"Suitable for Occupancy"

Presented by
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Law

- IRC §42(i)(3)(B)

(B) Exceptions.

(i) In general. A unit shall not be treated as a low-income unit unless the unit is **suitable for occupancy** and used other than on a transient basis.

(ii) Suitability for occupancy. For purposes of clause (i), the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes.

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- Treas. Reg. §1.42-5(c)(1)(vi)

Annual Certification to State Agency

1. For preceding 12 months
2. The buildings/units in the project were suitable for occupancy, taking into account **local health, safety, and building codes (or other habitability standards)**, and
3. Report any inspection violations and corrections

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- Treas. Reg. §1.42-5(b)(3)

Retain violation reports or notices until:

1. The state agency must review the report/notice and complete physical inspection, and
2. The violation is corrected

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- IRC§42(j)(6)(E)

Credit recapture relief for casualty losses

1. If property restored within reasonable period, which can be up to **2 years** following the end of the tax year in which the casualty loss occurred
2. Additional relief for casualty events declared to be a federal disaster area (Rev. Proc. 2007-54)

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State Agency Inspections

- Treas. Reg. §1.42-5(c)(2)

1. By the end of the second calendar year following the year the last building in the project is placed in service and **at least once every 3 years thereafter**
2. **20% sample** of low-income units for each project
3. Local health, safety, and building codes or HUD's **Uniform Physical Condition Standards (UPCS)**
4. State agency must review any inspection violations retained by the owner

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Uniform Physical Condition Standards

Housing must be decent, safe, sanitary and in good repair, considering the following **components.**

- Site
- Building Exterior
- Building Systems
- Dwelling Units
- Common Areas
- Health and Safety Concerns

The physical condition standards do not supersede or preempt state or local codes for building and maintenance

Dictionary of Deficiencies

- Based on UPCS Components
- Identifies "Inspectable Items"
- Defines noncompliance by description
- Ranks severity of noncompliance

Inspectable Items for "Building Exterior"

- Doors
- FHEO – Accessibility to Main Floor Entrance
- Fire Escapes
- Foundations
- Lighting
- **Roofs**
- Walls
- Windows

Inspectable Item: Roof

- Roof system consists of the structural deck, weathering surface, flashing, parapet, and drainage system. They may be flat or pitched.

Noncompliance Description

- Ponding – You see evidence of areas of standing water – roof depressions, mold ring, or effervescence water ring.
- **Note:** Consider whether there has been measurable (1/10 inch) within last 48 hours…Determine that ponding has occurred only when there is clear evidence of a persistent long-standing problem.

Severity of Noncompliance

- Level 1: Not applicable
- Level 2: Not applicable
- Level 3: You see evidence of standing water on the roof, causing potential or visible damage to the roof surface or underlying materials. Note: If you have any doubt of the severity of the condition, an inspection by a roofing specialist is recommended.

IRS Audits

- Interview with the taxpayer
- Annual Certification to the state agency
- Vacant units
- Tour the business site – the "property"
- State agency inspections (Form 8823 reports)
- "Other" documentation

Problem: Cannot observe actual noncompliance

Interview with the Taxpayer

- What do you do to ensure that the units are suitable for occupancy?
- What procedures are in place to identify physical deficiencies and correct problems on an on-going basis?
- Do you have a routine maintenance schedule?
- Do you regularly inspect the units?

Annual Certification to the State Agency

- Certification under penalties of perjury
- Evidence of compliance made concurrent to tax year
- Was the certification timely?
- Did the taxpayer self-report noncompliance?

Vacant Units

- Were vacant units ready for occupancy?
- Is there evidence that the taxpayer was attempting to rent vacant low-income units?
- What was the vacancy rate during the year?
- How long did it take to prepare a vacant unit for occupancy (clean, repair, etc.)?
- Why were specific units vacant for unusually long periods of time?

Tour the Business Site – The "Property"

- Ensure housing exists
- Does the "property" match the description in the taxpayer's books and records
- Evaluate current condition
- Observe taxpayer's procedures for maintaining the "property" in a manner suitable for occupancy.

