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PROPERTY COMPLIANCE



Separated Spouse Might Be a Live-In Aide

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Question: Can I exclude the income of a separated spouse who is a live-in aide when determining a household's eligibility for a low-income housing tax credit (LIHTC) property?

Answer: Generally, yes, you can exclude the income of a separated spouse if s/he meets the requirements to be a live-in aide listed below.

According to U.S. Department of Housing and Urban Development (HUD) Handbook 4350.3, a live-in aide is:

"A person who resides with one or more elderly persons, near-elderly persons or persons with disabilities, and who:

- i. Is determined to be **essential to the care and well-being** of the person(s);
- ii. Is **not obligated for the support** of the person(s); and
- iii. **Would not be living in the unit except to provide the necessary supportive services.**" (emphasis added)

HUD Handbook 4350.3 states that "a relative may be considered to be a live-in aide" if they meet the above requirements, especially the criteria that s/he would not be living in the unit except to provide the necessary supportive services.

Some tenants might want their separated spouse to be their live-in aide. For example, a 60-year-old man who has been separated with his wife for the last five years falls ill and needs a live-in aide. Because he has been married to his wife for more than 30 years, he might prefer asking his wife to be his live-in aide despite their separated status, rather than hiring a stranger to be his live-in aide.

Property managers should clearly document that the tenant and the live-in aide are separated. This can be established with a marital separation affidavit and a legal separation agreement.

To qualify as a live-in aide, the separated spouse must be essential to the care and well-being of the tenant. The property manager must first verify the need for a live-in aide. This verification should be obtained from a physician, psychiatrist or other licensed medical practitioner or health care provider, stating that a live-in aide is essential to the care and well-being of the tenant. Verifications should be on official letterhead, and must be dated within 120 days prior to the effective date of certification. It's important to note that property managers cannot request confidential medical records.

In addition, the separated spouse (live-in aide) should not be obligated for the support of the tenant in order to

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qualify as a live-in aide. If the tenant and the live-in aide are legally separated or divorced, they are generally not legally obligated for each other's support. To prove that the separated spouse (live-in aide) is not obligated for the support of the tenant, the tenant and the separated spouse should provide a legal separation agreement and tax returns showing that the tenant and the separated spouse file separate tax returns that indicate they are not married. They could also provide third-party income verifications that show each of them is financially independent, and the tenant does not need any extra support from the separated spouse, and therefore, the separated spouse is not living with the tenant for financial reasons, but rather because the tenant needs the separated spouse for live-in aide services.

Finally, it must be established that the separated spouse (live-in aide) would not be living in the unit except to provide the necessary supportive services to qualify as a live-in aide. Proving that a live-in aide would not be living in the unit except to act as a live-in aide can be difficult. Some state agencies might ask the tenant and the separated spouse to demonstrate that the provision

of care is an arm's length transaction or demonstrate that the separated spouse was not a household member prior to becoming a live-in aide.

Below are some other ways to prove that the separated spouse/live-in aide would not be living in the unit except to provide the necessary supportive services:

- Separate health insurance policies;
- Separate car insurance;
- Separate finances (e.g., bank accounts, credit cards);
- Legal separation documents, or other legal document indicating that spouses are not obligated for the support of each other (e.g., prenuptial agreement); and/or
- Child custody and visitation documents.

Because some state agencies believe it isn't possible to prove that the separated spouse would not be living in the unit except to provide the necessary supportive services, those state agencies might count income of a separated spouse who is a live-in aide. LIHTC property owners and managers should consult with the appropriate state agency to confirm its policy regarding this scenario. ❖

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