

General Property Information

Bonds vs. Tax Credits

Many properties receive both tax-exempt bond and low-income housing tax credit financing. If your property received both types of financing, it will have two different Regulatory Agreements with different requirements. From a compliance standpoint, Commission staff will review for the most restrictive rules that apply to your property. Generally those will be the tax credit requirements, but not always. Make sure that you have a copy of both Regulatory Agreements and both of the Compliance Procedures Manuals, and that you understand the most restrictive requirements that apply to your property.

Several important distinctions between bond and tax credit properties are described below. Additionally, a concise chart of bond and tax credit differences is located in *Appendix B, Differences Between Tax Credits and Bonds*.

Bonds are Income-Restricted Only

Bond-financed properties are income-restricted only, while tax credit properties are rent *and* income-restricted. However, if you know your property intends to take tax credits, you should restrict the rents accordingly.

Bond Closings and Minimum Income Set-Aside

Acquisition-Rehabilitation

The bond closing date is set by the Commission in coordination with the Owner. Closing documents are signed on this date and the term of the bond Regulatory Agreement begins.

For acquisition/rehabilitation projects, the federal Minimum Low-Income Housing Set-Aside must be met no later than 12 months after the bond closing, per IRS Revenue Procedure 2004-39. Income verifications required to meet the minimum set-aside must be completed *no earlier than* 120 days before closing and no later than twelve months after closing.

Eight months after the closing date, the Owner must submit a report showing how the property is meeting its federal requirements. This report consists of the *Certificate of Continuing Project Compliance* and a spreadsheet of tenant activity (called the Table 1 Report), and the documentation on those households that have been qualified to meet the property's set-aside requirements. Failure to meet the minimum set-aside requirement within

New Construction

twelve months of closing will result in the retroactive taxability of the bonds to their date of issuance.

New construction projects report **quarterly** beginning at ten percent overall occupancy until ninety percent overall occupancy is reached. The first report is due when the property achieves 10% occupancy; the Portfolio Analyst will work with the Owner/Manager to determine the subsequent specific reporting dates for each property. Quarterly reports must show rental information for the **total** number of units in the project, including information about units rented to low-income Households to date, and information about units currently vacant. Immediately previous rental history must be included for those units that are vacant as of the end of the reporting period.

The total number of units rented to income-qualified households plus the qualified vacant units must equal or exceed the Owner's minimum set-aside commitment. **Only those vacant units that were immediately previously rented to income qualified households may be counted toward the minimum set-aside commitment.**

**Federal
Minimum Low-
Income Set-
Aside**

The Owner must select one of the following federal Minimum Low-Income Set-Asides in their Regulatory Agreement.

1. At least 40% of the units in a property are rented to Households earning 60% or less of the Area Median Gross Income (AMGI)

OR

2. At least 20% of the units in a property are rented to households earning 50% or less of the AMGI.

If your Owner chose the 40/60 election in the Bond Regulatory Agreement, you must ensure that at least forty percent of all Households in the property are income-qualified. One difference between bond and tax credit compliance is that the percentage of units that must be income-qualified in Bond properties is based on **all** units in the property, whereas Common Area Units (typically manager units) are excluded from the percentage in tax credit properties.

After the first 12 months after closing on an acquisition/rehabilitation project, or after a new construction project achieves 10% overall occupancy, minimum set-asides must be maintained at all times during the entire term of the Regulatory Agreement.

**Consequences
of Non-
Compliance**

Instances of non-compliance may be caused by submitting compliance reports late or by submitting insufficient or incorrect compliance documentation.

One of the most serious non-compliance events is failing to meet income set-aside requirements by the end of each reporting period. This may occur through counting non-qualified vacant units toward income set-asides; otherwise failing to meet income set-aside requirements by the end of each reporting period; or by failing to rent market rate and qualified units proportionately during initial lease-up (new construction only). Most instances of non-compliance can be corrected. However, consequences of uncorrected and/or frequent instances of non-compliance can include:

- ◆ Bonds losing tax-exempt status retroactively to the date of non-compliance.
- ◆ Bonds subject to early prepayment in full.
- ◆ Project loans declared in default and foreclosure proceedings initiated.
- ◆ Legal action initiated against non-complying properties and/or non-complying Owners barred from further financing with the Commission. Owners will be responsible for all costs of such legal actions.

