

DRAFT - Low-Income Housing Tax Credit vs. Section 811 PRA Occupancy Requirements – DRAFT

The Section 811 PRA program is funded and regulated by the U.S Department of Housing and Urban Development (HUD) to provide rental assistance for extremely low-income persons with disabilities in properties financed by State Housing Agencies (HAs). Properties financed by Low-Income Housing Tax Credits (HTC) that participate in the Section 811 PRA program have to maintain compliance with both the HTC and the Section 811 PRA program.

Low-Income Housing Tax Credit (HTC) Program

The HTC program, regulated by the Internal Revenue Service, provides financing for affordable housing through HAs, who are responsible for compliance with the program. Properties must follow the following regulations for the HTC program:

- Internal Revenue Code Section 42
- Additional Treasury regulations, typically through Private Letter Rulings
- State HA rules and regulations

Section 811 PRA Program

The Section 811 PRA program, a project-based rental assistance program, is regulated by HUD, which provides Section 811 PRA funds to state HAs which in turn award those funds to properties. Properties participating in the Section 811 PRA program must follow the following regulations:

- Owner requirements listed in the Section 811 PRA Cooperative Agreement between HUD and the HA
- Rental Assistance Contract Parts I and II
- HUD Handbook 4350.3 and related notices
- State HA rules and regulations

At times, the occupancy requirements for the PRA and the HTC programs may not align perfectly. The attached provides guidance in a number of these areas, identifying when the Owner should follow PRA guidance, HTC guidance or both. This is a “work in progress”. If you identify other areas that require additional clarification, please contact Ellen Fitzpatrick at TAC efitzpatrick@tacinc.org.

Topic	Section 811 PRA Program Requirements	Low-Income Housing Tax Credit (HTC) Requirements	Impact of Section 811 PRA units in HTC Properties
Property Should Follow Section 811 PRA Rules			
Student Status of Resident	Allows full-time students, but the student must prove independence from parents in order for the PRA program to not consider the income of parents.	Does not allow a household made up entirely of full-time students, unless the household meets certain exceptions.	Cannot evict a Section 811 PRA tenant based on LIHTC student requirements, but the 811 tenant must prove independence from parents.
SSN	Applicants and tenants must disclose SSNs for all household members. Individuals who do not contend eligible immigration status must sign a certification that will be used to support the individual not being subject to disclose an SSN.	No Requirements regarding SSN	All Section 811 PRA tenants must disclose SSNs or certify that the household is not subject to disclosure.
Income Eligibility (Initial)	Must use the HUD definition of a household at or below 30% AMI with adjustments for smaller and larger families.	IRS requires either 20% or more of the units are targeted to at or below 50% AMI or 40% or more are targeted to at or below 60% AMI.	All Section 811 PRA tenants must be at or below 30% AMI at initial occupancy
Occupancy Standards	HA must create occupancy standards for the Section 811 PRA Program.	No occupancy standards	The owner must follow the occupancy standards for Section 811 PRA units as set by the HA.
Section 504	HAs and owners are subject to Section 504. The entire property/development is subject to 504 requirements once participating in the Section 811 PRA Program, including tenants/units not under the 811 program. This includes reasonable accommodation	The HTC program is not considered “federal financial assistance” and therefore not subject to Section 504.	The entire property and the HA are subject to 504.

Topic	Section 811 PRA Program Requirements	Low-Income Housing Tax Credit (HTC) Requirements	Impact of Section 811 PRA units in HTC Properties
	requirements, effective communication obligations, and ensuring program accessibility for individuals with disabilities.		
Fees	Owners cannot charge application fees or fees for late payment of rent. Owners may charge security deposit and refundable pet deposit (not applicable to service animals) at limits allowed by the PRA program, and other misc. charges allowed in 4350.3 Paragraph 6-25.	The owner can charge application fees to cover the costs associated with the application; optional fees (not a condition of occupancy) such as storage fees and pet fees; and a security deposit.	The owner cannot charge application fees or fees for late payment of rent for Section 811 PRA tenants. Owners may charge a security deposit or the fees as allowed by the 811 program.
Income Recertifications	Owners must recertify all tenants by the anniversary date, with specific guidance in 4350.3 about reminders required before the anniversary date.	Tenants must be recertified at least annually, unless the property qualifies for certain exceptions, such as 100% HTC properties or other IRS waivers.	The owner must income recertify all Section 811 PRA tenants annually and provide reminders as required by 4350.3
Interim Income Recertifications	Owners must do interim recertifications when there is a change of household composition, income increases by \$200 or more per month, or an unemployed household member obtains employment.	Does not require interim certifications.	For 811 PRA tenants, owners must do interim recertification according to the 811 program requirements.
Lease	For 811 tenants, owners must use the HUD required model lease.	The lease should include prohibition of eviction for other than good cause, requirements to report changes to student status, and prohibition from	For Section 811 PRA tenants, the owner must use the required HUD model lease.

