

HUD responses to initial state agency questions on new income limits

Note: Multifamily Tax Subsidy Projects (MTSPs) are governed by IRS rules and HUD's only authority is in setting income limits. All other program matters are the purview of IRS. The below answers are merely HUD opinion and carry no official weight.

Q1. Which limit(s) can a project in a non-impacted county, placed in service after 2008, use? Can the income limit, once established during lease up, decrease, or does it remain at its highest initial level?

Answer: A project making its initial use of income limits between January 1, 2009 and May 13, 2010 uses the higher of the FY2009 MTSP Income Limits or the FY2010 MTSP Income Limits. Projects making their initial use of income limits on May 14, 2010 or after use the FY2010 MTSP Income Limits. As for the second question, based on HUD's understanding of Section 3009 of HERA paragraph a (E) I, MTSPs income limits cannot decrease.

Q2. Some counties were newly assigned HERA limits. Is it correct to assume these limits only apply to projects PIS before 2008?

Answer: Correct. Based on Section 3009 of HERA, paragraph (E) ii II, HUD must always calculate the change in median family income from 2008 to the current year and determine if this increase causes income limits to be higher than they otherwise would be. If so, then we have a HERA special limit applied. It is HUD's interpretation that these special limits are only used by projects who used income limits in either 2007 or 2008 in areas subject to HUD's old Hold Harmless policy.

Q3. In Washington State, Island County, the 2009 50% limit was \$41,900 for HUD Impacted HERA and \$38,950 for non-HERA (non-impacted). In 2010, the HERA remains at \$41,900 and the Non-Impacted MTSP is now \$37,050. Do we apply limits as follows in this county?

a. Project A that was PIS during 2008 used the HERA limit of \$41,900.

Answer: Assuming the project used FY2007 or FY2008 income limits, yes.

b. Project B that was PIS in between January 1, 2009 and May 14, 2010 uses \$38,950.

Answer: I would say May 13, but otherwise yes.

c. Project C that will PIS in June of 2010 uses \$37,050.

Answer: Projects making their initial use of income limits on May 14, 2010 or after will use the \$37,050.

Q4. This same county currently has a median income limit of \$68,200 for a family of four. If this limit remains the same in 2010 can we expect the 2011 limits to decrease by another 5% to \$35,200 for Project D and again in 2012 to \$34,100 (half of \$68,200) for project E?

Answer: If HUD estimates the FY2011 MFI to be \$68,200 in Island County, then yes, the FY2011 4-Person 50% income limit will decrease to 35,200 which is a 5% decrease from FY2010. Projects making their initial determination of income limits between May 14, 2010 and the publication of FY2011 income limits will use the income limits where the 4-person limit is \$37,050. Projects making their initial use of income limits after the FY2011 income limits are published would use \$35,200. This same logic applies if HUD's estimated FY2012 MFI is again 68,200.

I should point out, there is a high likelihood that HUD will use the 5-year ACS data for the publication of FY2011 income limits; 5 year ACS data covers the 2005-2009 time period.

Q5. Assuming the same again, we would need to track the PIS date for projects above, we would need to keep the limits on Projects A, B, C and D and hope for an increase in area median income in 2013. Is this correct? So project A would keep the same limits at least until 2013 in the likely scenario described above, as would the others, or is there some minimum increase based on HERA?

Answer: Each project's income limit path over time is determined by when they first used income limits. So the answer to first question is yes. Under the scenario that FY2011, and FY2012 MFI remains unchanged from 68,200, then yes, projects A, B, C, D would have the same, but separate, income limits for the time period. Based on HUD's understanding of HERA, there is no minimum increase legislated.

Q6. Can you explain how HUD Impacted HERA project limits and non impacted limits will change in the future? If incomes remain flat or decline, will the limits also remain the same or will they increase under any scenario?

Answer: In general, changes in income limits will be determined by changes in HUD's estimated Median Family Income. In some cases, where income limits have been held harmless at historically high levels (more than 5 percent higher than current MFI estimates indicate), some income limits will continue to adjust until they reach a level commensurate with the MFI estimate (please see the stylized example for Island County, WA.)

HUD continues to make adjustments for areas of high housing-costs-to-income ratios, low housing-cost-to-income ratios and ensures that income limits are not below those specified by a state's non-metropolitan minimum. Therefore, these adjustments may also affect income limits in the future.

Q7. In 2010, there are areas of our state that have HERA limits that did not in 2009. Why is this?

Answer: Based on Section 3009 of HERA, paragraph (E) ii II, HUD must always calculate the change in median family income from 2008 to the current year and determine if this increase

causes income limits to be higher than they otherwise would be. If so, then we have a HERA special limit applied. Based on the estimated MFI, a special HERA limit was warranted this year and was not last year.

Some areas experienced increases in estimated MFI in FY2010. Take Cheyenne, WY MSA as an example. The FY2009 MFI was 63,700. The FY2010 FMR is 67,400. This is a 5.8% increase. However, because of the new cap on the increase in income limits from one year to the next, the maximum amount that section 8 income limits could increase is 5%. This yields a 4-person 50% limit of 33,400. There is no such cap for MTSPs. Therefore, the change from FY2008 to FY2010 creates an income limit larger than 33,400. Consequently, this area now qualifies for a HERA Special 4-person 50% limit of \$33,700.

Q8. With HERA, limits never drop from the previous year. Is that income and rent, or just income?

Based on HUD's interpretation and understanding of section 3009 of HERA, the determination of incomes cannot be lower from one year to the next. Therefore there is statutory hold harmless for incomes only. However, since income limits determine maximum rents for MTSPs, maximum rents cannot fall either.

Q9. I think in an area or county without a special HERA limit, the "initial income limit" for any project will be the published limit in effect when the "initial income limit" is determined. The limit for any project after the "initial income limit" will be the higher of the published limit for a particular year or the highest published limit in any year during the project's income restricted life to date. That's not too bad for 2010 when it is the higher of 2010 or 2009 since income limits were never reduced prior to 2010 but it will get more complicated as time goes on. Since it is a project by project calculation, posting charts to tell the public the income limits for projects they might want to apply to will be challenging.

The lack of guidance on exactly when an "initial income limit" is determined I expect will also cause problems. When is the "initial income limit" determined? At placed in service date? When bonds are sold or credits allocated? When the application is made?

In the past when income limits only went up this was not an issue; if the limits went up, the rents could be a little higher if the market could support them, the band of eligible possible renters was wider and the underwriting margin only got better. Now if the initial income limit is determined at placed in service, the rental income may be lower or the project may be harder to rent up because fewer income qualified applicants are available. A tight but viable project might therefore be made infeasible by an income limit reduction during construction.

This impact will be mitigated by HUD limiting the increases or decreases in the income limits to the greater of 5% or the average % of increase in the US but even if the impact is minor I bet some developers will argue that they should have "initial income limit" determined at a time that will maximize a project's income.

Answer: This is a question that HUD cannot answer. At what point a project's "initial income limit is determined" is up to the IRS.