

Key Housing Credit Compliance Issues

November 3, 2010

Presented By:
Anita Moseman, FHC, SHCM, NAHP-H

Gianna Solari, SHCM, NAHP-e

Greg Proctor, SHCM, NAHP-e



Calculating Assets

Presented by: Anita Moseman



What is Considered to Be an Asset?

- Assets are items of value that may be turned into cash
 - A savings account is an asset
 - Income earned on the savings account is income
- Some tenants have assets that are not earning income
 - Cash on hand doesn't earn income but is an asset
- **Some belongings of value are not considered assets**
 - Necessary personal property is not counted as an asset
- **Exhibit 5-2 of the HUD 4350.3 handbook summarizes the items that are considered assets and those that are not**

Determining Income from Assets

- **The calculation to determine the amount of income from assets to include in annual income considers both of the following:**
 - The total cash value of the family's assets; and
 - The amount of income those assets are earning or could earn.
- **The rule for calculating income from assets differs depending on whether the total cash value of family assets is \$5,000 or less, or is more than \$5,000.**

Determining the Total Cash Value of Family Assets

- **To comply with the rule for determining the amount of income from assets, it is necessary to first determine whether the total "cash value" of family assets exceeds \$5,000.**

Determining the Total Cash Value of Family Assets

- **The "cash value" of an asset is the market value less reasonable expenses that would be incurred in selling or converting the asset to cash, such as the following:**
 - Penalties for premature withdrawal;
 - Broker and legal fees; and
 - Settlement costs for real estate transactions.
- **The cash value is the amount the family could actually receive in cash, if the family converted an asset to cash.**

Example – Calculating the Cash Value of an Asset

- A family has a certificate of deposit (CD) in the amount of \$5,000 paying interest at 4%. The penalty for early withdrawal is three months of interest.
 - $\$5,000 \times 0.04 = \200 in annual income
 - $\$200/12$ months = $\$16.67$ interest per month
 - $\$16.67 \times 3$ months = $\$50.01$
 - $\$5,000 - \$50 = \$4,950$ cash value of CD

Example – Determining the Cash Value of an Asset

- Juanita Player owns a rental house. The market value is \$100,000. She owes \$60,000. The cost to dispose of this house would be \$8,000. The owner would determine the cash value as follows:

– Market Value	\$100,000
– Mortgage amount	<u>- \$60,000</u>
–	40,000
– Cost of disposing of the asset	
– (real estate commission, & other costs of sale) -	<u>\$8,000</u>
– Cash Value	\$32,000

Calculating Income from Assets When Assets Total \$5,000 or Less

- If the total cash value of all the family’s assets is \$5,000 or less, the actual income the family receives from assets is the amount that is included in annual income as income from assets.

Calculating Income from Assets When Assets Exceed \$5,000

- When net family assets are more than \$5,000, annual income includes the greater of the following:
 - Actual income from assets; or
 - A percentage of the value of family assets based upon the current passbook savings rate as established by HUD. This is called *imputed* income from assets. The passbook rate is currently set at 2%.
- To begin this calculation, first add the cash value of all assets. Multiply the total cash value of all assets by .02. The product is the “imputed income” from assets. Then, add the actual income from all assets. The greater of the imputed income from assets or the actual income from assets is included in the calculation of annual income.
 - “Imputed” means “attributed” or “assigned.” Imputing income from assets is “assigning” an amount of income solely for the sake of the annual income calculation. The imputed income is not real income.

Example – Use Actual Income from Assets When Total Net Family Assets are \$5,000 or Less

Type of Asset	Cash Value	Actual Yearly Income
Certificate of Deposit \$1,000 withdrawal fee \$50 Interest @ 4%	\$950	\$40
Savings Account \$500 interest @ 2.5%	\$500	\$13
Stock \$300 Not paying dividends	\$300	\$0
Total	\$1,750	\$53

The total cash value of the family’s assets is \$1,750. Therefore, the amount that is added to annual income as income from assets is the actual income earned or \$53.

