TAX CREDIT HOUSING MANAGEMENT

A Legal Compliance Guide for the Low-Income Housing Tax Credit Community

insider

JANUARY 2021

IN THIS ISSUE

FEATURE

DEPARTMENTS

Resolve to Continue Pandemic Best Practices in 2021

Don't relax your COVID protocols too soon.

Although the vaccine rollouts have begun with health care workers and residents of long-term care facilities, normal operations for LIHTC sites are still a ways away. The current level of vaccine distribution won't be able to stop a difficult winter with rapidly growing outbreaks and record hospitalizations threatening to overwhelm health care resources.

The past year was a challenging one for residents and housing providers. The economic downturn created by the pandemic has particularly affected renters earning less than $25,000 a year, according to the Harvard Joint Center for Housing Studies' (JCHS') "2020 State of the Nation's Housing" report. As a group, these renters were much more likely to report lost employment income since March, and more than half of the lowest-income renters lost wages during this period compared with 41 percent of all households.

In addition, a survey by the National Leased Housing Association found that expenses rose for affordable housing providers as a result of the pandemic. Additional monies spend on personal protective equipment and other health-related expenses to protect staff have had a negative effect on bottom lines. The survey found that nearly three-quarters of housing providers have increased their operating expenses due to COVID-19. For these housing providers, operating expenses have increased by an average of 14.8 percent. The increase was greatest for housing providers with 1,000 units or fewer, whose operating expenses increased nearly 16.7 percent, compared to 14.3 percent for those with 1,000 to 5,000 units and 11.7 percent for housing providers with 5,000 units or more.

Successfully getting through 2020 required owners and managers to adapt quickly to changing conditions and implement new policies in a very short time frame. We'll review the best practices site owners and management companies have adopted in 2020—and will have to continue to adhere to until the vaccine is more widely available.

Social Distancing, Reducing Infection Risk

According to the Centers for Disease Control and Prevention (CDC), the virus that causes COVID-19 most commonly spreads between people who are in close contact with one another (within about 6 feet). It spreads through respiratory droplets or small particles, such as those in aerosols, produced when an infected person coughs, sneezes, sings, talks, or breathes. These particles can be inhaled into the nose, mouth, airways, and lungs and cause infection. This is thought to be the main way the virus spreads.

Droplets can also land on surfaces and objects and be transferred by touch. A person may get COVID-19 by touching the surface or object that has the virus on it and then touching his or her own mouth, nose, or eyes. However, spread from touching surfaces is not thought to be the main way the virus spreads.

Reduced office hours. Considering the ways the virus spreads, many sites closed offices to walk-in traffic and management offices encouraged residents to use online rent payment methods. Your staff may have worked in the leasing office but scheduled visits by residents by appointment only. To cut back on unnecessary

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YOU MAY ALLOW E-SIGNATURES ON RECERTIFICATIONS AS LONG AS YOU GET "WET" SIGNATURES AT A LATER DATE.

face-to-face meetings, you may have encouraged residents to speak over the phone or via email when possible. To further promote social distancing, encourage all residents to utilize their community website, resident portal, and email for all service requests, rent payments, and general questions, where applicable.

Amenity spaces. To protect residents and employees from further exposure, owners have considered closing amenity spaces with the exception of areas such as laundry rooms. Any common areas that remained open were put on a sanitization schedule to prevent possible infection by droplets. The IRS has stated that closing an amenity or common area during some or all of the period between April 1 and Dec. 31, 2020, in response to COVID-19 and not some other noncompliance reason, does not result in a reduction of eligible basis.

Rigorous cleaning protocols. Staff should sanitize work areas, public areas, and commonly touched places (door handles, elevator buttons, etc.). Staff should place hand sanitizers in common areas. The U.S. Environmental Protection Agency (EPA) has listed disinfectant products that are qualified for use against COVID-19 at *www.epa.gov/pesticide-registration/list-n-disinfectants-coronavirus-covid-19*.

