



TO: Owners and Managers of VHDA Allocated Tax Credit Properties
FROM: Brenda D. Hawkins, Program Manager *BDA*
SUBJECT: Housing & Economic Recovery Act of 2008 (HR 3221)
DATE: September 29, 2008

Introduction

On July 30, 2008, the President signed the Housing and Economic Recovery Act of 2008 (HR 3221) into law. The Bill (HR 3221) makes several significant changes that impact the administration of the Tax Credit Program. Below are written guidelines prepared by VHDA for implementing these new changes. We have included in the heading of each change the corresponding section number of the bill as a reference. Please understand that State Agencies may impose higher standards for ensuring compliance with the Tax Credit Program requirements.

Elimination of Annual Recertification (Section 3010)

Section 3010 of the Bill provides for the elimination of annual recertifications for properties with Tax Credit and Tax Exempt Bonds that are 100% low-income.

As state monitoring agency of the Tax Credit Program, VHDA is imposing a more restrictive policy requiring owners of 100% low-income properties to continue performing one annual recertification upon the first anniversary of any resident's move-in or initial certification. Annual recertifications for all subsequent years are eliminated once the property is determined to be 100% low-income occupied. This policy change is also applicable to properties that previously received recertification waivers and properties in the Extended Use Period.

Example 1 :

Hannah Montana moved in 2/3/08
Annual Recertification due 2/3/09
Annual Recertifications for all subsequent years eliminated.

Example 2:

Hannah Montana moved in 4/1/2007
Annual Recertification was completed and in file for 4/1/2008
No further Annual Recertifications required.

- The elimination of annual recertifications should not be implemented for any household until
 - The first annual after the move-in or initial certification has been completed

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Elimination of Annual Recertification (continued)

- There is **no** questionable doubt about the household's initial eligibility and the property is 100% low-income occupied.
 - There are no outstanding uncorrected 8823's.
- Owners must establish points in time that they can clearly certify that all (100%) units occupied are low-income. The method to establish these points in time are dependent on the following:
- All existing households that moved-in or initially qualified in 2007 and prior are recertified by 12/31/2008
 - All move-ins and initially qualified households in 2008 are recertified by 12/31/2009
- The initial/move-in and first year annual recertification **must** have supporting third party verifications and student status information maintained in tenant files.

Please Note: VHDA has been informed that some tax credit investors will require owners to continue recertifying all households annually. If your tax credit investors impose a more restrictive policy on annual recertifications, it is highly recommended that you comply with their requirement.

- **STUDENT STATUS**
- Although annual recertifications will not be required after the first year, owners must continue to verify and document the student status and household composition changes of each household. VHDA is providing an Annual Student Certification form for owners to utilize at move-in and annually thereafter. The Annual Student Certification form must be maintained in each resident file with original signatures and dates of all adult household members. Owners must begin utilizing the Annual Student Certification form effective October 1, 2008. The form can be obtained from our website at www.vhda.com, Program Compliance, Low Income Tax Credit Compliance, Forms & Documents.

Please Note: A household comprised of all full time students that does not meet one of the exceptions would result in the property not being 100% low-income occupied.

- VHDA will require owners to update student status information **annually** in WCMS by selecting the annual recertification option. Owners must update information based on the Annual Student Certification completed by adult household members. VHDA is requiring owners to update the annual student status on the anniversary of the move-in or initial certification date. Remember, verification of student status must be within 120 days of the certification effective date.

Elimination of Annual Recertification (continued)

- **AVAILABLE UNIT RULE**

If at any time VHDA discovers that an ineligible household was moved into the building after the elimination of annual recertifications was implemented, the owner will have to prove that the Available Unit Rule was not violated by recertifying and third party verifying the income of each existing household in that building to ensure that no household had income exceeding 140% of the applicable limit at the time the ineligible household moved into that building. Once a property ceases to be a 100% occupied low-income property the elimination of annual recertifications is revoked.
- If the elimination of the annual recertification privilege is revoked, the owner must show due diligence for a period of one year by annually recertifying and re-verifying the income for each existing household in the entire property.
- VHDA will monitor the progress of the property through WCMS and notify the owner and onsite staff when the privilege to eliminate annual recertifications is reinstated.

Please note that the provision eliminating annual recertification is not applicable to any property with market units in one or more buildings.

- **CHANGES IN HOUSEHOLD COMPOSITION**

Owners must report changes in household composition by completing an interim in WCMS. The income of the new member joining the household must be third party verified and maintained in the tenant file. The household continues to be income-qualified; however, the income of the new member is taken into consideration with the income of the existing household for purposes of the Available Unit Rule.
- **TRANSFERS**

Moving residents from unit to unit in the same building does not require a re-qualification of the household. The units simply swap status. Although the IRS allows transfers between buildings providing the household's current income does not exceed 140% of the applicable income limit, VHDA strongly recommend that owners initially qualify all households wishing to transfer between buildings. Since annual recertifications will not be required after the first year, owners will need to re-qualify the transferring household to ensure their income does not exceed 140% of the then applicable income limit. Remember, the initial certification of the transferring household will require a first year recertification.

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Housing & Economic Recovery Act of 2008 (HR 3221), continued

Elimination of Annual Recertification (continued)

Although the provision to eliminate annual recertifications will reduce costs and save time for property owners, **owners and managers should be mindful that there are considerable risks of credit loss.** It is imperative that owners implement a multi-layered review and approval process for all new move-ins and initial certifications to ensure each household is low income.

Continued Eligibility for Students who received Foster Care Assistance (Section 3004)

Effective 7/30/2008, the student rule was modified to add a fifth exception giving an exemption to a student who received foster care assistance and who 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.

