To: Owners and Managers of Housing Credit and Multifamily Bond Projects

From: Jill King, Kentucky Housing Corporation Compliance Manager

Re: Revisions to Compliance Monitoring Requirements due to H.R. 3221

Date: October 29, 2008

On July 30, 2008, President George W. Bush signed into law the Housing and Economic Recovery Act of 2008 (Act). The Act addresses a wide range of housing issues, including critical Low Income Housing Tax Credit (Housing Credit) compliance rules. This memo provides guidance and commentary on four of the changes of which owners and managers of Housing Credit and Multifamily Bond projects should be aware. The changes are effective immediately, unless otherwise indicated. Kentucky Housing Corporation (KHC) will issue additional guidance through memos and the eGram system. In addition, owners and managers should anticipate the issuance of additional guidance by the Internal Revenue Service (IRS), in the form of regulations or through the 8823 Guide, for some provisions of the Act.

The IRS also issued revisions to Regulation 1.42-10 the week of July 28, 2008. The revised regulation allows for several alternatives for calculating utility allowances. KHC has issued its policy and procedures for the application of the new methodology formulas on the KHC Web site under Housing Production, Compliance Monitoring or click here.

H.R. 3221 Housing and Economic Recovery Act of 2008

Sec 3004(e) – Continued eligibility for students who received foster care assistance

The provision adds an additional exception for households that consist entirely of full-time students. If a member of a household that consists entirely of full-time students was previously under the care and placement responsibility of the state agency responsible for administering a plan under part B or part E of title IV of the Social Security Act will be considered eligible for the student exception. A revised Certification of Student Eligibility form is now available on the KHC Web site under Housing Production, Compliance Monitoring, and Verification Forms. Please remember, supporting documentation MUST be obtained to verify that a household meets one of the eligible student exceptions.

Sec 3004(f) – Measurement of area median gross income for certain projects located in certain non-metropolitan areas

The provision now allows for the use of area median gross income standard or the national non-metropolitan median gross income, whichever is greater. This new income targeting rule applies to all such buildings if the building receives a low-income Housing Credit allocation under the otherwise applicable low-income Housing Credit volume limit. It does not apply in the case of buildings which do not require a low-income Housing Credit allocation because they are substantially bond-financed. This provision is effective for income determinations made after July 30, 2008. The area median gross income rules are **not** changed for buildings in metropolitan areas.

Note: This new provision only applies to counties in Kentucky that are in non-metro areas (as defined in Section 520 of the Housing Act of 1949) with area gross median incomes below the national non-metro median gross income. This provision ***DOES NOT*** *apply to multifamily bond projects that are eligible for and receive the 4 percent credit.*

To obtain a current list of eligible rural (non-metro) counties in Kentucky affected by this provision, please refer to the U.S. Department of Agriculture (USDA) Web site.

Income and Rent charts **effective July 30, 2008,** utilizing the National Non-Metro AMI for applicable rural (non-metro) counties:

INCOME	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
50%	17250	19700	22200	24650	26600	28600	30550	32550
60%	20700	23640	26640	29580	31920	34320	36660	39060

RENT	0-br	1-br	2-br	3-br	4-br	5-br
50%	431	461	555	640	715	788
60%	517	554	666	768	858	946

Note: Because the list of eligible Kentucky counties may periodically change, owners/managers should review the USDA Web site for rural (non-metro) counties at least annually.

Sec 3008 – Coordination of certain rules applicable to low-income Housing Credit and Qualified Residential Rental Project exempt facility bonds

The provision conforms the tax-exempt bond rules with respect to students; the available unit rule; and single-room occupancy units to the low-income Housing Credit rules. Therefore, the student rule exceptions provided in IRC Sec 42 are now applicable to residents living in projects financed with tax-exempt bonds. In addition, the tax-exempt bond rule has been modified and is to be applied on an individual building basis, not to all buildings in a project. The single-room occupancy non-transient rule now applies to tax-exempt bond projects as in the low-income Housing Credit program (Sec 42).

Sec 3010 – Exception to Annual Current Income Determination Requirement where Determination Not Relevant

Effective **July 30, 2008**, projects financed with Low-Income Housing Tax Credit (Sec 42) or tax-exempt bonds (Sec 142) may discontinue annually re-certifying the incomes of existing residents, for any project in a year if during such year no residential unit in the project is occupied by a new resident whose income exceeds the applicable income limit (project was allocated credit for 100 percent of the residential units and there are no market rate units in the project). The provision does not modify the HUD rules; therefore, some projects must continue annual re-certifications even with this provision. The amendment to IRC Section 142(d)(3)(A) does not modify the owner's obligation to certify a household's income at move-in. Owners/managers should review their policies and procedures to ensure that initial tenant income certifications are accurate and properly documented. KHC reserves the right to require annual re-certifications when a pattern of non-compliance is identified with initial tenant income certifications or a project is out of compliance as a result of leasing a unit to a household that is not income qualified.

KHC is currently in the process of revising the Tenant Income Certification (TIC) so that owners/managers may use the TIC form to satisfy the continued requirement of annually re-certifying the household's student status and testing of gross rent. In addition, the TIC will assist in efforts to collect tenant data that is required by Sec 36 of the Act. When this form is available on the Compliance Web page, notification will be distributed through the KHC eGram.

Note: Owners/managers should review line 8b of the Form 8609(s) that was initially filed with the IRS for the project to determine the election made for the project. If the election was made to NOT treat the building as part of a multi-building project, then each building will be monitored as an individual project.

Transfers for 100% LIHTC Projects

The Guide for Completing Form 8823, pages 4-16, provides information on how a household's transfer to a different building should be monitored when the household's income is no greater than 140% of the income limit during any year of the 15-year credit period. Because the Act now exempts 100% LIHTC projects from performing annual re-certifications of income, KHC will no longer monitor a project for the testing of a household's income to determine if the household's annual gross income exceeds 140% of the income limit when transferring from building to building within a project.

Note: The guidance will still apply for mixed use projects when transferring a LIHTC household from building to building within a project.