**Property &
Resident
Manager
Guidelines**

One of your main goals will be to achieve and maintain enough Residents to meet your property’s set-aside requirements for income-qualified Households. Depending on the market, you may need to offer various incentives – including lowering your rents - to attract and retain the necessary income-qualified households.

**Income Set-
Asides and
Your Residents**

The apartment units that have been reserved for income-qualified Residents are commonly referred to as set-aside units or just “set-asides.” There are several categories of income-qualified Residents described below.

Bond and tax credit properties use the same rent and income tables published annually by the Commission for qualifying households. Bond properties use **only** the income sections of those tables. Maximum income levels are based on the county Area Median Gross Income (AMGI) and are listed on our website at <http://www.wshfc.org/limits/map.asp>.

Bond Regulatory Agreements use terms such as Qualified Resident, Project Qualified Resident, Additionally Qualified Resident and Specially Qualified Resident that correspond to AMGI levels. These terms are not used in tax credit Regulatory Agreements but equate to levels indicated as follows:

- **Qualified Resident (Q) = 80% AMGI**
- **Project Qualified Resident (PQ) = 60% AMGI**
- **Additionally Qualified Resident (AQ) = 50% AMGI**
- **Specially Qualified Resident (SQ) = a lower level elected by the Owner in the Regulatory Agreement (not common)**

The combined gross annual income of all Residents in a unit must be below one of the above income limit categories as selected by the Owner and outlined in the Regulatory Agreement to qualify that unit for a particular category. To keep Bond properties in compliance, Owners must ensure that they qualify enough households to meet specific income levels committed to in the Regulatory Agreement and maintain those levels throughout the term of the Regulatory Agreement.

In *Chapter 3, Rental Process & Reporting Procedures*, we describe the “Available Unit” rule. It is very important to understand this rule because it affects how many of your qualified units remain qualified for purposes of compliance.

Discrimination Prohibited

Federal Fair Housing laws state that housing providers may not discriminate in providing housing on the basis of:

- ◆ race
- ◆ sex
- ◆ national group
- ◆ color
- ◆ religion
- ◆ disability
- ◆ retaliation
- ◆ familial status

In some cities and counties the following are also considered discriminatory practices (make sure you know the requirements for your area):

- ◆ marital status
- ◆ creed
- ◆ age
- ◆ sexual orientation
- ◆ political ideology
- ◆ veteran or military status
- ◆ ancestry
- ◆ parental status
- ◆ Public Assistance/Section 8

If you have concerns about rental policies that may be discriminatory, contact your local Fair Housing enforcement agency for assistance. Links to Fair Housing contacts are listed on our web site at

<http://www.wshfc.org/managers/resources.htm>

Fulltime Students

The Internal Revenue Service Code generally does not allow you to count fulltime students as qualified low-income Residents unless specific exceptions are met. Special rules apply when determining if a student can qualify as an Eligible Resident.

Student Status Documentation

A “student” is an individual who is a fulltime student at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on for at least five calendar months during a calendar year (these months do not have to be consecutive). “Fulltime” is determined by the normal rules of the educational organization. It is permissible for one or more fulltime students to be part of an otherwise qualified household or for part-time students to be part of a qualified household, but **if all the Residents of a unit are fulltime students, the unit will not be eligible unless the household meets one of the following exceptions:**

1. At least one individual is receiving assistance under Title IV of the Social Security Act (i.e. TANF);
2. At least one individual is enrolled in a job training program receiving assistance under the Workforce Investment Act or under other similar federal, state, or local laws;
3. A household consisting of a single parent and his/her dependents, where neither the single parent nor their children are dependents of another individual (other than a parent of such children);
4. A household consisting of persons who are married and eligible to file a joint tax return;
5. At least one individual was previously under the care of a foster care program.

Unlike other rules, such as income requirements, where a unit remains qualified even if the household income later rises up to 140% above the applicable income limit, there is *no* such rule for units that become occupied entirely by fulltime students not falling into the exceptions above.

If a Resident has indicated they are, or intend to be, a fulltime student on the *Rental Eligibility Application*, have the Resident complete a *Student Certification* (find this form on our website at <http://www.wshfc.org/managers/forms-RC.htm>)

Use the *Verification of Student Status* to mail to the school if you are uncertain about the Resident's student status.

If a household meets one of the student exceptions described above, provide documentation that demonstrates how they meet the exception.

Following are some examples of student living situations:

Example 1: *Not Eligible*

Four single fulltime students occupying one unit, whose combined incomes fall below the prescribed income limits.

