Change 2 to the HUD Handbook 4350.3, Rev. 1 For Low Income Housing Tax Credit Properties

On July 13, 2007 HUD posted Change 2 to the 4350.3 Handbook on the web site hudclips.org. Its accompanying transmittal is dated June 29, 2007 and states that all changes included in Change 2 are effective immediately.

Owners of tax credit properties follow rules from Chapter 3, Chapter 5 and Appendix 3 of the handbook. HUD did not change Appendix 3 and none of the changes they made to Chapter 3 impact the tax credit program. Owners and managers of tax credit properties must implement some of the changes HUD made to Chapter 5.

Chapter 5 – Determining Annual Income

- In Figure 5-2, HUD clarified that the earned income of a full-time student 18 years or older, who is a dependent, is excluded to the extent that it exceeds \$480. In HUD terminology, a dependent is a person who is not the head of the household, co-head of the household, spouse to the head of the household, a foster child, a foster adult or a live-in care attendant. The revised language does not change HUD's policy on calculating earned income for full-time students. It clarifies the existing policy that an owner must exclude the income a full-time student earns in excess of \$480 per year if the student is not the head of the household, co-head of the household or spouse to the head of the household. An owner never includes the earned income of a foster child, a foster adult or a live-in aid.

- HUD clarified that if a household elects to include a permanently confined family member in the household composition, the owner must include the income related to the confined family member in the household's annual income. This does not represent a change in policy.

- In December 2005 HUD issued a rule that changed the requirements for including a student's scholarship or grant in a household's annual income for the Section 8 program. An owner of a tax credit property must implement this change because the IRS instructs owners to follow the income calculation rules for the Section 8 program.. Through Change 2, HUD has added the requirements of the December 2005 rule into the handbook.

  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. 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.*

Note: In July 2006, President Bush signed legislation including a provision that continued to exclude all scholarships and grants in the Section 8 program for a person with a disability who was receiving rental assistance on November 30, 2005. Recently HUD clarified that for an owner to exclude a scholarship or grant for a disabled person, they did not need to be receiving the subsidy at the owner's Section 8 unit on November 30, 2005. It is only necessary that they were receiving assistance in some unit through the Section 8 program (or for the tax credit program, living in an affordable unit) on November 30, 2005 for their scholarship or grant to be excluded from their annual income.

- HUD added a paragraph on the inclusion of periodic Social Security payments in a household's annual income. This paragraph represents a clarification of existing policy rather than a change of policy.

  Count the gross amount, before deductions for Medicare, etc. of periodic Social Security payments. Include payments received by adults on behalf of individuals under the age of 18 or by individuals under the age of 18 for their own support.

- HUD added a paragraph on the treatment of Federal government pension funds paid to a former spouse. HUD is establishing a new policy for how owners should treat this source of income when determining a household's gross annual income.

  Federal government pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree or divorce, annulment, or legal separation are not counted as annual income. The state court has, in the settlement of the parties' marital assets, determined the extent to which each party shares in the ownership of the pension. That portion of the pension that is ordered by the court (and authorized by the Office of Personnel Management) to be paid to the applicant's/tenant's former spouse is no longer an asset of the applicant/tenant and therefore is not counted as income. However, any pension funds authorized by OPM, pursuant to a court order, to be paid to the form spouse of a Federal government employee is counted as income for a tenant/applicant receiving the funds.

- HUD has made a significant change to how an owner should treat the withdrawal of cash or assets from an investment a tenant receives as periodic payments. Prior to Change 2, periodic payments a tenant received from an investment were treated as income only after they had received their original investment back through the stream of payments. Now HUD instructs owners to count the periodic payments as income, even if the tenant has not yet received the return of their investment.

  The withdrawal of cash or assets from an investment received as periodic payments should be counted as income. Lump sum receipts from pension and retirement funds are counted as assets. If benefits are received through periodic payments, do not count any remaining amounts in the account as an asset. … Generally, when the holder has begun receiving annuity payments, the holder can no longer convert it to a lump sum of cash. In this situation, the holder will receive regular payments from the annuity that will be treated as regular income and no calculations of income from assets will be made.

- Prior to Change 2, when an applicant/tenant held a mortgage or deed of trust secured by a piece of property, HUD instructed owners to determine the cash value of the asset as the principal balance remaining on the mortgage 12 months from the date of the certification. HUD has changed this policy to the following:

  A mortgage or deed of trust held by a family member is included as an asset. … The value of the asset is the unpaid principal as of the effective date of the certification. Each year this balance will decline as more principal is paid off. The interest portion of the (mortgage) payment is counted as the actual income from an asset.

Chapter 5 – Verifications

- HUD clarified how soon an owner may utilize alternative documentation when a third party fails to respond to a request for information. Previously HUD said an owner could utilize alternative documentation if the third party did not respond within 2 weeks or sooner if they knew the third party was not going to provide the information. HUD has changed their policy to the following:

  If information from a third party is not received within two weeks of its request, owners may consider original documents submitted by the tenant.

- HUD clarifies the number of pay stubs an owner must have in order to utilize the stubs to calculate employment income.

  Owners may not accept pay stubs to document employment income unless the applicant or tenant provides the most recent four to six pay stubs to illustrate variations in hours worked. Actual paychecks or copies of *paychecks should never be used to document income because deductions are not shown on the paycheck.*

- When accepting an applicant/tenant certification as verification, HUD tells owners to accept a notarized statement or a signed affidavit. HUD is no longer requiring the signature be notarized. Generally, a signature is witnessed on an affidavit.

  An owner may accept a tenant's notarized statement or signed affidavit regarding the veracity of information submitted if the information cannot be verified by another acceptable verification method.

- HUD clarified their change in policy extending the length of time from 90 days to 120 days an owner may use verified information in support of a tenant income certification

  Verifications are valid for 120 days from the date of receipt by the owner. If verifications are more than 120 days old, the owner must obtain new verifications.

Please contact me if you have any questions.

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