Example – Determining Income from Assets When Net Family Assets Exceed \$5,000

Type of Asset	Cash Value	Actual Yearly Income
Checking Account (non-interest bearing)	\$455	\$0
Savings Account (interest at 2.5%)	\$6,000	\$150
Stocks (not paying dividends this year)	\$3,000	\$0
Total	\$9,455	\$150

Total cash value of assets is greater than \$5,000. Therefore, it is necessary to compare the actual income from assets to the imputed income from assets.

The total cash value of assets (\$9,455) is multiplied by 2% to determine the imputed income from assets.
 $.02 \times \$9,455 = \189

\$189 is greater than the actual income from assets (\$150).

In this case, therefore, the owner will add \$189 to the annual income calculation as income from assets.

Examples – Balances Held in an IRA or 401K Retirement Account

- Jed Dozier's 401K account balance is \$35,000. He is able to terminate his participation in the retirement plan without quitting his job, but if he did so he would lose a part of his employer's contribution and would pay a penalty fee. The total cash he could withdraw, \$18,000, is the amount that is counted as an asset.

Assets disposed of for less than fair market value

- Applicants and tenants must declare whether an asset has been disposed of for less than fair market value at each certification and recertification. Owners must count assets disposed of for less than fair market value during the two years preceding certification or recertification. The amount counted as an asset is the difference between the cash value and the amount actually received.
 - Any asset that is disposed of for less than its full value is counted, including cash gifts as well as property. To determine the amount that has been given away, owners must compare the cash value of the asset to any amount received in compensation.
 - However, the rule applies only when the fair market value of all assets given away during the past two years exceeds the gross amount received by more than \$1,000.

Examples – Assets of More or Less Than \$1,000 Disposed of for Less Than Fair Market Value

- During the past two years, Alexis Turner donated \$300 to the local food bank, \$150 to a camp program, and \$200 to her church. The total amount she disposed of for less than fair market value is \$650. Since the total is less than \$1,000, the donations are not treated as assets disposed of for less than fair market value.
- Jackson Jones gave each of his three children \$500. Because the total exceeds \$1,000, the gifts are treated as assets disposed of for less than fair market value.

Qualifying Student Households

Gianna Solari, SHCM, NAHP-e



Qualifying Student Households

- A unit is not considered to be occupied by low-income individuals if all the occupants of such unit are Full-time Students, no one of whom is entitled to file a joint return.

8823 Guide – Page 17-1

Qualifying Student Households

- In part a Student is defined as an individual, who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins, is a Full-time Student. At an educational organization described in Internal Revenue Code (IRC) 170...OR...

8823 Guide – Page 17-1

Qualifying Student Households

- ...is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in IRC 170(b)(1)(A)(ii) or of a state or political subdivision of the state.

8823 Guide – Page 17-1

Qualifying Student Households

- IMPORTANT to know:
 - Treas. Reg 1.151-3(b) further provides that the five calendar months need not be consecutive.
 - The determination of student status as full or part-time should be based on the criteria used by the educational institution the student is attending.

8823 Guide – Page 17-1

Qualifying Student Households

- Units comprised of Full-time Students (no one of whom is entitled to file a joint return) do not qualify as low-income units.
- There are exceptions to the rule. If a household meets an exception, the household would be considered qualified.

8823 Guide – Page 17-1

Qualifying Student Households

- Exception:
 - At least one student receives assistance under Title IV of the Social Security Act. (i.e. AFDC / TANF / Welfare Assistance)

8823 Guide – Page 17-5 – Exhibit 17-1

Qualifying Student Households

- Exception:
 - Was at least one student was previously under the care and placement responsibility of the state agency responsible for administrating Foster Care?

8823 Guide – Page 17-5 – Exhibit 17-1

Qualifying Student Households

- Exception:
 - Does at least one student participate in a program receiving assistance under the Job Training Partnership Act (JTPA), Workforce Investment Act, or under other similar federal, state or local laws?

8823 Guide – Page 17-5 – Exhibit 17-1

Qualifying Student Households

- Exception:
 - Is at least one student a single parent with child(ren) AND this parent is not a dependent of another individual AND the child(ren) is/are not dependent(s) of someone other than a parent?

8823 Guide – Page 17-5 – Exhibit 17-1

Qualifying Student Households

- Exception:
 - Are the students married AND entitled to file a joint tax return?