Example 2: *Eligible*

Two fulltime students and one non-student occupying the same unit, whose combined incomes do not exceed the income limits.

**Special-Needs
Housing
Commitments**

Special-Needs Housing Commitments are a percentage of the property's total units for individuals or households identified by the Commission as requiring special targeting due to a lack of affordable housing for a particular group. These include commitments for Large Households, Elderly, and Persons with Disabilities. In the tax-exempt bond application process, an Owner may commit to serve a Special-Needs group by setting aside a percentage of the units for that group.

The percentage of units to be targeted for Special-Needs groups is identified in the Regulatory Agreement.

For all Special-Needs Housing Commitments, an Owner must maintain documentation to demonstrate affirmative marketing referrals and other best efforts used to fill the units with Residents from the elected Special-Needs group(s). Owners must complete the *Affirmative Marketing Report* form annually and submit it with other annual report requirements.

**Persons with
Disabilities
Commitment**

A Disability is defined as a physical or mental impairment that substantially limits one or more of the major life activities of an individual, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, or learning. To meet the commitment for a Special-Needs housing set-aside for Persons with Disabilities, at least one person in the household must meet the definition of Disabled.

Owners must take care not to violate federal rules prohibiting discrimination against persons because of a Disability. If the Owner elected to set aside units for the Disabled you must inform *all* prospective Residents that certain units are set aside for persons with Disabilities. Each Household must complete the *Disability Certification*.

If the answer is yes, the qualifying Disabled Household member must provide written verification from a physician, relative, social worker, or caregiver that states that the individual falls within the definition of Disabled. For your convenience you may use the *Disability Verification* form that is located on our website at <http://www.wshfc.org/managers/forms-RC.htm>.

Staff must neither inquire into the nature or severity of a disability, nor sign the *Disability Verification* form. Disability verification should be kept in a Resident's lease file.

**Large
Household
Commitment**

Non-income-qualified households may also satisfy the commitment for Persons with Disabilities even though they will not count toward the income set-aside requirements.

A Large Household unit means an affordable housing unit that has three or more bedrooms and is occupied by four or more Residents. The Residents of a Large Household unit do not necessarily need to be related; however, the entire household's combined income must fall below the prescribed income limits. Non income-qualified households, therefore, do not count toward this commitment.

**Housing for the
Elderly
Commitment**

Certain properties reserve all of their units for the Elderly. A property which commits to a set-aside for Elderly must comply with the federal Fair Housing Act. That Act prohibits discrimination in residential rental activity, and prohibits adults-only housing unless the housing falls within stated exceptions for housing for older persons. The Fair Housing Act lists the following permissible forms of housing for the elderly:

1. Housing intended for and solely occupied by Residents who are 62 or older;
2. Housing intended and operated for persons 55 or older, where at least 80% of the total housing units are occupied by at least one Resident who is 55 or older; or
3. Housing financed, constructed, and operated under Rural Development's Section 515 program for the elderly or a HUD program (i.e., where each Resident is either 62 or older or is a person with a Disability, regardless of age, as such terms are defined in Rural Development's/HUD's program rules).

The Commission does not administer or enforce the Fair Housing Act. However, Owners of properties which committed to a Special Needs Commitment must demonstrate they are operating in conformance with the Fair Housing Act. For the Elderly Commitment, properties must also verify age of Residents using drivers licenses or identification cards.

**Double
Counting**

Generally, if a property has more than one Special-Needs Housing Commitment, the same units *cannot* be used for more than one Special-Needs group, regardless of whether a Resident is eligible for more than one.

**Marketing and
Good Faith
Efforts**

Example: Ginkgo Apartments consists of 20 units. The property has two Special-Needs Commitments, one for Large Households and one for persons with Disabilities. At least 20% of the units, four units, must be reserved for persons with Disabilities, and a different four units reserved for Large Household units. If a Resident has a Disability and is moving into a three-bedroom unit that will have four persons in the household, that unit can be counted either toward the Large Household Commitment or the persons with Disabilities Commitment, but not both.

An exception to the general rule is that a property with a Special-Needs Commitment for Elderly persons, which covers all units in the property, can also have a Commitment for persons with Disabilities.

Example: Gecko Apartments consists of 40 units. The property has two Special-Needs set-asides, one for Elderly persons and one for Persons with Disabilities. All 40 units are within the set-aside for the Elderly, and at least eight units (20%) must be set-aside for Persons with Disabilities.

