

# Compliance Chat with the IRS

Presented by  
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# **Introduction**

# **Objectives**

- **Cite Relevant Law**
- **Apply Law to Specific Facts**
- **Use Independent Judgment**

# Topics

- **Determining Income**
- **Due Diligence**
- **Identifying Qualifying Students**
- **General Public Use Rule**
- **Utility Allowances**

# Determining Income

- New Income Limit Computation: Hold Harmless Rule under IRC §142(d)(2)(E)
  - Cross referenced in IRC §42(g)(4)
  - No longer matches HUD's Section 8 income limits
  - HUD Terminology: "Multifamily Tax Subsidy Projects"
  - Separately computed income limits
  - Tables are in the same format, but show the 50% and 60% income limits
  - <http://www.huduser.org/datasets/mtsp.html>

## Implementing the Hold Harmless Income Limits

- In some areas, there will be a second set of income limits identified as “HERA Special” 50% or 60%
- Areas impacted by HUD’s changes in methodology used to compute income limits in 2007 and 2008
- The HERA Special income limits apply if you relied upon HUD’s limits to determine income; i.e., your project was in service or was placed in service in either 2007 or 2008.
- More Questions? Next LIHC Newsletter

- Sporadic or Zero Income
  - Reference: Change to HUD Regulation 5.609; Page 4841-4842, Federal Register, Vol. 74, No. 16.
  - “Look Back” Rule when household reports sporadic, little, or zero income
  - Income certification based on actual income during the last twelve months
  - Limited application
  - Consider household’s current financial resources
  - **Use judgment**; not all situations are the same
  - Document “why”

- Military Basic Housing Allowances
  - IRC §142(d)(2)(B)(ii), military housing allowances are **not** included in household income if the low-income building is located near specific military installations
  - Qualifying military bases are identified in Notice 2008-79. The list is not intended to be exclusive.
  - Applies to determination of income made.....

1. after July 30, 2008 **and before January 1, 2012**, if (1) the IRC §42 credits were allocated<sup>[1]</sup> on or before July 30, 2008 or, (2) if financed with tax-exempt bonds, the building was placed in service before July 30, 2008, but only if the bonds were issued before July 30, 2008.
2. after July 30, 2008 if (1) the IRC §42 credits were allocated after July 30, 2008 and before January 1, 2012, or (2) if financed with tax-exempt bonds, the building is placed in service after July 30, 2008 and before January 1, 2012, but only if the bonds were issued after July 30, 2008 and before January 1, 2012.

- Educational Scholarships and Grants
  - Reference: HUD Manual 4250.3 Chapter 5, 5-6(D)
  - General Rule: All forms of student financial assistance (grants, scholarships, educational entitlements, work study programs, and financial aid packages) are excluded from annual income **except for students receiving Section 8 assistance**
  - Treatment based on whether tenant is receiving Section 8 assistance
  - Tenants in IRC §§ 42 or 142(d) low-income housing are **NOT** treated as Section 8 tenants or deemed to be receiving Section 8 assistance

For students receiving Section 8 assistance, all financial assistance a student receives

- (1) under the Higher Education Act of 1965,
- (2) from private sources, or
- (3) from an institution of higher education

that is in excess of amounts received for tuition is included in annual income **except** if the student is over the age of 23 with dependent children or the student is living with his or her parents who are receiving Section 8 assistance.

- Office in the Home

- Reference: IRC §280A(a)(1) and Publication 587
- Exclusively used for business purpose
- Used on a regular basis
- Primary residence
- Claim business expense on Form 8829

Use of a portion of a low-income rental unit for a business use by a tenant does not change the character to the property in the hands of the owner; i.e., the property continues to be residential rental property

- Federal Grants under IRC §42(d)(5)(A)

### Buildings Placed in Service Before July 31, 2008

If a federal grant is made with respect to any building **or the operation** thereof, the eligible basis of such building is reduced by the amount of the federal grant

### Buildings Placed in Service After July 30, 2008

The eligible basis of a building shall not include any costs financed with the proceeds of a federally funded grant

- Federally-sourced grants used for the operation of an LIHC building or for rent subsidies do not require a reduction of the eligible basis.
- Replacement of assets included in eligible basis using federally-sourced grants requires a reduction in eligible basis.

- Extended Use Period & New Credit Allocations

Households determined to be income-qualified for purposes of the IRC §42 credit during the 15-year compliance period are concurrently income-qualified households for purposes of the +30-year extended use period (IRC §42(h)(6)).

As a result, any household determined to be income qualified at the time of move-in for purpose of the extended use agreement is a qualified low-income household for any subsequent allocation of IRC §42 credit.

# **Due Diligence**

- Internal Controls (policies and procedures) to protect the owner's assets and interests
- Ordinary business care and prudence
- Compliant behavior (accuracy, timeliness)
- Reasonable response to individual fact patterns
- Applying Internal Controls; e.g., separation of duties, oversight and review, and independent internal audits

# Identifying Qualifying Students

- 100% full-time student household (as define by educational institution)
- Prohibition against renting low-income units to 100% full-time student households (legislative history)
- Exceptions to prohibition under IRC §42(i)(3)(D)
- New exception for students previously in “foster care”
- **New requirement:** Separate annual certification of student status

# General Public Use Rule

- Reference: IRC §42(g)(9) & Regulation 1.42-9
- Failure to market vacant low-income units
- Renting of low-income units to third parties
- Evicting, failing to renew the lease of, or otherwise terminating the lease of any low-income unit for other than good cause, as defined by **state law** and following **state's administrative procedures**.

# Utility Allowances

- Reference: IRC §42(g)(2)(B)(ii) & Regulation 1.42-10
- Applicable when tenant pays utility based on individual usage
- Issue: Submetering
- Annual review
- Notification requirements (tenants & state)
- Time period for updating utility allowance
- **Documentation** for allowances based on the HUD Utility Model or Energy Consumption Model

# Contact Information

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**Questions?**

# Conclusion

- Cite Relevant Law
- Apply Law to Specific Facts
- Use Independent Judgment

Thank You!