



U. S. Department of Housing and Urban Development
San Juan Multifamily Program Center
Region IV

FEB 10 2010

CIRCULAR LETTER – 10-01

MEMORANDUM FOR: Owners, Management Agents, and Contract Administrators
Of Multifamily Properties with Project-Based Section 8

FROM: 
Sylvette A. Méndez, Director

SUBJECT: Combining LIHTC with Multifamily Project-Based Section 8

When considering purchasing or refinancing an existing HUD Multifamily property with project-based Section 8 (i.e. LMSA, NC/SR, 202.8, 515/8, etc.) using Low Income Housing Tax Credits (LIHTC), please be aware that **prior** HUD approval is required for the transfer of the property's rental stream to the new ownership entity.

- The Housing Assistance Payment (HAP) Contract **must** receive approval to be assigned, even if there is no HUD financing remaining on the property.
- Certain Regulatory Agreement or Use Restrictions may remain on a property even after a HUD loan is paid off. Your legal counsel should be aware of this.
- LIHTC rules for the purchase of existing properties require rehabilitation. The HUD Project Manager **must** be informed of any substantial rehabilitation plans and projected dates in order to delay any HUD Real Estate Assessment Center (REAC) Physical Inspections that may be scheduled.
- LIHTC priorities and allocation factors may cause conflicts in the tenant selection plan with Section 8 or Use Agreement requirements. HUD approval is required for any waiver of tenancy requirements. Prior approval is strongly recommended before financing is put in place in order to ensure that underwriting is supportable. Be advised that HUD will not waive regulatory requirements without a compelling reason. Owners may want to choose less than 100% allocation in order to avoid these conflicts.
- **Income Targeting:** LIHTCs presuppose certain bands of income targeting. If the bands underwritten on the project do not match the bands on the HAP Contract, the conflict must be resolved.

HUD's mission is to increase homeownership, support community development and increase access to affordable housing free from discrimination.

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- **Limitations on Student Housing:** Section 8 has certain restrictions on full-time students, including a number of exceptions. These are not identical to the LIHTC student restrictions. Many property management companies managing LIHTC properties prefer to disallow students altogether, or strictly follow the LIHTC rules. This eliminates otherwise eligible potential program participants and requires a HUD approved waiver. [Student eligibility for section 8 housing. Final Rule December 30, 2005. Supplemental Guidance issued April 10, 2006.]
- **HUD Model Lease:** The HUD Model Lease for the particular project must be used, even on LIHTC units. A separate LIHTC lease is not allowed. However, HUD may consider a lease addendum for LIHTC projects, following HUD Handbook 4350.3 Rev-1's requirements for lease modification approval. Moreover, the HUD lease does not allow for eviction for other than good cause. Therefore, a tenant may not ever be evicted for failing to meet LIHTC requirements, such as becoming over-income or a student.
- **Enterprise Income Verification (EIV):** The tenant income data obtained from the EIV system to verify tenant income must not be viewed by the LIHTC compliance entity.

Feel free to contact your assigned Project Manager if you have questions.