VHDA believes that the spirit and intent of this provision was to provide an exemption to persons aging out of the foster care program and not to everyone who has ever been in the foster care program. Therefore we are giving a time frame to define "previously".

"Previously" means within five (5) years of the effective date of the initial income certification.

When implementing the new student exemption, owners must ensure that the applicant was in the foster care program within five years of the move-in or initial certification.

Federal Definition of Foster Care: - Means 24-hour substitute care for children placed away from parents or guardians and for whom the state agency has placement and care responsibility. This includes, but is not limited to, placement in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the state or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is a Federal matching of any payments that are made.

Verification Requirements

Owners should obtain written verification from a state foster care administrative agency that the student was in the foster care system. VHDA has created a Foster Care Verification form for your use. It can be obtained from our website at www.vhda.com, under Low Income Tax Credit Compliance, Forms & Documents.

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Housing & Economic Recovery Act of 2008 (HR 3221), Continued

General Public Use Rule (Section 3004)

Clarification was given on the General Public Use Rule to allow Tax Credit developments to establish tenancy restrictions for:

- Persons with Special Needs
- Persons who are involved in artistic or literary activities – **(Please Note:** Owners must contact their tax credit advisor if they intend to restrict occupancy at a property in this manner).
- Persons who are members of a specified group under a Federal or state program or policy that supports housing for such a specified group.

Please Note: This provision is effective for properties placed in service before, on or after 7/30/2008. Therefore this provision is applicable to all current tax credit properties regardless of the date it placed in service.

BAH for Military (Section 3005)

This provision allows the exclusion of Basic Allowance for Housing (BAH) from income of military members when income qualifying. This applies only to certain areas – effective through January 1, 2012. This exclusion only applies to **counties** with a military installation, greater than 1,000 personnel, where the percentage of military has increased by 20% or more between December 31, 2005 to June 30, 2008, or in any adjacent **county**.

On September 17, 2008, the IRS released a list of military installations that are deemed to be qualified military installations that satisfy the 20 percent population increase requirement under Section 142(d)(2)(B). The following military installation was listed for Virginia:

Dam Neck Training Center Atlantic

Although, HR 3221 limits the exclusion of BAH to counties, VHDA will not include BAH in its income calculations of tax credit units for cities Virginia Beach, Norfolk, and Chesapeake, unless directed otherwise by the IRS. Check with your tax credit advisor before deciding to exclude BAH from your income calculations in these jurisdictions.

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Coordination of NAU and Student Rule in Tax Exempt and Tax Credit Properties (Section 3008)

Please Note: This provision is only applicable to Tax Exempt Bond financed properties *with* Tax Credits.

This provision coordinates the Next Available Unit Rule (NAU) and Student Rule to be the same in Tax Credit Properties with Tax Exempt Bond financing. Previously, the available unit rule for Tax Exempt Bond financed properties was project wide. This new provision requires owners with Tax Exempt bond financing and Tax Credits to apply the rule by building.

The provision also stipulates that all Tax Exempt Bond financed properties will be governed by the Section 42 student rule. Previously the only student rule applicable to Tax Exempt Bond financed properties was that “a unit shall not be considered to be low and moderate income if all the occupants are students, no one of whom is entitled to file a joint tax return, under Section 6013 of the Internal Revenue Code”. As of July 30, 2008, owners must apply the Tax Credit Student Rule to Tax Exempt Bond properties regardless if it has Tax Credits or not.

Treatment of VA Disability Income (Sec. 2608)

This provision amends the United States Housing Act of 1937 (42 U.S.C. 1437a(3)(b)(4)) to exclude any deferred Department of Veterans Affairs disability benefits that are received in a lump sum or in prospective monthly amount from consideration as income for Section 8 and Public Housing Programs.

It is anticipated that HUD will update the income exclusions in Chapter 5 of the 4350.3 to reflect this change. This change is effective July 30, 2008.

Caution, please note that this exclusion is only for VA disability benefits. VA pension and retirement income must continue to be included when determining and calculating annual income.

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LIHTC Data Collection (Section 2835)

Section 2835(d) of the bill creates a requirement that state agencies administering Tax Credits must submit to HUD annually data on the characteristics of tenants living in each Tax Credit development (including race, ethnicity, family composition, age, disability status, receipt of vouchers, income and rent).

The household characteristics data fields required by the bill already exist in VHDA's online Web Compliance Management System (WCMS); however, we have observed that many owners/managers omit entering information in some of those fields. In order to satisfy this mandate imposed by the bill, VHDA is requiring owners of Tax Credit properties to enter household characteristics of all family members when completing the Tenant Income Certification in WCMS. Effective July 30, 2008, all tenant income certifications completed in WCMS and/or any XML file upload to WCMS must include information such as family composition, age, disability status, income and rent, and if the household is a voucher holder.

Obtaining race and ethnicity information from tenants and applicants should be on a voluntary basis. VHDA is providing a form for applicants and tenants to disclose such information. The form will advise the applicant/tenant that disclosing information or completing the form is appreciated and that they have the option not to furnish it. The Race and Ethnicity Data Reporting Form can be obtained from our website at www.vhda.com, program compliance, and low-income Tax Credit Compliance, Forms & Documents.

Please note the following:

- The Race and Ethnicity Data Form must be completed for each household member regardless of age.
- Owners must maintain the original forms in the household's file
- The Race and Ethnicity Data Form is completed once during tenancy of a household; however, any new member joining the household must complete a form.

VHDA is recommending that owners include the Race and Ethnicity Data Form as part of their application intake process.