Service requests. Service requests should be considered with regard for the safety of both maintenance staff and residents. To limit exposure, consider deferring nonessential maintenance and handling only emergency or urgent issues as allowed by applicable law. Maintenance staff should wear masks and gloves when performing service in an occupied apartment and thoroughly wash their hands after completing any service.

Building deliveries. Encourage staff and residents to maintain social distancing when getting packages, mail, and entering or exiting the building. For buildings where packages are left in the lobby, building staff may consider assisting residents by dropping deliveries outside their apartment to prevent residents from potentially congregating when picking up packages from the lobby.

In addition, delivery services such as Uber Eats, FreshDirect, and Amazon have an online section for "special instructions." In this section, residents can request that packages be delivered to the door or to text/call and leave the packages at the door to potentially minimize person-to-person contact and touching of surfaces.

Staff absences. In the event of a staff shortage, site owners and managers may consider identifying backup staff or asking resident volunteers to help with package delivery, routine cleaning, and disinfecting, and other tasks in the building as appropriate, while encouraging social distancing.

Owners should actively encourage sick staff to stay home. Also, owners should maintain flexible policies that permit employees to stay home to care for a sick family member. Staff members who are well but who have a sick family member at home with COVID-19 should notify their supervisor and refer to CDC guidance for how to conduct a risk assessment of their potential exposure. If an employee is confirmed to have COVID-19, employers should inform fellow employees of their possible exposure to

MAINTAIN FLEXIBLE POLICIES THAT LET EMPLOYEES STAY HOME TO CARE FOR A SICK FAMILY MEMBER.

COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA). Employees exposed to a co-worker with confirmed COVID-19 should refer to CDC guidance for how to conduct a risk assessment of their potential exposure.

Resident infections. If a resident tests positive for the coronavirus and notifies the staff, the owner or manager should follow the CDC's guidance and work with local health officials. It's the responsibility of the health care provider, not the patient, to report cases of disease to health departments and the CDC.

You may be able to post a notice to the community about somebody at the site having COVID-19, but you should exercise extreme caution if choosing to make a disclosure because of privacy laws. The staff member or resident's identity and unit number shouldn't be disclosed. This is what the ADA and privacy laws refer to as protected health information (PHI). The general rule is that you can't disclose PHI without the person's consent. However, you don't need consent if the disclosure:

- Includes only the PHI necessary to accomplish that infection control purpose; and
- Doesn't cast a stigma or subject the person to discrimination.

Rent collection. While rent collection should be continued in accordance with your lease agreement, you may consider working with those residents who've been financially impacted by COVID-19 on alternate payment schedules. In the September issue, we published "*How to Avoid Costly Evictions with Rent Payment Plans*," which discusses gathering information from at-risk residents and coming up with a realistic repayment plan for those low-income residents financially affected by the pandemic.

Compliance Regs

In July 2020, the IRS issued Notice 2020-53, which stated LIHTC site owners aren't required to perform income recertifications, and allocating agencies aren't required to conduct compliance monitoring inspections or reviews between April 1 and Dec. 31, 2020. The IRS hasn't indicated whether it will extend this relief for LIHTC sites facing COVID-19 related challenges into 2021.

In the event the IRS doesn't extend relief, income recertifications for mixed-income sites will resume in 2021. It's important to note that the IRS' income recertification waiver for 2020 didn't encompass a waiver for the LIHTC annual student certification requirement.

With processing applications, obtaining student certifications from households, and general processing of documents, you may have adopted protocols on accepting e-signatures on documents. And in many cases, state housing agencies and federal program administrators have allowed copies of signed documents in place of original signatures due to local and federal safety guidelines.

In 2021, for residents who are ill or have concerns about coming to the office for their recertification interview, you may want to allow electronic signatures as long as you obtain original, "wet" signatures on recertification documents at a later date. A note should be placed with documents that contain electronic or photocopied signatures stating that originals were not available due to COVID-19 restrictions. ◆

COMPLIANCE

Year-End Stimulus Gives Boost to LIHTC Development, Struggling Renters

OWNERS MAY APPLY FOR ASSISTANCE ON BEHALF OF TENANTS, WITH THE TENANTS' CONSENT.