State Agency Inspections (Form 8823 Reports)

- Evidence of noncompliance observed and recorded at the time of the noncompliance
- Relied upon unless otherwise established to be incorrect
- What is the noncompliance issue?
- What are the "out of compliance" and "noncompliance corrected" dates?
- Was the noncompliance corrected within reasonable period for the specific problem?
- **Was the noncompliance corrected before the end of the tax year in which the noncompliance first occurred?**

"Other" Documentation

- Evidence concurrent with noncompliance; i.e., newspaper articles, HUD inspection reports, tenant complaints, etc.
- Can the evidence be relied upon?

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Tax Consequences

- Noncompliance determined as of the **end** of the taxable year
- Generally, a **unit-by-unit** determination
- Can be a **building** or **project** determination
- Affects "Applicable Fraction"

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Example

Taxpayer owner 100% LIHC building with 10 units

- The Applicable Fraction is 10/10, or 100%, if all the units are in compliance.
- If 3 of the units are "out of compliance," then the Applicable Fraction is 7/10 or 70%.

How does this affect the credit for the year?

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	Compliance	Noncompliance
Eligible Basis:	$833,333	$833,333
Applicable Fraction:	x 1.000	x 0.700
Qualified Basis:	$833,333	$583,333
Applicable %:	x 0.090	x 0.090
Allowable Credit:	$75,000	$52,500

The taxpayer loses $22,500 in credit and is subject to the credit recapture rules

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Questions?

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A Practical Guide to Tax Credit Housing Management Webinar

Multiple Allocations of Credits

Gregory Proctor
Windsor Compliance

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Multiple Allocations of Credits

- The information contained in this presentation is excerpted primarily from the 8823 Guide and the Low-Income Housing Credit Newsletter #39. Special thanks and acknowledgement go to Grace Robertson of the IRS.

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Qualifying Existing Households Based on Safe Harbor Rule

- The treatment of existing households relates to Revenue Procedure 2003-82 which provides safe harbors under which the IRS will treat unit as a low-income unit if the incomes of the individuals occupying the unit are at or below the applicable income limitation before the beginning of the first taxable year of the building's credit period but their incomes exceed the applicable income limitation at the beginning of the first taxable year of the building's credit period.
- When the IRS released an updated Guide for Completing Form 8823, one of the new issues that was addressed is the treatment of households who were initially income-qualified and then continue to reside in the low-income unit after the end of the 15-year compliance period.

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Qualifying Existing Households for Subsequent Allocations of Credits

- As explained in the Guide, page 4-27, concurrent to qualifying the unit for IRC §42 purposes, the household also qualifies the unit for purposes of the +30-year extended use agreement, even after the end of the 15-year compliance period, based on the initial income certification at move in.
- If buildings receive a second allocation of credit, 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.

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Qualifying Existing Households Same Owner

- The Guide provides two examples of how this might work. The first example considers the allocation of additional credit to the same owner who received the first allocation.
- An owner received credits to construct new low-income housing. The owner placed the buildings in service in 1991 and started claiming credits the same year. The 15-year compliance period ended December 31, 2005.
- In 2007, the owner applied for and received an allocation of credit to rehabilitate the existing low-income buildings. The rehabilitation is completed and the owner starts claiming the credit in 2009.

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Qualifying Existing Households Same Owner

- On February 1, 2004, John and Mary are determined to be income-qualified and move into a low-income unit project. John and Mary timely complete their income recertification each year 2005 through 2008. The unit has always qualified as a low-income unit, except when the unit was not suitable for occupancy during the rehabilitation period. The unit is a low-income unit on January 1, 2009, when the owner (a calendar year taxpayer) begins claiming the credit.
- If the unit was determined to be an over-income unit under IRC §42(g)(2)(D) at the time of the household's last income recertification in January of 2008, then the owner is subject to the Available Unit Rule.