Topic	Section 811 PRA Program Requirements	Low-Income Housing Tax Credit (HTC) Requirements	Impact of Section 811 PRA units in HTC Properties
		locking out except under certain circumstances.	
Lease Term	Lease term must be one year, and will be renewed for one month terms.	Lease term must be at least 6 months, unless transitional housing or SRO housing.	The lease term for Section 811 PRA tenants must be one year.
Tenant Rent Payment	<p>Must use income and rent calculations of according to HUD Handbook 4350.3. The Total Tenant Payment (TTP) is expected to contribute for rent and utilities.</p> <p>TTP for PRA is based on the family's income. Calculation of TTP is the greater of the following:</p> <ul style="list-style-type: none"> a. 30% of monthly adjusted income; b. 10% of monthly gross income; or c. Welfare rent (where applicable). 	The rent charged to the tenant is set by the AMI rent level of the unit. In general, the gross rent does not exceed 30% of the imputed income limit applicable to the unit. The rent level does not change based on the household's income, but the household must income qualify to live in the unit.	The total tenant rent payment for Section 811 PRA tenants will be calculated according to the Section 811 program TTP requirements.
Affirmative Marketing	HAs must establish an affirmative fair housing marketing plan for the Section 811 PRA program (not for individual properties). All participating agencies and owners must follow the plan if responsible for marketing to Section 811 tenants.	No affirmative marketing requirement specifically, but subject to the Fair Housing Act.	The HA will be responsible for establishing an affirmatively marketing plan for the Section 811 PRA units.
Vacancies more than 60 days	A Section 811 PRA unit may receive vacancy payments. These payments may not exceed 80% of contract rent for up to 60 days of vacancy. If no 811 tenants are identified within a reasonable period of time, as determined by the HA, the	Must certify annually that they have made reasonable attempts to rent units to income qualifying households before renting to tenants not having qualifying income.	If a HA cannot fill a vacancy for a Section 811 PRA unit within a reasonable period of time, the owner can rent the unit to a non-Section 811 tenant. But, the owner

Topic	Section 811 PRA Program Requirements	Low-Income Housing Tax Credit (HTC) Requirements	Impact of Section 811 PRA units in HTC Properties
	owner may lease the unit to families who are not eligible for the Section 811 program, but the owner will not receive Section 811 rental assistance for that unit. The owner must offer the next available unit to the 811 program in order to fill all of the units obligated in the RAC.		will not receive Section 811 PRA rental assistance for that unit.
Absenteeism During Lease Period	HAs may continue to pay rental assistance if the head of household is temporarily absent, but the tenant must continue to pay rent. A household may request a reasonable accommodation to the owner during an extended absence.	No regulations, except for household income determinations (See Absenteeism Impact on Income Determination).	A Section 811 unit may be unoccupied and received rental assistance during a temporary absence as long as the tenant continues to pay rent.
Waiting Lists	HAs must follow the waiting list policies as described in the HA's Tenant Selection Plan for the Section 811 PRA Program.	No waiting list requirements	Owners must accept tenant applications for the Section 811 PRA program based on the waiting list policies of the HA's Section 811 Tenant Selection Plan.
Household Eligibility	If the household member who made the household eligible for the Section 811 PRA program passes away, the remaining family members are eligible to remain in the unit and continue receiving rental assistance based on income. However, if the eligible household member leaves the unit for any other reason other than death, the remaining members are eligible to continue receiving rental assistance if at least one remaining family member meets the definition of "persons	No requirements regarding target population eligibility.	The property must follow the household eligibility requirement of the Section 811 PRA program.