Congressional negotiators recently struck a deal on a bipartisan year-end legislative package, which includes a change that has been advocated by LIHTC proponents for a long time. In the proposed $900 billion federal relief package, lawmakers proposed a floor rate of 4 percent, separating the LIHTC program from borrowing rates set by the Treasury Department. The new floor rate will apply to projects that receive tax credits after Dec. 31.

As a result, the credits will be worth more and become more attractive to corporate investors, who receive a reduction on federal income taxes for 10 years based on the rate. There has been long-building pressure to make this floor rate change to the LIHTC program by developers and industry groups. The minimum 4 percent housing credit rate was a key provision in the bipartisan Affordable Housing Credit Improvement Act of 2019, which is co-sponsored by more than half the House of Representatives and 40 percent of the Senate.

The provision was also included in the House-passed Moving Forward Act infrastructure legislation, Senators Ron Wyden (D-OR) and Maria Cantwell's (D-WA) Emergency Affordable Housing Act of 2020, and Senate Democrats' Economic Justice Act, and gained the support of 103 bipartisan members of the House who signed a letter to leadership urging its passage in summer 2020.

The rate had hovered between 3.07 and 3.09 percent in recent months. The increase to 4 percent in 2021 will make available an infusion of housing credit equity into developments for which additional financing is necessary, providing for an additional 130,000 affordable homes from 2021 to 2030, according to estimates from Novogradac and Co.

In addition to the rate change, the stimulus deal includes disaster housing credit allocations, rental assistance, and direct economic relief for workers and families.

Disaster Housing Credit Allocations

The legislation provides $1.2 billion in disaster LIHTC allocations for qualified disaster zones. These are the 11 states and Puerto Rico that experienced non-COVID-19 major disasters in 2020 that qualified for Federal Emergency Management Agency (FEMA) individual and public assistance with an overall cap of no more than 65 percent of the respective state LIHTC ceiling.

For 2021, the allocation will be the lesser of $3.50 multiplied by the number of residents in qualified disaster zones or 65 percent of the state's 2020 credit allocation, and unused credits may be carried over to 2022. Eligible buildings will also receive a one-year extension of the placed-in-service deadline and 10 percent test deadline for the disaster credits.

Qualified disaster zones are those determined by the president, from Jan. 1, 2020, to 60 days after enactment of the legislation, to warrant individual or individual and public assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act due to disasters other than COVID-19.

DON'T COUNT STIMULUS CHECKS AND THE ENHANCED UNEMPLOYMENT ASSISTANCE TOWARD INCOME.

Relief for Renters

The COVID-19 relief legislation includes $25 billion for emergency rental assistance to be distributed by the Treasury Department to states based on population, with small states receiving a minimum of $200 million.

Funds will be administered by state and local grantees. Renters will apply and, upon qualifying, payments will be sent directly to owners and/or utility service providers. If an owner doesn't want to participate, the grantee may provide funds directly to the eligible household. And owners may apply for assistance on behalf of tenants, with the tenants' consent.

According to the language of the legislation, no less than 90 percent of the funds can be used for payment of rent, rental arrears, utilities and home energy costs, utility and home energy arrears, and related housing expenses. And up to 10 percent of the funds will be available for housing stability services, such as case management and tenant-landlord mediation. Support can cover up to 12 months of assistance in three-month increments, though an additional three months of assistance may be provided if it's needed for housing stability.

Households are eligible if they earn 80 percent of area median income (AMI) or less, with priority for households making 50 percent of AMI or less, or those who have been unemployed for at least 90 days. Households must be able to demonstrate a risk of homelessness or housing instability, and have one or more household members who qualify for unemployment benefits or experienced financial hardship due to the pandemic. Grantees may also develop additional eligibility criteria.

Eviction moratorium extended. The legislation also extends the current eviction moratorium through Jan. 31, 2021. The moratorium, which was first enacted by the Centers for Disease Control and Prevention in September, was set to expire on Dec. 31.

