2010 Income and Rent Limits Regulatory Guidance

H. R. 3221

SEC. 3004. OTHER SIMPLIFICATION AND REFORM OF LOW-INCOME HOUSING TAX INCENTIVES.
(f) TREATMENT OF RURAL PROJECTS.—Section 42(i) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

> ‘‘(8) TREATMENT OF RURAL PROJECTS.—For purposes of this section, in the case of any project for residential rental property located in a rural area (as defined in section 520 of the Housing Act of 1949), any income limitation measured by reference to area median gross income shall be measured by reference to the greater of area median gross income or national nonmetropolitan median income. The preceding sentence shall not apply with respect to any building if paragraph (1) of section 42(h) does not apply by reason of paragraph (4) thereof to any portion of the credit determined under this section with respect to such building.’’.

SEC. 3009. HOLD HARMLESS FOR REDUCTIONS IN AREA MEDIAN GROSS INCOME.
(a) IN GENERAL.—Paragraph (2) of section 142(d), as amended by section 3008, is amended by adding at the end the following new subparagraph:

> ‘‘(E) HOLD HARMLESS FOR REDUCTIONS IN AREA MEDIAN GROSS INCOME.—
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>> ‘‘(i) IN GENERAL.—Any determination of area median gross income under subparagraph (B) with respect to any project for any calendar year after 2008 shall not be less than the area median gross income determined under such subparagraph with respect to such project for the calendar year preceding the calendar year for which such determination is made.
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>> ‘‘(ii) SPECIAL RULE FOR CERTAIN CENSUS CHANGES.—In the case of a HUD hold harmless impacted project, the area median gross income with respect to such project for any calendar year after 2008 (hereafter in this clause referred to as the current calendar year) shall be the greater of the amount determined without regard to this clause or the sum of—
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>>> ‘‘(I) the area median gross income determined under the HUD hold harmless policy with respect to such project for calendar year 2008, plus
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>>> ‘‘(II) any increase in the area median gross income determined under subparagraph (B) (determined without regard to the HUD hold harmless policy and this subparagraph) with respect to such project for the current calendar year over the area median gross income (as so determined) with respect to such project for calendar year 2008.
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>> ‘‘(iii) HUD HOLD HARMLESS POLICY.—The term ‘HUD hold harmless policy’ means the regulations under which a policy similar to the rules of clause (i) applied to prevent a change in the method of determining area median gross income from resulting in a reduction in the area median gross income determined with respect to certain projects in calendar years 2007 and 2008.
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>> ‘‘(iv) HUD HOLD HARMLESS IMPACTED PROJECT.— The term ‘HUD hold harmless impacted project’ means any project with respect to which area median gross income was determined under subparagraph (B) for calendar year 2007 or 2008 if such determination would have been less but for the HUD hold harmless policy.’’.

WHAT DOES THIS MEAN FOR TAX CREDIT PROPERTIES?

There are 3 basic provisions regarding income limits for tax credit properties in HR 3221:

1. **Rural (National Non-metro) -** Properties located in rural areas (as defined in section 520 of the Housing Act of 1949) can use the greater of the area median income or the national non-metro median income to calculate income limits. For many counties in the State of NC, the national non-metro median income is greater than the area median income limits. Six counties in NC are eligible to use the National Non-metro limit for rural areas, but they also have cities that are not eligible.

   Note: This provision only applies to tax credit properties. It cannot be used for other housing programs, such as Section 8, Rural Development or HOME. It applies on top of other provisions, such as Hold Harmless and HERA Special. Allocation or placed in service dates have no bearing on this provision.

The next two provisions, Hold Harmless and HERA Special, apply based on when income "is determined" for a given property. When NCHFA released income limits for 2009, little guidance was available on this topic. The Agency concluded that income is determined at the time of allocation. Since that time, the industry has concluded that income is determined at the placed in service date. NCHFA has changed to go along with the industry in an attempt not to further complicate this topic.

2. **Hold Harmless –** The basic income limits for tax credit and tax exempt bond properties are identified as MTSP limits in the Multifamily Tax Subsidy Program income limits chart issued by HUD in 2009 & 2010. In 2009, NCHFA referred to these limits as "Standard".

