



## **MEMORANDUM**

To: Owners, Management Agents, and Managers of Housing Credit Properties

From: New Mexico Mortgage Finance Authority

Subject: The Housing and Economic Recovery Act of 2008 (H.R. 3221)

Date: January 2, 2009

On July 30, 2008, President Bush signed into law the Housing and Economic Recovery Act of 2008 (H.R. 3221), thereby changing several provisions of the Low-Income Housing Tax Credit Program (LIHTC). The provisions that impact Tax Credit compliance are as follows:

### **Student Rule Amendment – Foster Care**

Effective July 31, 2008, the Act amends the student rule to include students who were previously under the care and responsibility of a foster care program under part B or E of Title IV of the Social Security Act. In order for a unit to qualify under this exception, the applicable third party documentation must be obtained.

### **Rural Projects**

Properties located in rural areas and financed with 9% tax credits, may use the greater of the county area median gross income or the national non-metropolitan median gross income to calculate rents and income limits. Properties can go to the Rural Development website at <http://eligibility.sc.egov.usda.gov/> to see if they qualify to use the limits. Please note, once the limits and rents are released, MFA will post on our website.

### **General Public Use Clarification**

The Act clarifies that Tax Credit Projects may still qualify for tax credits even if the project has occupancy restrictions or preferences that favor tenants with special needs, who are members of a specified group under a federal or state housing program or policy that supports housing for such group, or those who are involved in artistic or literary activities. The restrictions and/or preferences must still follow Fair Housing Laws and it applies to all properties before, on and after the enactment date.



### **Military Basic Housing Allowance**

The Act excludes military employees' basic allowance for housing from the definition of income. This income exclusion is only for Tax Credit properties located in a county or an adjacent county with a qualified military installation. A qualified military installation is defined as any military installation or facility that has no less than 1000 members of the Armed Forces assigned to it by June 1, 2008. Applies to new and existing 9% buildings and is used for eligibility determinations made between July 31, 2008 and December 31, 2011. Currently New Mexico is not affected by the Act, as there are no military installations that qualify under the Act.

### **Veteran's Benefits**

The Act states that any deferred VA disability benefits received as a lump sum amount or in monthly amounts may not be considered as part of the income determinations on Section 8 and other public housing programs. Because Tax Credit properties are required to calculate income eligibility in a manner consistent with Section 8, it is assumed this exemption holds true for these properties as well.

### **Project Based Voucher Rents**

Public Housing Authorities (PHAs) may set project-based voucher rents up to 110% of HUD's fair market rent on Tax Credit properties even if the rent exceeds the maximum allowable Tax Credit rent. This is similar to the policy in place for Housing Choice Vouchers. The provision also states PHAs must agree not to reduce the voucher rents below initial rents during the term of the HAP contract. The intention of this provision is to improve the feasibility of HOPE VI and other affordable housing properties with public based vouchers.

### **Data Gathering**

The Act requires State Monitoring Agencies to report annually to HUD the following information on all Tax Credit units in their portfolio: race, ethnicity, family composition, age, income, rental assistance status, disability status, and monthly rental payments. The state agencies are to set up a plan that will minimize the burden on owners. Currently state agencies are waiting for further guidance from HUD regarding the data collection. Once our office is notified, MFA will advise owners and agents of the timing and method of data collection.

### **Annual Recertifications**

Effective July 30, 2008 projects financed with 100% tax credits are no longer required to complete annual re-certifications. The change in the recertification requirement is not applicable to federal housing programs such as Section 8 or other HUD multifamily programs, Rural Development 515 projects, deep-rent skewed properties, or if the property has market units. It also does not apply to any MFA tax credit projects that are financed with the 542c Risk Share Program. Projects layered with the 542c program must continue to recertify the income of



households as per MFA and program requirements. In addition, projects must continue to comply with the student and next available unit rule.

**NOTE: MFA feels most errors are discovered during an annual recertification; therefore, MFA will still require at least one annual recertification upon the first anniversary of move-in, including all required 3<sup>rd</sup> party verifications and supporting documentation. Thereafter, MFA will require a tenant self-certification of income and student eligibility. MFA is working on a self-certification form that will soon be posted on our website.**

### **Re-Certification Guidance for Properties with HOME Funds**

Properties with HOME funds must still comply with the HOME program requirements; therefore, annual re-certifications must still be performed on an annual basis for all HOME units, including all required 3<sup>rd</sup> party verifications and supporting documentation. All other units without HOME funds can follow the requirement of one annual recertification and self certification thereafter.

If you have any questions, please do not hesitate to contact our Asset Management department to speak with any of our Specialists at 505-843-6880.