Additional relief. The legislation includes another round of stimulus checks that are capped at $600 for individuals making up to $75,000 per year and $1,200 for couples making up to $150,000 per year, as well as a $600 payment for each child dependent. Here are the other provisions that may help struggling renters:

- An additional $300 per week for workers receiving unemployment benefits through March 14, 2021, and an increase of the maximum number of weeks an individual may claim benefits to 50 weeks;
- An additional $13 billion to combat food insecurity, including a 15 percent increase for SNAP nutrition assistance and additional funding for food banks, senior nutrition programs, and school and day care feeding programs;
- $10 billion in emergency funds for the child care sector and $250 million for Head Start providers;
- $7 billion to expand broadband access, including $3.2 billion in emergency funds for low-income families to access broadband and the creation of a $1 billion tribal broadband fund; and
- Provisions to strengthen the Earned Income Tax Credit and Child Tax Credit for households who experienced lower wages in 2020 due to the pandemic.

With regard to income calculations, treat this round of stimulus checks and unemployment insurance the same as you did with the first round of payments authorized under the CARES Act. Stimulus checks, and the enhanced unemployment insurance assistance, should not be counted toward income. Because the stimulus assistance is technically an advance tax credit, and because the up to $300 per week federal unemployment insurance payments issued are temporary, they are not to be included in calculations of income. However, regular payments of unemployment insurance issued by the state are treated as income, as is customary under HUD Handbook 4350.3, par. 5-5(A)(1). ◆

COMPLIANCE QUIZ

Calculating Income & Applying Income Limits

Here are four questions that test your knowledge—and that of your staff—on calculating annual income and applying correct income limits to applicant households. The answers, along with explanations, follow the quiz, on page 8. Special thanks to tax credit consultant Karen Graham of Karen A. Graham Consulting LLC for her assistance in reviewing these questions.

Question 1: Every year, about 4.4 million children receive monthly benefits because one or both of their parents are disabled, retired, or deceased. When a parent becomes disabled or dies, Social Security benefits help to stabilize a family's financial situation. In addition, the Social Security Administration pays benefits to qualifying minors through its disability insurance and Supplemental Security Income (SSI) programs. When determining the anticipated annual income of a household, you should include the Social Security benefit paid to minor occupants. True or false?

Question 2: An applicant is a young single parent who receives $75 in groceries delivered weekly from a relative. The applicant also has a recurring gift of $250 that's deposited monthly into a bank account. When determining the annual income of this household, the correct annual income is:

a. $7,200
b. $3,600
c. $3,000
d. $2,100

Question 3: A single parent of two is applying for an apartment at your site. Her 20-year-old daughter is away at college and she comes home for the summer and school recesses. The applicant's son is 8 years old and lives with his father but stays with the applicant every other weekend. What income limit should be applied?

a. 1-person limit
b. 2-person limit
c. 3-person limit
d. 4-person limit

Question 4: A couple is applying for an apartment at your LIHTC site. The wife is pregnant and the husband's daughter from his first marriage will be living with them 50 percent of the year. What income limit should be applied?

a. 1-person limit
b. 2-person limit
c. 3-person limit
d. 4-person limit

Answer 1: True. HUD Handbook 4350.3, par. 5-6(I) says for periodic Social Security payments, you count the gross amount, before deductions for Medicare, etc. You would 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.

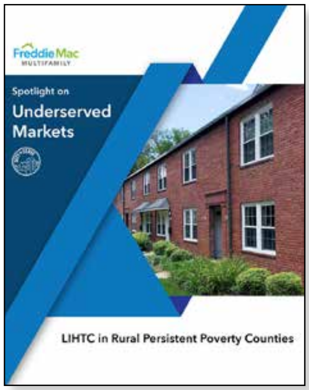
Answer 2: c. $3,000. The weekly amount of groceries is exempt. Groceries and/or contributions paid directly to the childcare provider by persons not living in the unit are excluded from annual income [HUD Handbook 4350.3, par. 5-6(G)(2)]. However, the recurring cash deposit into the applicant's bank account is a verifiable cash contribution and must be included as income to the household. If it was temporary, nonrecurring, or sporadic income, it would not be counted [HUD Handbook 4350.3, par. 5-6(G)(3)].

