



State of Nevada
 Department of Business & Industry
HOUSING DIVISION



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PROGRAM BULLETIN

TO: Owners and Managers of Low Income Housing Tax Credit and Bond Projects

RE: 2010 Income Limits – Policy Changes – Utility allowance procedures

Income Limits

On May 14, 2010, HUD released the Multifamily Tax Subsidy Project Income Limits (MTSP) and the HUD Program income limits. The MTSP limits are issued in response to changes in the income limit methodology as required under the Housing and Economic Recovery Act of 2008. The MTSP limits include HERA special limits, which are income limits “held harmless”, meaning changes in median income are not reflected in these. Non-impacted limits are income limits that are not held harmless. The MTSP limits are for use by tax credit and multifamily bond projects only. Nevada Housing Division has posted on its web site the MTSP limits, Section 8 limits and the HERA limits.

The applicable income limit for a tax credit or multifamily bond project is based on the year the building is placed in service and the county in which the building is located. For new construction projects, the placed in service date is generally the date on which construction is completed and a certificate of occupancy is issued; the placed in service date for purposes of applying the income limits for acquisition and rehabilitation projects is the date of the acquisition of the building(s). Buildings within projects may have various placed in service dates so owners should use caution when selecting the income limit(s). The appropriate income limit for a building is based on one of the following three criteria:

1. Buildings placed in service **prior to 1/1/2009** apply the HERA Special limit, if the county was assigned a HERA limit, or the higher of the 2009 or 2010 MTSP income limit.
2. Buildings **placed in service on or after 1/1/2009**, but before the issuance of the MTSP limits by HUD on 5/14/2010, apply the higher of the 2009 or 2010 MTSP income limit.

NOTE: projects placed in service on or after 1/1/2009 cannot use the HERA special limits.

3. Buildings placed in service on or after 5/14/2010 apply the appropriate non-impacted income limit. **NOTE: projects placed in service on or after 1/1/2009 cannot use the HERA special limits.**

The industry continues to discuss the application of the HERA limits with the IRS and other parties. IRS Low Income Housing Newsletter #35, available at: www.novoco.com/low_income_housing/resource_files/irs_rulings/irs_newsletter/lihc_newsletter_35.pdf, includes a discussion regarding when income limits are determined for a tax credit building.

Projects placed in service after 1/1/2009 may use the higher of the non-impacted income limit in effect at the placed in service date or the latest non-impacted income limit. Once an income limit is established at the placed in service date, an owner is not required to decrease the income limit if the non-impacted limit in any subsequent year decreases. Project rents are also calculated based on the higher of the non-impacted income limit in effect at the placed in service date or the latest non-impacted income limit. An owner should still follow the guidance established in IRS Revenue Procedure 94-57, which describes the process for electing a gross rent floor. Revenue Procedure 94-57 is available on the Novogradac website at: http://novoco.com/low_income_housing/lihc/compliance.php.

Owners seeking additional guidance regarding the appropriate income and rent limits and gross rent floor may wish to refer to the Novogradac & Company's "Rent and Income Limit Calculator" located at: <http://www.novoco.com/products/rentincome.php>. This is a useful tool and available at no cost to you.

Projects constructed/rehabilitated using HOME or Nevada Housing Division Trust Funds, but not tax credits or multifamily bonds, must use the 2010 HOME income and rent limits to be posted on the NHD website by July 23, 2010. Tax credit projects with either HOME or NHDTF must apply the most restrictive income and rent limits. Please be aware that different income limits may apply for units with Section 8 vouchers. HOME designated units will not apply the "held harmless" rule for *income* but may apply the "held harmless" rule to *rents*. Therefore, the rents in HOME units will not decrease even if the income limits do.

The HERA income limits cannot be used by projects financed with HUD programs such as Section 8, or by Rural Development 515 projects.

The application of the appropriate income limits continues to be the focus of much debate within the tax credit industry. Housing finance agencies and stakeholders continue to seek additional guidance from the IRS regarding the income limits. Therefore, this Program Bulletin may be revised as additional information is available.

Policy Changes

EFFECTIVE IMMEDIATELY:

1. The Nevada Housing Division is suspending the mandatory five percent income increase when employers do not answer the question on the VOE regarding raises, increases etc. However, it may be reinstated with written notice, when the Division deems it necessary.
2. When entering social security numbers into the Certification On Line system please enter *only* the last four digits of the number.
3. After the first year required recertification, you will no longer have to enter anything into the COL system except the “rent change effective date”. This will allow the system to annually test unit rents against the current income and rent limits. For example:

Select the unit number;

Select New Tenant/Recert;

Select Unit Rent (do not select the General Information button or it will make you enter a new effective date);

Enter the date the rent will change during the current reporting period;

Update the new rental information (rent, utility allowance, subsidy amount);

Click update

NOTE: This does not change the procedure for the first annual recertification process.

Utility Allowances

The Nevada Housing Division, in accordance with the Internal Revenue Service Section 42 Utility Allowance Regulation Update (see attached) is requiring all property owners by October 1st of every year to initiate the 90-day notification period for the utility allowance that will be implemented on January 1st of the following year.

By October 1st owners must submit to the Division for approval and notify the tenants at all properties the option chosen for each utility, regardless if owners are implementing a new utility allowance or are continuing to use their current utility allowance method. This also includes if owners are using the U.S. Department of Housing and Urban Development Combined Utility Allowance for the county where the property is located.

Owners must clearly indicate the option chosen for each utility and be able to prove that the proper methodology associated with this option was used to arrive at the estimate. If different options were used for different utilities or different options were used from year to year, owners must justify the reason the change was made. If the change resulted in a significantly lowered utility allowance estimate than previously used, the difference must be clarified. The Division will request additional information during the 90-day period if warranted. In addition, the Division requires evidence of the 90-day notice to tenants

Regulations state the cost associated with this entire process, no matter which method is chosen, is the responsibility of the owner.

The Division will file 8823's for each property that fails to follow the above procedure.

Please direct any questions to the Compliance Officer assigned to your properties.