Rents &Tenancy Issues

Remember that a Project's applicable income and rent limits may be the most recent limits or may be an older set of limits, depending on geographic location (i.e., county) as well as Placed-in-Service date. Be sure to consult the Commission's Income and Rent Limits web page to determine which limits apply to a particular Project.

Use the Commission's limit sets rather than making your own calculations to avoid any rounding errors. Remember that from these rents, you ***must*** subtract the appropriate utility allowance for any *Resident-paid* utilities based on appropriate utility allowance schedules. For example:

*If the applicable utility allowance for a two-bedroom unit in the property is $54, the maximum rent that can be charged Residents at **60%** AGMI is $655 ($709- $54 = $655). The maximum rent that can be charged Residents at **40%** AMGI is $419 ($473 - $54 = $419). This assumes a 40% rent limit of $473.00.*

If adding rent and a utility allowance results in cents, Owners must round the total up, not down, regardless of the amount of cents.

It is important to note that if a Project has public funding other than tax credits or bonds, another funder may require the use of more restrictive income and rent limits. Owners are responsible for knowing which funder requires the most restrictive income and rent limits; the most restrictive limit sets will be applied to each Household record in WBARS. If an Owner has a concern about not being able to use a higher set of income/rent limits (because of cash flow issues, for example), the Owner should contact the most restrictive funder to discuss the possibility of using the more financially optimal income/rent limit set.

Restricted Rent Requirements

- Use correct maximum rent table provided by Commission.
- Deduct correct utility allowance from maximum rent:

Note: See ***Chapter 2, Federal Requirements*** for rules regarding use of correct utility allowance.

- Changes in maximum rents apply to future Residents and existing qualified households ***after*** the effective date of the change.
- Changes in utility allowances must be used to adjust maximum rents for all existing qualified households and all future qualified households within **90 days** of effective date for new utility rates.

What is the consequence of overcharging rent? The unit is no longer qualified and must be reported by the Commission to the IRS. A refund of the rent overpayment must be made to each affected Household and verified to the Commission.

What Constitutes Rent

There are special rules for what is or is not counted as rent. Generally, rent includes any fees *required* for occupancy at the property. For example, if meals are provided in a central cafeteria and all Residents must pay for this meal service, that cost is included as part of rent. Similarly, if a fee is charged to each Resident for a parking space or garage, that charge is included as part of rent. However, *optional* costs are not included in rent. For example, if central meals are available but are not mandatory, and kitchen facilities exist in each unit so that Residents have a practical alternative for providing meals for themselves, the charge for optional meals is not part of rent. The same is true for optional charges for covered parking or garages. If a Resident pays for optional services, the property's lease should make clear what part of the monthly payment the Resident pays is rent and what part is for optional services.

In general, for a fee to be *optional*, Residents must have a viable alternate choice at no cost. For instance, to charge for parking in garages or carports, Residents must have a free option of parking in a paved uncovered area that is part of the property. The Owner must also be able to prove that the cost of developing these optional garages and facilities was excluded from the tax credit Eligible Basis, otherwise no fee can be charged at all, unless the fee, plus rent, plus utility allowance, is under the restricted rent level.

Mandatory requirements for features such as cable television or telephone service to allow guests into a secure apartment are considered rent and therefore must be included under the Gross Rent limit.

Gross Rent does not include assistance payments made by other government agencies or nonprofit organizations, such as Section 8 payments, RD rental assistance or any comparable rental assistance program. For example, if a Resident has Section 8 rental assistance, only the portion of the rent *the Resident actually pays* is counted toward the applicable rent ceiling amount.

In addition, if a fee for a supportive service and rental assistance is paid to the Owner of the unit (on the basis of the low-income status of the Household) by any governmental assistance program or by a 501(c)(3) organization *and* if the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, the payment received for supportive services is not included in rent. The term "supportive service" means any service provided under a planned program of services designed to enable Residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically disabled. In the case of a single-room occupancy (SRO) unit or Transitional Housing for the Homeless, such term includes any service provided to assist Residents in locating and retaining permanent housing.

Changes in Rent Limits

If the rent limits for the county in which a property is located changes in the middle of a lease term, and the maximum rent that can be charged goes down, the Owner must reduce the rents of all affordable units to conform to the new schedule, regardless of the rent stated in the lease.