Topic	Section 811 PRA Program Requirements	Low-Income Housing Tax Credit (HTC) Requirements	Impact of Section 811 PRA units in HTC Properties
	with disabilities". If, however, at least one family member does not meet the definition of a "person with disabilities" the remaining family members can still remain in the unit, but the household will not receive PRA rental assistance and must pay market rent.		
Property Should Follow Low-Income Housing Tax Credit Requirements Only			
None			
Section 811 PRA Rules and Low-Income Housing Tax Credit Requirements are the Same			
Citizenship	No citizenship requirements.	No citizenship requirements.	No citizenship requirements.
Eviction	May evict for material noncompliance with the program, drug abuse, criminal activity, failure to follow State laws, and other good cause.	Can only evict for good cause, as determined by state or local law.	Section 811 PRA tenants may only be evicted for good cause.
Assets	There is no asset limitation, but income from assets must be determined using 4350.3 requirements.	The owner must verify all assets, but there are no limits on the amount of assets a household may hold. Income from assets must be determined using 4350.3 requirements.	There are no asset limits, but income from assets must be determined.
Absenteeism Impact on Income Determination	Temporarily absent family members must be included when determining household limits, including family members in the hospital. The family decides if a person permanently confined to a hospital or	Temporarily absent family members must be included when determining household limits, including family members in the hospital. The family decides if a person permanently	For Section 811 PRA tenants, temporarily absent household members must be included in income determination and limits.

Topic	Section 811 PRA Program Requirements	Low-Income Housing Tax Credit (HTC) Requirements	Impact of Section 811 PRA units in HTC Properties
	nursing home is part of the family for income limits and that person cannot be listed as the head, co-head, or spouse. If listed as part of the family, all income must be counted.	confined to a hospital or nursing home is part of the family for income limits and cannot be listed as the head, co-head, or spouse. If listed as part of the family, all income must be counted.	
Section 811 PRA Rules and Low-Income Housing Tax Credit Requirements are Different – Follow Both			
Income Verification through EIV	The Section 811 PRA program requires the use of the EIV system to verify employment and income.	Cannot use EIV system due to HUD requirements, not IRS requirements	Must use the EIV system to verify employment and income for all Section 811 PRA tenants, but cannot use that information for those same tenants for verification of income for the HTC program.
Household Income Documentation	Must use HUD Handbook 4350.3 requirements.	No IRS requirement. HA must designate the Tenant Income Certification (TIC) form.	For Section 811 PRA tenants, the owner must document income according to both Section 811 and HTC requirements.
Tenant File Retention	Must retain all active waiting list applications; retain for 3 years documentation of everyone taken off the waiting list (including application, rejection notice, etc.); retain for duration of tenancy certain documentation, and for former tenants, maintain certain documentation for 3 years after the tenant leaves.	Retain for 6 years after the filing of tax return, the income certification of each tenant and back-up documentation. The first year's HTC files must be kept for 6 years after the compliance period.	For Section 811 PRA tenants, files must be retained for 6 years, and if the Section 811 tenants are within the HTC's property's first year, they must be kept for 6 years after the compliance period. The HA will assign responsibility for maintaining waiting list files.

Topic	Section 811 PRA Program Requirements	Low-Income Housing Tax Credit (HTC) Requirements	Impact of Section 811 PRA units in HTC Properties
Physical Inspections by HA	The HA must provide a Uniform Physical Condition Standards (UPCS) inspection at least every 3 years for all Section 811 PRA units.	The HA must do a Uniform Physical Condition Standards (UPCS) inspection for at least 20% of a project's LIHTC-assisted units (randomly selected) at least once every three years.	The HA, at least every three years, will provide a UPCS inspection to 20% of randomly selected units in the property AND to all of the Section 811 PRA units.
Over-Income Households	<p>Rental assistance ends when tenant's income increases to the level that the eligible family contribution equals the total housing expense. The tenant has the right to remain in place in accordance with their lease.</p> <p>The HA should develop program policies that address:</p> <ol style="list-style-type: none"> 1. Whether the Owner will then provide the next available unit to the Section 811 PRA Program; 2. How the tenant may request a resumption of the Rental Assistance Payments if needed; 3. How tenant can continue to receive services if so desired; and 4. Other related policies 	If a tenant's income rises above 140% of the HTC income limit, the next available unit HTC rule applies, generally requiring the next comparable unit to be rented to a qualifying household.	The HA should develop a policy on how to address potential tenant income increases and how to address if a Section 811 PRA tenant's income rises about 140% of the HTC income limit.