Residents with Disabilities *do not* need to be income-qualified to count toward the Persons with Disabilities commitment.

When a vacancy occurs in the property, the manager must determine whether that unit must be held vacant for a household that meets the definition of a Special-Needs group. If the property does not have enough units to satisfy the Owner's Special-Needs Housing Commitments, the vacant unit(s) must be held vacant until a qualified household rents the unit.

Exceptions are made for the Large Household and Persons with Disabilities commitments. If an Owner is unable to fill the unit with a Disabled or Large Household-qualified Resident, after good faith marketing efforts, an Owner may rent the unit to a qualified low-income household that does not fall within either of these Special Needs groups.

“Good faith efforts” is defined as actively marketing any vacant housing units which are necessary to meet the Commitment to the proper Special-Needs group for at least 30 days. During this time, the unit must remain vacant until the Owner can rent it to a Household who meets the eligibility criteria for the Special-Needs selected. If an Owner is unable to secure a Household who meets the eligibility criteria after 30 days of active marketing, s/he may rent a unit to an otherwise qualified Household.

Minimum Rental Agreement and Physical Requirements of Set-Aside Units

The minimum 30-day recruitment period begins once a vacant unit in the Special-Needs group is ready for occupancy. Recruitment efforts, such as the use of the property's Referral and Marketing Agreements, must be documented.

If a Special-Needs unit is rented to a Household who does *not* meet the eligibility criteria after completing the minimum 30-day recruitment period, when the next unit of comparable size and type that becomes vacant, the Owner must again follow the same recruitment procedures, until the Special-Needs Commitment level is achieved and maintained.

The Commitment for Elderly persons applies to the entire property, consistent with the Fair Housing Act.

For Special-Needs Housing Commitments, you must advertise in the property's area either of the availability of units at least once for each vacancy; or, the general availability of units must be advertised once a month throughout the year. Additionally, you must notify each local nonprofit organization with which you have a Referral and Marketing Agreement of each vacancy. Advertisements may be made in newspapers or other paper circulations, television, radio, and the Internet.

The minimum rental agreement (for *all* Residents) must be for at least 30 days. If the Owner is obtaining tax credits, the initial lease must be for at least **six months**.

Units set aside, or reserved for, income-qualified Residents must be comparable in size, location and quality to those rented to other Residents and,

- ◆ must have substantially the same equipment and amenities (excluding luxury amenities such as a fireplace) as other units in the property;
- ◆ must be substantially the same size as other units in the property; and
- ◆ cannot be geographically segregated from other units in the property.

Specific units do not need to be used continually for qualified Residents. However, the total number of units set aside for income-qualified Residents must meet or exceed the level recorded in your property's Regulatory Agreement and committed to by the Owner.

Inspections

A representative of the Commission will visit each bond property every three years (or as needed) to inspect approximately ten percent of all units in the property. The inspections are conducted according to HUD-established UPCS standards; mostly low-income units will be inspected, however a few market rate and vacant units may be inspected each time as well.

**Qualified
Vacant Units**

Vacant units may be counted toward the project's income set-aside requirements if the required percentage of set-asides has not been met. In other words, if your property has a requirement for 20 low-income set-aside units and you have only 19 rented to qualified Residents, then you may count an additional vacant unit toward the set-aside in order to meet the income requirement. However, this is allowable **only if the vacant units were immediately previously rented to income qualified households.**

Allowable Fees

Customary charges such as a damage deposit, cleaning deposit, pet deposit and/or a credit check fee are permissible. However, you may not charge a fee for any extra costs or work involved in completing the additional forms required by the Commission.

Properties financed with bonds **and** tax credits are subject to other upfront charge and fee restrictions. For additional guidance, see **Chapter 3** of the *Compliance Procedures Manual for Low-Income Housing Tax Credit Projects*.

Rents

Rents do not have to be adjusted according to a qualified Resident's income, but logically, income-qualified Residents can afford to pay only a reasonable portion of their income towards rent. In some instances, an Owner may choose to adjust rents for income-qualified Residents rather than leave units vacant.

It is permissible to charge income-qualified Residents first and last months' rent if the same is charged to other Residents; however, these charges may be prohibitive to lower-income individuals. Instead, Owners could assist income-qualified Residents in obtaining units within their properties by accepting alternative evidence of capacity and willingness to pay rent; for example, verification that the Resident has satisfactorily paid at least an equal amount of rent for a twelve-month period.