



HOUSING AND ECONOMIC RECOVERY ACT OF 2008

Impact on Compliance in the Tax-Exempt, Private Activity Bond Program

The Act made several changes that simplify management of bond-financed, low income housing tax credit (LIHTC) properties.

Follow LIHTC Student Rule for all Bond-Finance Properties

Regardless if a property financed with tax-exempt, private activity bonds has low income housing tax credits, the owner now implements the LIHTC full-time student rule. Owners are no longer required to follow the more restrictive student rule for the tax-exempt bond program, and owners of bond-financed, LIHTC properties are no longer required to implement both the LIHTC and bond student rules.

Effective for eligibility determinations made after July 30, 2008

Follow LIHTC Available Unit Rule in LIHTC/Bond Projects

For a property financed with tax-exempt, private activity bonds and low income housing tax credits, the owner must follow the Available Unit Rule for the LIHTC program. The Available Unit Rule is applied as a building rule within the LIHTC program.

For a property financed with tax-exempt, private activity bonds without low income housing tax credits, the owner must follow the Available Unit Rule for the tax-exempt bond program. The Available Unit Rule is applied as a property rule within the tax-exempt bond program.

Effective for eligibility determinations made after July 30, 2008.

Deferred Veteran's Disability Benefits Excluded from Annual Income

Deferred disability benefits from the Department of Veterans Affairs received as a lump sum or in prospective monthly payments are excluded from the calculation of annual income when determining eligibility for a tax-exempt bond unit.

The Act makes this change in how an owner calculates annual income in the Section 8 and public housing programs. Because the tax-exempt bond program follows the rules for calculating annual income for the project-based Section 8 program, owners in the tax-exempt program must incorporate this change in how they calculate annual income as well.

Questions for HUD

Does this change apply only to people who begin to receive deferred Veteran's disability benefits after July 30, 2008? Does it also apply to people who were already receiving deferred Veteran's disability benefits on July 30, 2008?

This provision is effective for income determinations completed after July 30, 2008.

Exclusion of Military Housing Allowance from Annual Income in Specified Counties

At a qualified building located within a county experiencing a significant increase in service personnel, the owner of a tax-exempt bond property must exclude the basic housing allowance from the annual income calculation for a military family. A qualified building means any building located in a county with a qualified military installation to which the number of military personnel assigned to units based out of the military installation has increased by at least 20 percent between December 31, 2005 and June 1, 2008 or, any county adjacent to such a county.

A qualified military institution means any military installation or facility which had at least 1,000 military personnel assigned to it on June 1, 2008.

On September 17, 2008, the IRS issued Notice 2008-79 addressing the impact of the Act on the tax-exempt, private activity bond program. In the notice, they listed the counties currently impacted by this provision. You can download a copy of this notice by going to www.lizbramletconsulting.com and clicking on the page Housing Act of 2008.

This change in how to calculate annual income for an applicant or resident does not impact the Section 8 or public housing programs.

This provision is effective for buildings placed in service after July 30, 2008 and before January 1, 2012.

Continued Eligibility for Students Who Received Foster Care Assistance

A student who has been part of the foster care system is not considered to be a full-time student within the LIHTC program.

Questions for the IRS

How does an owner document that a person has been part of the foster care system? What documentation must be in a resident's file? Will the documentation requirements be set on a state-by-state basis?

Is there a limitation on how old a person can be who has been part of the foster care program and be exempt from the LIHTC student rule?

Is there a limit as to how long it has been since a person was in the foster care system and be exempt from the LIHTC full-time student rule?

This provision is effective for eligibility determinations made after July 30, 2008.

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