15-year compliance period, the normal MTSP income limits would be used since the HUD income limits from 2007 or 2008 were not relied on for the new credits. Any existing tenants determined to be income-qualified during the 15-year compliance period are concurrently income-qualified for purposes of the extended-use agreement. As a result, any tenant determined to be income-qualified at the time of move-in for purpose of the extended-use agreement is a qualified low-income tenant for any subsequent allocation of credits.

Because a property that qualified for the HERA special income limits will lose the benefit of using the higher HERA income limits after the 15-year compliance period if a new allocation of credits is received, the effect of using the lower income limits will need to be considered when applying for the new credit allocation. ❖

Have a question on Property Compliance? We encourage you to submit questions for the monthly Q&A column. Questions can be submitted to James R. Kroger, CPA at [jim.kroger@novoco.com](mailto:jim.kroger@novoco.com)

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