If rent limits **rise** during the term of a Resident's lease, the owner must wait until the end of the lease term to raise the rent. If the lease term is month to month, the landlord can raise the rent with appropriate advance notice. Current Washington State landlord/tenant law requires that landlords provide at least 60 days' written notice of rent increases to residents.

The maximum Gross Rent that can be charged may fluctuate up and down as the county median income fluctuates from year to year. For the latest Area Media Gross Income limits by county, see the Commission's website. However, the Gross Rent charged can never drop below an initial gross rent floor as applied to a unit. That initial Gross Rent floor is fixed by an election of the Owner no later than the date when the building was Placed in Service.

Tax Credit Properties with Section 8 or RD Subsidies

In properties with Section 8 and/or Rural Development subsidies, a Resident's rent portion may exceed the Tax Credit maximum rent limit, as long as subsidy is being paid on the Resident's unit. Note that other public funders may not allow the Resident's rent to exceed the applicable tax credit or Section 8 rent limit.

Restricting Up-Front Charges

For information on this topic, please see ***Chapter 3, Washington State Requirements*** in this Manual.

Model Units

Properties may utilize a vacant unit as a model unit for purposes of showing to prospective Residents. However, the model unit must always be available to rent and it cannot be permanently designated as a model unit. A model unit must be rotated on a regular basis if the Owner claims credit for that unit.

Household Composition Issues

In general, no changes to a Qualified Household should be made within the first six months of the Household's lease. This applies to adults only – minors and/or Live-in Aides may be added to the Household at any time.

Changes in Household Composition

After the first six months, the Resident may request adult additions to the lease. Whether or not such household additions are approved by the Owner depends on the provisions of the Owner's lease and applicable landlord/tenant regulations.

New additions to a Qualified Household must be income-certified, but the Owner is not obligated to require that the whole household be re-certified. As long as one member of the original Qualified Household continues to reside in a unit, the unit *remains qualified*, regardless of how many other members are added or removed.

Victims of Domestic Violence

A change to the Household may be requested at any time by a victim of domestic violence. Under Landlord-Tenant law as well as the Federal Violence Against Women Act (VAWA), a domestic violence victim can seek an emergency transfer and/or to get out of a lease early, and has the right to be free from discrimination by a landlord when entering into or renewing a lease.

For more information on this issue, Owners are encouraged to consult with their attorneys and review the Residential Landlord-Tenant Act found at RCW 59.18, as well as understand and carry out their responsibilities under VAWA.

Live-in Aides

Live-in Aides are persons who reside with one or more elderly persons or persons with disabilities and who are:

- Determined to be essential to the care and well-being of the Resident(s)
- Not obligated for the support of the Resident(s) and
- Would not be living in the unit except to provide the necessary supportive services.

Before allowing a Live-in Aide to live in a unit, Owners must first obtain written verification that a household needs a Live-in Aide. However, an Owner cannot require access to confidential medical records in order to verify the need for an Aide. A Live-in Aide (LIA):

- qualifies for occupancy only as long as the Resident needing supportive services remains qualified and requires the Aide's services.
- never qualifies as a remaining family member who can continue to live in the Unit after the Resident moves out.
- does not count as a Household member when determining the income limit, their income is excluded from the Household income certification, and they are not included on the lease.
- is not allowed to be classified as a LIA AND have their family members living in the qualified unit. HUD guidance associated with the **HUD Occupancy Handbook 4350.3** makes clear that the children or other family members of a LIA are not allowed to reside in the unit because they do not meet the definition or requirements to be considered live-in care providers.
    - If a LIA has accompanying family members AND the Resident still wishes to have the LIA in their unit, then the LIA and their family members become full members of the household. They are counted for purposes of calculating income and they retain rights to the unit. If the Resident does not agree to this, then they must find a LIA without family members to reside in their unit.
- Relatives may be considered Live-in Aides only if they would not otherwise be living in the Unit except to provide necessary supportive services to a household member. A spouse can never be considered a Live-in Aide.
- Owners are encouraged to use appropriate lease language to deny occupancy to Live-in Aides after the household member needing assistance is no longer living in the Unit, and to enable the eviction of Live-in Aides for violations of the terms of the lease (including house rules, if any).

Anticipated Children

For the purpose of determining Household size, the Owner should count all children anticipated in the next 12 months to be:

- Born to a pregnant woman
- Adopted

- Coming into the home through foster care
- Whose custody is being obtained by an adult household member
- Present in the Household more than 50% of the year through a joint-custody agreement

The Owner may also count children who are away at school but who reside with the Household during school recesses.