



To: Owners and Managers of Tax Credit and Multifamily Bond Projects  
From: Brian Carnahan, Director, Office of Program Compliance  
Re: Revisions to Compliance Requirements  
Date: September 11, 2008

On July 30, 2008, the President signed into law the Housing and Economic Recovery Act of 2008 (the “Act”). The Act addresses a range of housing issues, including critical tax credit compliance rules. This memo provides guidance and commentary on the changes of which owners/managers of tax credit and multifamily bond projects should be aware. The changes noted are effectively immediately, unless otherwise indicated. OHFA may issue additional guidance through memos and the Compliance Handbook. In addition, owners/managers should anticipate the issuance of additional guidance by the 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. The revised regulation allows for several alternatives for calculating utility allowances. OHFA is presently reviewing the regulation and plans to issue additional guidance as soon as possible.

#### Annual Recertification of Income

Effective **July 30, 2008**, projects financed with Low- Income Housing Tax Credits or multifamily bonds issued by OHFA may discontinue recertifying the incomes of existing residents, provided all of the units in the project are in compliance and are restricted for low- income occupancy (i.e. there are no market units in the project). A project is in compliance if there are no current outstanding uncorrected IRS Forms 8823 for either physical or file non-compliance for any buildings in the project. The amendment to Internal Revenue Code 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. OHFA reserves the right to require recertifications 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.

Owing to continuing discussions among state housing credit agencies regarding the implementation of the compliance changes in H.R. 3221, OHFA may, at a later date, choose to require that owners complete a recertification of each resident’s income before annual recertifications are suspended, or OHFA may require that residents complete an annual self-certification attesting to student status, household composition, and other

information. If either certification procedure is deemed necessary, the requirement will not be applied retroactively.

The change in the recertification requirement is not applicable to federal housing programs such as Section 8 or other HUD multifamily programs, or Rural Development 515 projects. OHFA tax credit and multifamily bond projects financed with HOME funds or Ohio Housing Trust Funds must continue to recertify the income of residents in assisted units per OHFA and HUD guidelines.

In addition, owners must continue to comply with the student rule. OHFA suggests the owner clearly define in the lease that the household must notify management if the household becomes composed entirely of full-time students.

Households may transfer between units in the same building without completing a tenant income certification. The units simply swap status. A tenant income certification should be completed when transferring a tenant from one building to another. If the household is over 140% of the income limit, to avoid violating the Available Unit Rule, the household should not be moved to the new unit.

Acquisition and rehabilitation projects that are qualifying in-place residents before the project is placed in service must complete a tenant income certification during the first year of the credit period. Owners may do this using the safe harbor established in Revenue Procedure 2003-82, or by recertifying residents on the anniversary of the initial income certification.

OHFA may elect to increase the number of first year files reviewed during the lease up inspection to ensure the project met minimum set-aside. In subsequent inspections, OHFA may elect to review only the files of new residents, while reviewing the appropriate percentage of units and buildings.

#### Student Rule Exception - Foster Care

The tax credit student rule exemptions have been expanded to accommodate the needs of single adult households that were previously under the care and placement responsibility of the local county children services agency. For the purposes of the tax credit student rule, such residents or applicants are not considered full-time students. To claim the exception, an applicant or resident should present documentation from the local county children's services agency indicating they are currently assisted by a foster care program, are transitioning out of such a program, or were previously in foster care.

#### Bond Projects – Student Rule and Available Unit Rule

The student rule exceptions provided in Internal Revenue Code Section 42 are now applicable to residents living in communities financed with tax-exempt bonds. The following exceptions now apply to both the tax credit and bond programs: student(s) is receiving assistance under Title IV of Social Security Act (e.g. Temporary Assistance for Needy Families (TANF)); student was previously under the care and placement responsibility of the local county children services agency; student is married and files a

joint return; single parent household with children, where the parent is not the dependent of another and the children are the dependent of no one other than the other parent; the student is enrolled in a government sponsored job training program.

The multifamily bond program Available Unit Rule (AUR) has also been modified. The rule is now applied on an individual building basis, not to all buildings in a project.

General Public Use

The general public use requirement defined in Section 42 has been modified. Specific exceptions to the requirement for housing for special needs populations or those groups who benefit from a state or federal program are included in the definition. The new law does not allow occupation or employer specific housing. Existing project owners with questions about the expanded rule should consult OHFA before making any changes.

Rural Area Income Limits

Properties located in certain rural areas, as defined in Section 520 of the Housing Act of 1949, and financed with 9% tax credits, may use the higher of the county median income or the national non-metropolitan area median income to calculate rents and income limits. The FY 2008 Federal Non-Metro Median Family Income is estimated to be \$49,300, while the Ohio Non-Metropolitan Median Income is \$51,600. OHFA has identified only two counties where the rent relief provided in the Act is applicable: Belmont County and Lawrence County. Because these counties are in Metropolitan Statistical Areas outside of the State of Ohio, the higher Ohio non-metropolitan median income was not used by HUD in establishing median incomes for Belmont and Lawrence Counties. Properties in both counties should ensure eligibility to use the limits below by consulting the Rural Development web site at <http://eligibility.sc.egov.usda.gov/>. Note: not all areas of Lawrence County are eligible for Rural Development assistance. For example, residents and properties in the City of Ironton are not eligible for Rural Development assistance. Therefore, tax credit communities located in Ironton would be required to continue using the income limits as published by HUD, and not the limits made available in the Act.

**2008 National Non-Metropolitan Rent and Income Limits**

<b>Rent: Bedrooms (Residents)</b>	Eff (1)	1 (1.5)	2 (3)	3 (4.5)	4 (6)	5 (7.5)	6 (9)		
<b>Income: Residents</b>		1	2	3	4	5	6	7	8
50% rent	431	461	555	641	715	788			
50% income		17250	19700	22200	24650	26650	28600	30550	32550
60% rent	517	554	666	769	858	946			
60% income		20700	23640	26640	29580	31980	34320	36660	39060

The changes to certain rural rent and income limits do not affect Section 8 or HOME Program rent limits.

Exclusion of Military Basic Pay

The Act contains a provision excluding military basic pay from the income calculation for residents at projects located near certain military bases. As of the date of this memo,

OHFA has not identified a military facility in Ohio that meets the criteria established in the Act.

#### HUD “Hold Harmless” Income Limit Policy

The Act directs that for purposes of the tax credit program, HUD must issue income limits that are not adjusted under HUD’s “hold harmless” policy. OHFA is not recommending projects use income limits other than those published by OHFA until such time as HUD issues limits that conform to the requirements of the Act.

#### Veteran Disability Payments

Lump sum payments of deferred U.S. Department of Veterans Affairs (VA) disability benefits are excluded from the income calculation. Managers should anticipate HUD will address this change in a revision to HUD Handbook 4350.3. Until additional guidance is issued, owners should exclude lump sum payments of deferred VA disability payments.

#### Recapture Bond

Owners of properties sold before the end of the compliance period will not be required to obtain a recapture bond provided the project will remain a tax credit project. OHFA will continue to report dispositions of projects to the IRS as required. When notifying OHFA of the intent to sell a tax credit project, the current owner should include information from the buyer regarding whether the buyer intends to continue to operate the project as a tax credit property.

#### Tax Credit Data Collection

The Act directs state housing finance agencies to annually collect for submission to HUD certain demographic data regarding the residents living in tax credit communities. OHFA will be working closely with other state housing finance agencies to identify how best this information can be collected and submitted to HUD.