Answer 3: b. 2-person income limit. The applicant counts as the head of household. Her daughter is considered a temporarily absent member of the household while she's away at college. HUD says children who are away at school but who live with the family during school recesses are included when determining family size for income limits [HUD Handbook 4350.3, par. 3-6(E)(4)(c)]. The applicant's son should not be counted as a household member because he doesn't physically reside with her at least 50 percent of the time. Children in joint custody arrangements who are present in the household 50 percent or more of the time are included when determining family size for income limits [HUD Handbook 4350.3, par. 3-6(E)(4)(b)].

Answer 4: d. 4-person limit. The HUD Handbook requires you to count household members' unborn children as part of a low-income household for occupancy and income purposes [Handbook 4350.3, par. 3-6(E)(4)(d)]. You should also include the husband's daughter because she will be living with them 50 percent of the year. Children in joint custody arrangements who are present in the household 50 percent or more of the time are included when determining family size for income limits [HUD Handbook 4350.3, par. 3-6(E)(4)(b)].

IN THE NEWS

Freddie Mac White Paper Highlights LIHTC in Rural Counties



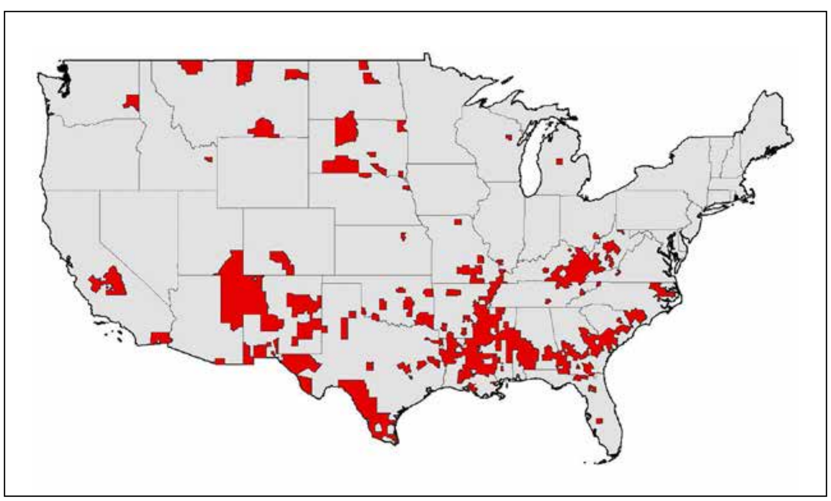
LIHTC supports a little over 40 percent of the multifamily housing market in rural Persistent Poverty Counties (PPCs), according to a new Freddie Mac white paper.

Freddie Mac is a government-sponsored entity that provides fixed-rate or floating-rate loans to acquire or refinance all types of multifamily properties. These multifamily mortgages are used to finance properties such as market-rate apartments, student housing, senior housing, and affordable housing. Freddie Mac Multifamily has a specific mission to expand affordable rental housing for all Americans, and most of the loans that this group finances support affordable rental housing for low- and moderate-income households who earn no more than area median income.

Freddie Mac's white paper found that LIHTC supports 40.1 percent of the multifamily housing market in rural PPCs. Developing unsubsidized rental housing in rural PPCs is challenging since household incomes are often too low to support units that can charge enough rent to cover construction and operating expenses. Consequently, subsidized housing is far more common in these areas than in other regions. However, the report finds that even subsidized housing faces challenges both in terms of economic feasibility and allocation of limited federal, state, and local funding.

