



Opening doors to a better life



Compliance and Preservation Division

Special Attention of:
Tax Credit property owners
Tax Credit property managers

Memorandum #1-2010
Issued: January 22, 2010

Subject: Updates to the Compliance and Preservation Division's Tax Credit Compliance Procedures

1. Purpose

This memo provides notice to property managers and owners of updates to our compliance procedures for tax credit properties. **These changes are effective as of the date of this memo but will not appear in the Tax Credit Procedures Manual until mid-2010. Until the Manual is updated, use this memo as proof of current updates.**

2. Background

HUD published CHANGE 3 to the HUD Occupancy Handbook 4350.3 in June 2009, which includes various revisions to most chapters. In September 2009, the IRS published its first revision to the Section 42 8823 Guide; this revision clarifies many of the new policies resulting from the passage of federal HERA legislation in July 2008 as well as the federal ARRA legislation passed in January 2009. Additionally, the Guide revision clarifies the IRS' guidelines on how to treat student financial aid and addresses other areas of concern unrelated to the passage of HERA/ARRA.

3. Specific Updates

Live-in Aides (4350.3, Ch 3, Para.3-6)

- For a person to qualify as a live-in aide, owners must first obtain written verification that a household needs a live-in aide.
- The owner cannot require access to confidential medical records in order to verify the need for an aide.
- Live-in aides may not qualify for occupancy of a unit as a remaining family member.
- Owners are encouraged to use appropriate lease language to deny occupancy to live-in aides after the household member needing assistance is no longer living in the unit, and to enable the eviction of live-in aides for violations of the terms of the lease, including house rules.
- Income of live-in aides is excluded from the household's gross annual income.
- Relatives may be considered as live-in aides, *only* if they would not otherwise be living in the unit except to provide necessary supportive services to a household member.

Deployment of Military (4350.3, Ch 5, Para.5-6.C)

- Owners are encouraged to be as lenient as is responsibly possible to support households where persons are called to active duty.
- This may include allowing a temporary guardian to move into an assisted unit to care for dependents – income of such a person would be excluded from annual income.
- Hostile fire pay is excluded from annual income.

Pensions/Annuities of Federal Government/Uniformed Services Employees (4350.3, Ch 5, Paras.5-6.L and 5-6.G.5)

- Federal Government and/or Uniformed Services pension funds **received by a former spouse of** the Fed Govt. or Uniformed Svcs. employee must be included in the former spouse's annual income.
- Do *not* count the portion of pension/annuity that is being paid to a former spouse in the annual income of the employee/pension holder.

Foster Adult/Child (4350.3, Ch 5, Figure 5-2)

- Include in annual income all *unearned* income received by foster children.
- Include in annual income all *unearned and wage* income received by foster adults.
- Do not include in annual income any *state foster care payments* received by a household for their care of a foster child/adult.

Annualization of Unemployment Benefits (8823 Guide, 4-8)

- The IRS states that benefits should not be annualized if the employer or benefit provider can verify a specific end date. The Commission recommends that owners continue to annualize based on current circumstances.

Income from Last 12 Months (8823 Guide, 4-8)

- If a household receives little income, or their income fluctuates, it is permissible to calculate their annual income by using verification of income received in previous 12 months if current information is inconclusive.
- Owners may consider income from the last 12 months when calculating income for seasonal workers and workers with sporadic income.

Using Unit for Business Purposes (8823 Guide, 4-13)

- As long as a unit is the household's primary residence, they may use a portion of the unit as their principle place of business, and claim associated expenses as tax deductions.
- The owner may establish lease-related rules regarding home businesses.
- The business use of a unit must conform to local ordinances.
- Refer to IRS Form 8829, *Expenses for Business Use of Your Home*, and IRS Publication 587 for detailed IRS guidance on home businesses.

Student Financial Assistance (8823 Guide, 4-19)

- Student financial assistance income is not counted for the purpose of qualifying an applicant for a tax credit unit.
- If a tax credit applicant *also* receives Section 8 assistance, WSHFC's position is different from the Guide. We advise you to *count* the income for purposes of Section 8 eligibility, but *exclude* the income when determining tax credit eligibility.

Tenant Fraud (8823 Guide, 25-1)

- Tenant fraud at tax credit properties can no longer be reported to the IRS' fraud hotline, but should be reported via IRS Form 211, which can be downloaded from the IRS' website.

Recertifications After 1st Lease Anniversary

- WSHFC requires ALL 100% low income tax credit properties to use our *Self-Certification of Annual Income* form to recertify households *after* their first lease anniversary.
- This applies to all 100% low income properties, regardless of whether they are prior to or beyond Year 15 in the life of the project.
- If your property previously qualified for the IRS Recertification Waiver, you do not have to do a third-party verification process at households' first recertification – you may begin using the *Self-Certification* form at the first recertification.
- The form is located on our website under the Forms and Reports section.

4. Other Changes:

Student Financial Aid Worksheet – To be deleted

Student Certification – To be replaced with 8823 Guide version

Appendix P re: student financial aid income – To be deleted

Appendix N re: HUD 4350.3 - To be revised with CHANGE 3 version