

Wisconsin Housing and Economic Development Authority Recertification Exemption (H.R. 3221 Sec. 3010)

The Housing and Economic Recovery Act (H.R. 3221) changed several aspects of the federal Low Income Housing Tax Credit (LIHTC) program. This policy addresses the provision in H.R. 3221 that eliminates the annual recertification for 100% low income LIHTC developments.

Effective 7/30/08, owners of 100% tax credit projects are no longer required to obtain annual recertifications beyond the certification at the initial move-in.

All other components and rules of the LIHTC program remain intact, including the continued eligibility of households in respect to student status, changes in household composition and gross rent.

Following are the policy decisions for the implementation and use of the recertification exemption as adopted by the Wisconsin Housing and Economic Development Authority.

- The exemption is only available to 100% low income projects. Project is defined on the owner's IRS Form 8609 Part II Line 8b.
- The effective date for the recertification exemption is 7/30/08, the effective date of the legislation. Recertifications that were due prior to 7/30/08 that were not completed timely are not cured by the enactment of the recertification exemption.
- Households wishing to transfer to another building must re-qualify under initial eligibility requirements. There is no change to our current policy.
- Unit Status Reports will be required but only on an annual basis due in January. This will continue to include move-in/move-outs, adjustments, and annual recertifications as applicable.
- H.R. 3221 requires that 100% of the residential units be qualified in any year for the exemption to apply. If the Applicable Fraction of any building in the project falls below 100%, the project is no longer eligible for the recertification exemption. In the event this occurs, all households of the project will be required to be third-party verified for the year. This violation is correctable and the recertification exemption will again apply to the project once the Applicable Fraction has been re-established at 100% for the entire year.

Recertifications, especially the first anniversary following the initial move-in, while not required, help to establish the income qualification of the household and determine the eligibility of any households that may have understated their income at initial move-in. Changes in student status and household composition could also impact the eligibility of a unit.

In the event a unit is determined to be ineligible, retroactive recertifications, if not done prior, would be required for all households. The owner could be subject to tax credit loss or recapture in accordance with the Available Unit Rule under 1.42-15(f) and other rules.

IRC §142(d)(3)(A) as amended by H.R. 3221 SEC. 3010. (new language is italicized):

“...The determination of whether the income of a resident of a unit in a project exceeds the applicable income limit shall be made at least annually on the basis of the current income of the resident. *The preceding sentence shall not apply with respect to any project for any year if during such year no residential unit in the project is occupied by a new resident whose income exceeds the applicable income limit*”.