8823 Guide – Page 17-5 – Exhibit 17-1

Qualifying Student Households

- Example - newly married students:
 - A recently married full-time student couple is looking for housing. The couple is income qualified, by they have not yet filed their first tax return. Even if the couple does not file a joint tax return, they are still entitled to file a joint return and thus satisfy the exception under IRC 42(i)(3)(D)(ii)(II).

8823 Guide – Page 17-3

Qualifying Student Households

- A unit is out of compliance when it is occupied by full-time students at qualifying educational organizations for five or more months during a calendar year in which the taxable year of the taxpayer begins AND who do not meet of the exceptions identified.

8823 Guide – Page 17-3

Qualifying Student Households

- A unit is also considered out of compliance if the owner (or agent) fails to verify the household's student status at the time of move in, or an annual student status verification was performed late and after notification of a state agency review.

8823 Guide – Page 17-3

Qualifying Student Households

- Back in Compliance...
 - The unit is back in compliance when is no longer occupied entirely by full-time students or the tenant qualifies under one of the exceptions under IRC Section 42(i)(3)(D).

8823 Guide – Page 17-4

Dealing with Disasters and Casualty Losses

Presented by:
Gregory Proctor



Disasters

- Based on Rev Proc 2007-54 and under Sec 42(j)(4)(E), a building that is beyond the first year of the credit period and has, because of a disaster, suffered a reduction in qualified basis that would cause it to be subject to recapture or loss of credit will not be subject to loss of credit or recapture if the following is met:

Disasters

- Credits are not lost if the building's qualified basis is restored with a reasonable time.
- Your state agency determines what a constitutes a reasonable period of time.
- The period of time can not exceed 24 months after the end of the calendar year in which the disaster occurred.
- And most importantly, the building must be located in a Presidentially declared disaster area.



Disasters

- If the building is not restored within the reasonable period of time, the owner shall lose all credits claimed during the restoration period.
- The owner will also be subject to recapture of credits claimed in prior years.

Casualty Losses

- The rules of Presidentially declared disasters do not apply to casualty losses outside of the declared areas.
- This might include fires, flooding, severe storms.

Casualty Losses

- The good news is that there is no recapture event with casualty losses so long as the qualified basis is restored within a reasonable time.
- The bad news is that there still could be loss of credit for the year.

Casualty Losses

- Under Sec 42(f)(1), a building's credit period is 10 years beginning with the first day of the taxable year in which the building is placed in service.
- Other than in the first year of the credit period, there is no authority for disallowing credits on a monthly basis.

Casualty Losses

- Therefore, if a building with a casualty loss is restored and rented to low-income tenants by December 31st of the year that the casualty event occurred, there is no recapture or loss of credits.

Casualty Losses

- If the building suffering the casualty loss is not restored and occupied by low-income tenants by December 31st, then credits are lost on those units affected by the casualty loss for the entire year.
- However, so long as the restoration is completed within the reasonable period of time, as stipulated by the state agency, there is no recapture of previously claimed credits.

Casualty Losses

Question 1:

If a building consisting of 50 housing credit units has a fire that significantly damages the building on June 7, 2010, and the building is placed back in service on November 13, 2010, can the owner claim credits on the units in 2010?

Casualty Losses

Answer 1:

Assuming that the reasonable time requirement is met and that the units are occupied by low-income tenants or the vacant rule is met, the answer is YES!

Casualty Losses

Question 2:

If a building consisting of 50 housing credit units has a fire that significantly damages the building on June 7, 2010, and the building is placed back in service on January 1, 2011, can the owner claim credits on the units in 2010?

Casualty Losses

Answer 2:

Bad news here! The answer to the question is NO! Credits can not be taken for the previous year. The consolation prize is there is no recapture so long as the reasonable period requirement is met.

Casualty Losses

- Moral of the story is:

DO NOT HAVE A FIRE IN DECEMBER!!!!

Casualty Losses

In closing:

- Make sure your units are back on line (and in compliance) on December 31st
- Do whatever it takes to get the units back up.
- Discuss loss of credit insurance with your insurance carrier for this type of exposure.



Deal with your compliance challenges

Don't live in Wonderland...

Question and
Answer
Session with
the Experts!