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Qualifying Existing Households Same Owner

- Vacant units previously occupied by income-qualified households continue to qualify as low-income units if the units are suitable for occupancy. However, the owner is subject to the Vacant Unit Rule.

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Qualifying Existing Households New Owner

- The second example addresses the situation where a new owner acquires and rehabilitates the low-income buildings. If the owner qualified for acquisition credits, then the owner is a new owner.
- Owner New Hope Homes, Ltd received IRC §42 credits to construct new low-income housing. New Hope placed the buildings in service in 1991 and started claiming credits the same year. The 15-year compliance period ended December 31, 2005.
- In 2006, New Hope Homes, Ltd sold the project to Second Chance Homes, LP who simultaneously received an allocation of acquisition and rehabilitation credits. The rehabilitation was completed and Second Chance started claiming the credits in 2008. From the time of acquisition until a new extended use agreement is recorded, Second Chance is subject to the extended use agreement between New Hope Homes and the state agency.

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Qualifying Existing Households New Owner

- On February 1, 2004, John and Mary are determined to be income-qualified and move into a low-income unit project. John and Mary timely complete their income recertification each year 2005 through 2007. The unit has always qualified as a low-income unit, except when the unit was not suitable for occupancy during the rehabilitation period.
- Based on the 2007 annual income recertification, the unit is a low-income unit at the beginning of Second Chance Home's credit period on January 1, 2008, when Second Chance (a calendar year taxpayer) begins claiming the credit. Second Chance should follow the procedures under Rev. Proc. 2003-82 to test income at the beginning of the credit period as described above.
- Vacant units previously occupied by income-qualified households are not low-income units on January 1, 2008. .

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Qualifying Existing Households Summarized

- In either case noted previously, originally income-qualified households are protected by the extended use agreement and qualify as low-income households for purposes of the second allocation.

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Qualifying Existing Households Summarized

- The Available Unit Rule (AUR) is applied differently.
  - For a second credit allocation to the same owner, the AUR is applied based on the household's last annual income recertification.
  - For a new owner, income is tested at the beginning of the credit period and the AUR applied accordingly. However, the household is not required to complete a new income (re)certification within 120 days of the acquisition; the existing certification is fine.

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Qualifying Existing Households Summarized

- Vacant units are also treated differently.
  - For a second credit allocation to the same owner, vacant low-income units continue to qualify as low-income units if the units are suitable for occupancy.
  - For a second allocation to a new owner, units previously occupied by income-qualified households, but are vacant at the beginning of the 10-year credit period are not low-income units.

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A Practical Guide to Tax Credit Housing Management Webinar

Questions?

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A Practical Guide to Tax Credit Housing Management

Review of the Study Guide for the Specialist in Housing Credit Management (SHCM) Certification Program

Gianna Solari, Vice President / COO
SHCM, NAHP-E, FHC

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Verifying the Unverifiable

Presented by Gianna Solari, SHCM
Solari Enterprises, Inc.
April 14, 2011

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Determining Income & Assets

- Refer to HUD Handbook 4350.3, Chapter 5 for detailed information on verifying and calculating a household's annual income.
- Policies should refer to HUD and Federal Regulations which require the Resident to fully cooperate in supplying all information needed to establish eligibility.

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Determining Income & Assets

- Applications should:
  - Ask direct questions to be answered Yes or No.
  - Detail each type of income and asset that is countable.
  - Ask are there any additional forms of income and/or assets.

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Determining Income & Assets

- Applicants that state they have Zero Income…
- If the income does not cover the anticipated rent or their previously paid rent (Application should ask for information regarding prior residences), ask how rent will be paid.

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Determining Income & Assets

- Third Party Verifications are the best way to determine all Income and Assets.
- Zero Income households should be asked to confirm their income more frequently.
- Ask for details on expenses, such as utilities, food, gas for their car, bus pass, clothes, etc.
- People cannot live for long periods of time with absolutely no income

Applicant/Resident Affidavits

- Serves as a Secondary form of verification.
- The Affidavit should have a statement such as "This information is true and correct, under penalty of perjury".
- Demonstrates due diligence.