The white paper, titled "LIHTC in Rural Persistent Poverty Counties," is part of Freddie Mac's three-year Duty to Serve plan to increase rental and homeownership opportunities in historically underserved markets throughout the nation. Here are some of the paper's key findings:

- There are 7.9 million residents in rural PPCs. This represents 2.5 percent of the total U.S. population and 10.7 percent of the nation's rural population.
- Income in rural PPCs is about 43 percent lower than the national average and 28 percent lower than the rural average.
- Rental housing, and multifamily rental housing in particular, is relatively uncommon in rural PPCs. Only 32.6 percent of households are renters (compared with 36.2 percent nationally). Single-family housing is the primary form of rental housing.
- The multifamily stock that does exist is supported by LIHTC at a higher rate than elsewhere in the country. LIHTC supports 40.1 percent of the multifamily housing market in rural PPCs, a rate that's more than three times greater than the national average and one and a half times greater than all rural areas.
- In rural PPCs, an average of 54 properties and 2,370 units have been supported by LIHTC annually since 2000, although the rate has declined in the past decade (consistent with the national trend).
- LIHTC development faces many challenges, but still plays a vital role in addressing the rental housing needs for lower-income families in rural PPCs. ◆



Map of Rural Persistent Poverty Counties

Source: Mapping of Duty to Serve data (12 CFR 1282). Hawaii is not shown because it does not contain any PPCs.

Report: Rising Sea Levels Threaten Affordable Housing

CITIES IN THE NORTHEAST AND CALIFORNIA ARE THE MOST VULNERABLE.

More than 7,600 apartments, townhomes, and houses nationwide are currently exposed to at least one "coastal flood risk event" in a typical year, and more than 24,500 units may be so threatened by 2050, according to a new report by The National Housing Trust and Climate Central. Their analysis evaluates the risk to affordable housing from flooding related to sea-level rise over the next 30 years. In short, the number of affordable housing units at risk from coastal flooding and sea level rise is expected to more than triple over the next three decades. A flood risk event occurs when local coastal water levels reach higher than a building's ground elevation, and any known barriers don't provide full protection.

According to the report, New Jersey has the highest number of units and percentage of its affordable housing stock exposed, followed by New York and Massachusetts. Fewer units are at risk in California, but these units face a high risk of repetitive flooding, similar to affordable housing in Maine, Maryland, Alabama, and Texas.

By 2050, under a continued high-carbon emissions scenario, the risk increases significantly, with the aggregate number of affordable housing units exposed annually more than tripling to 24,519 units. New Jersey could see nearly 7,000 units exposed, a four-fold increase; and New York and Massachusetts would continue to rank among the top three states for absolute and relative number of units exposed. Pennsylvania (792 percent), Florida (774 percent), and South Carolina (669 percent) face the largest percentage increase over the 2,000 baseline in units exposed.

The researchers also ranked the top 20 cities in terms of annual numbers of units exposed by 2050. These 20 cities account for three-quarters of all the affordable housing units at risk of coastal flooding across the United States, showing that coastal flood risk is highly concentrated. Cities in the Northeast and California are the most vulnerable, with New York City remaining the most exposed, with over 4,000 units at risk per year by 2050. Five cities in New Jersey ranked in the top 20, four of which (Atlantic City, Camden, Penns Grove, and Salem) are among the poorest urban areas in the country, with an average median household income of just $28,618 (in 2018 dollars). In a number of cities, more than half of the affordable housing stock is at risk in 2050, including Foster City, Calif. (100 percent), Crisfield, Md. (92 percent), Hoquiam, Wash. (72 percent), and Atlantic City (52 percent). ◆

ANNUAL INDEX

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DEALING WITH ...

MODEL TOOLS

- COVID-19 Lease Payment Plan Agreement
- Set Written Policy on Reasonable Modifications for Individuals with Disabilities
- Get Reasonable Modification Requests in Writing
- Notify Resident of CDC Eviction Moratorium Denial
- Have Residents Unable to Pay Rent Sign Declaration
- Use Self-Employment Affidavit to Verify Anticipated Net Income
- Use Form to Certify Victim Status, Assert VAWA Protections
- Spell Out Requirements for Live-In Aide
- Send Abusive Resident Warning Letter
- Have Resident and Live-In Aide Sign Agreement Restricting Rights of Aide