   Once income limits are determined for tax credit properties, they cannot be decreased for future years, and are thus, held harmless. Any property that placed in service prior to the release of 2010 income limits can use the greater of 2009 or 2010 income limits, regardless of which chart applies. Properties that did not place in service prior to the release of 2010 income limits are subject to any decrease, as published. In NC, 15 counties experienced a decrease in income for 2010.

3. **HERA Special –** Properties that placed in service on or before 12/31/2008 and are located in a HUD hold harmless impacted county are allowed to use specially computed income limits. These limits are identified as HERA Special limits in the Multifamily Tax Subsidy Program income limits chart issued by HUD in 2009 & 2010.

   Any property that placed in service prior to 1/1/2009 can use the HERA Special limits, if published for that county.

Summary:

Properties that placed in service:	**Are eligible for these provisions:**	**May use the greater of:**
On or before 12/31/2008	Rural (National Non-Metro) Hold Harmless HERA Special	2009 National Non-metro (if applicable) 2010 National Non-metro (if applicable) 2009 MTSP limits 2010 MTSP limits 2009 HERA Special limits (if applicable) 2010 HERA Special limits (if applicable)
Between 1/1/2009 – 5/13/2010	Rural (National Non-Metro) Hold Harmless	2009 National Non-metro (if applicable) 2010 National Non-metro (if applicable) 2009 MTSP limits 2010 MTSP limits
On or after 5/14/2010	Rural (National Non-Metro) Note: will be eligible for Hold Harmless in 2011	2010 National Non-metro (if applicable) 2010 MTSP limits

In conclusion, NCHFA will not be publishing charts for 2010 tax credit income and rent limits (50% & 60%) because each property is subject to a different limit based on location and placed in service date.

What About State-Required Deeper Targeting (30%, 35%, 40%, 45%)?

State Set-asides – NCHFA has chosen to use the highest possible income and rent limit for a given county, as published by HUD. Therefore, there will be only one income and rent limit applicable to each set-aside in a given county and these limits will apply to all properties subject to that set-aside in the county, regardless of placed in service date. For example, all properties in Wake County will be subject to the same 35% income and rent limits, regardless of when the property placed in service. This will help to simplify compliance with lower set-asides required by NCHFA.

(Note: Because of this simplification, properties will have to rely on income and rent limit charts published by NCHFA. Income and rent calculators, found on websites such as Novogradac, may produce incorrect limits for these lower set-asides, because the calculator will use the applicable tax credit median based on placed in service date to calculate the limits.)

What About Other Programs?

Section 8 – HUD will no longer apply hold harmless provisions to income limits. Three tiers of income limits are published for HUD programs: Extremely Low (30%), Very Low (50%) and Low (80%). These tiers are used by various HUD programs. Rents are determined by program definitions. The income limit for a Section 8 property is typically less than the tax credit income limit, except for properties subject to the Low (80%) limit.

Rural Development – RD will hold income and rent limits harmless in conjunction with multifamily programs. Most RD housing properties use the Very Low (50%) or Low (80%) income limits, and are further limited to the applicable tax credit income limit for tax credit properties. For 2010, properties will use the greater of 2009 or 2010 income limits. Rents are determined by program definitions, and are also held harmless. Unless rental assistance is available, the income limit for an RD property is typically more than the tax credit income limit.

HOME – HOME will no longer apply hold harmless provisions to income limits. However, hold harmless will apply to rent limits. HOME units are subject to the 2010 Very Low (50%) and Low (80%) income limits, and are further limited to the applicable tax credit income limit for tax credit properties. Low HOME designated units are subject to the greater of 2009 or 2010 Low HOME rent limits. High HOME designated units are subject to the greater of 2009 or 2010 High HOME rent limits.

(Note: It is important to determine the number of HOME designated units in the property. This can be 100% of the units or less. The HOME income limits are typically less than tax credit limits, but they only apply to HOME designated units.)

Tax credit properties that are combined with the above housing programs must use the most restrictive income and rent limits required to maintain compliance with all applicable housing programs. When the tax credit limit is higher, violations of other program limits (that do not violate tax credit limits) will not result in notification to the IRS, but may result in noncompliance penalties imposed by the applicable program, including prohibiting the owner from participating in the program in the future.