Applicant/Resident Affidavits

- Specific circumstances to use an Affidavit, when Third Party Verifications are not accessible:
  - Child Support
  - Full-time Student Status
  - Zero Income
  - Non-employed Status

Long Days are made of this…

- Applicants paid in cash
- Self-employed Individuals
- Unemployment Income
- Joint Custody of Minors
- Full-time Students
- Seasonal Workers

Applicants Paid in Cash

- Require Third Party Verification from employer.
- HUD Handbook 4350.3 says an Affidavit of Employment is acceptable. Before using an Affidavit document all attempts to obtain the Third Party Verification.

Self-employed Individuals

- Ask for a photocopy of their most recent Income Tax Return, return with appropriate schedules
- Always ask for current income information as well, via a Profit & Loss Statement.
- What to do when a Self-employed applicant/resident says "I don't have a tax return…"
- IRS Form 4506-T.

IRS Form 4506-T

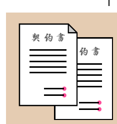

4506-T
Request for Transcript of Tax Return

Sole Source of Income is Unemployment

- Third Party Verification of Unemployment Benefits.
- Recommendation for LIHTC properties:
  - Affidavit of Non-employed Status.

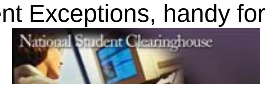
Joint Custody of Children

- Legal documentation of custody arrangements.
- Child Support verification.
- Affidavit.
- Some State Agencies require every household member over 18 to complete an Affidavit of Child Support Income.



Full-time Students

- The Application and Interview Tenant Income Certification Questionnaire are to be very clear as to every household's Full-time Student Status.
- Keep a "cheat sheet" of the Full-time Student Exceptions, handy for your use.



http://www.studentclearinghouse.org

Seasonal Workers

- Consider all sources of income for a seasonal worker, when calculating their income.
- Will unemployment be received?
- Many employers can provide historical earnings over previous years.

Do we need to be detectives?

No, however we need to be thorough and resourceful!

Lease Enforcement

- Leases should include language requiring all household members to complete an annual recertification. Even with the Recert Waiver, after the first complete recertification, a Family Income Sheet needs to be completed.
- Leases should include language to terminate a household for failing to comply with Section 42 Program requirements.

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Unauthorized Guests

- Discuss with the Resident, document all conversations in writing.
- Gather information and document everything; cars, license plates, frequency of visits, mail received in names of non household members.
- Send a Notice to Perform or Quit, if you have good reason to believe a resident has an unauthorized guest.

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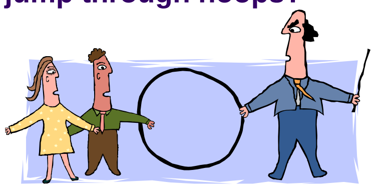
Must we make applicants/residents jump through hoops?



Technically NO. However, some may feel that is exactly what we are doing. Be sure to have information available to applicants regarding Section 42 requirements.

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Files Must Exhibit Due Diligence

- Due diligence is defined *(Black's Law Dictionary [6th ed.1990])* as:
  - Such measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent person under the particular circumstances; not measured by any absolute standard, but depending upon the relative facts of the special case.
- Your efforts to verify unique and difficult situations will be evaluated to determine if they were reasonable.

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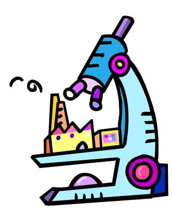
Files will be scrutinized

- Auditors look for things that don't make sense.
- Documentation of questions asked of applicants is essential.
- If it's not documented, then it did not happen.



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A Property Manager's Job is a Balancing Act

- Protect Owner's Interest and Program Integrity.
- Assure units are rented to those for whom program is intended.

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A Practical Guide to Tax Credit Housing Management

Questions?

Thank you.