

TAX CREDIT FREQUENTLY ASKED QUESTIONS

The information below provides brief guidance to many frequently asked questions (FAQ's). The Commission's Compliance & Preservation Division staff frequently discusses IRS rules and interpretations with other state agencies and industry professionals. These FAQs are based on staff interpretations or understanding of IRS rules. However, other state agencies and/or IRS staff may sometimes disagree with this guidance. Ultimately, Owners are responsible for making sure their properties are in compliance with all applicable rules and regulations. Owners and managers should consult their Tax Credit legal counsel for further clarification or specific application to their properties.

*Note: Changes related to the Housing and Economic Recovery Act of 2008 (HERA) reference the specific section of HERA in parentheses.

CERTIFICATIONS & LEASING

Annual Recertification of Income (*Sec. 3010 of HERA)

Q: How does the change proposed in HERA affect our previous requirement to submit third-party income recertifications for all households?

A: This section allows states to waive annual recertifications on low-income properties in any year where all initial certifications were properly income-qualified. HERA indicates that if **any** new household is determined to be over-income at move-in, the Owner must re-implement recertifications on all low-income households, until such time as the Owner can prove that all low-income households are income-qualified.

State agencies, national compliance experts and professional management companies agree that the majority of compliance errors and instances of fraud that bring into question the validity of the initial certification are discovered at the first annual recertification. To ensure proper compliance with federal and WSHFC requirements, we require that each new household must be third-party recertified once, twelve months after completion of the initial move-in certification. This policy is limited to 100% low-income properties.

Washington State allows Owners of 100% low-income properties to complete **initial** certifications on each new household and **one third-party annual recertification**, after which annual **self-recertifications** are allowed. Discontinuing annual **third-party** recertifications for households that have been initially certified and recertified once, occurs under the following circumstances:

1. Twelve months after completion of the first **third-party recertification** and annually thereafter, each household must complete the WSHFC **Self Recertification of Annual Income** form. This form is also accepted by several other Washington State public funders for purposes of their recertification requirements. However, this form does not satisfy the recertification requirements of HUD or Rural Development.
2. By January 31st of each year, the Owner will certify to WSHFC that all previous calendar year initial move-in certifications and recertifications were completed properly and all households were income-qualified at move-in.
3. The Owner must also certify that no adult members were added to any household in the first six-months of occupancy. For any household changes involving adult members in the first six months, the Owner will certify that the entire household was re-income-qualified as a new move-in.
4. The Owner certifies that they (and/or the Owner's representatives) have immediately notified the Commission upon discovering any over-income household — due to resident fraud, management error, or any other reason. WSHFC will evaluate each case to determine whether 100% recertifications will be necessary for a minimum

period on the building affected, after any Owner discovery to determine compliance with HERA and compliance with the Next Available Unit Rule.

5. If any household is discovered to be over-income at move-in during a WSHFC or public funding partner audit, WSHFC staff will determine the appropriate remedy, including requiring 100% recertifications to be implemented for a minimum period on all buildings in the project, to ensure compliance with HERA and IRS Code.

Q: Is back-up documentation required for self recertifications?

A: WSHFC does not require back-up documentation for self recertifications. However, other funders may require documentation to substantiate estimated income. Please check with your other funders.

Q: What does 100% "low-income" mean? If my property is only partly restricted by WSHFC but all other units are restricted by another public funder, does that count?

A: Yes, if the Owner can document that all units are rent and income restricted at or below 60% AMGI, our policy applies.

Q: What if my property has market units, but I choose to also limit those units below 60% AMGI?

A: If the Owner is willing to amend the regulatory agreement, restricting all units below 60% AMGI, this policy will apply. However, amending the regulatory agreement would not result in additional tax credits. The Owner must pay for the recording of the amendment.

Q: What if my property already received the IRS Recertification Waiver?

A: If your property already received the IRS Recertification Waiver or is beyond year 15 and has received approval for Post Year 15 Procedures, no third-party recertifications of income are required — only the *Self-Recertification* process is required.

Changes in Household Composition

Q: A husband and wife qualified at the time of move in. They get divorced and the wife moves out. The husband has a new roommate and their combined income now exceeds the household income limit but is still under the 140% level. Does this household still qualify?

A: Yes, because the household was initially qualified and the change in household composition does not constitute a new household since the husband is still residing in the unit.

Q: A household qualified at the time of move in. Four months after moving in, the household wants to add their 22 year old son. Does this household still qualify?

A: It depends. First, we recommend that all leases include a clause that no household changes can occur during the first six months, so that questions regarding the household's income-qualified status can be avoided (this applies to adults, not to the birth or adoption of a child). That being said, if you wish to allow the household addition, we recommend that you re-qualify the entire household at the time of the addition.

Q: Can you explain the "totem pole" rule? It is my understanding that there must always be at least one member of the original household that remains in a unit for the unit to remain qualified. Is this correct?

A: This has always been Washington State's interpretation. The 2007 IRS 8823 Guide confirmed the IRS agrees. However, you can avoid some problems with this issue by re-qualifying the household when a new person moves into the unit. Many properties have

language in their leases stating that the household must be income-qualified when additions are made, and the additional person(s) must sign the lease. If, when qualifying the new household, you find that together they exceed the income limits for that unit, you can still allow the additional resident to move in. However, if all the original household members ever move out, the new members are no longer qualified (see scenario below).

Scenario: "A" moves in and is the initial (qualified) occupant. Eight months later, "B" moves in with "A". Manager re-qualifies "A" and "B" together as a new household and they are income-qualified.

Q: Do "A" and "B" then become the new household, thus qualifying "B," even if "A" moves out years later, under the "once qualified, always qualified" rule?

A: Yes, if the *verified* combined income of "A" & "B" together (new household) is under the income limit at the point where "B" is added to the lease. If, however, the new household income is *over* the limit when "B" is added to the lease, the "totem pole" rule applies and the household remains qualified until "A" moves out – even if it is several years later. At that point, "B" must be income-qualified as a new household.

Q: If "A" had a minor child who has since turned 18, would he or she be considered a member of the original household (under this rule), even though they were not a resident or co-resident upon move-in?

A: If "A" has a child who has since turned 18 they would be considered part of the original household but once again you might want to include something in your rental criteria that covers this situation.

140% Rule – Next Available Unit

Q: What is the 140% or "Next Available Unit" rule?"

A: If a household income exceeds 140% of the federal income limit (50 or 60% of Area Median Income) – either at recertification or upon addition or deletion of new household members, the Next Available Unit rule (NAU) must be applied. This means that the over income unit can continue to count as qualified, but only so long as the next unit rented, of comparable size or smaller, anywhere in the building, is income-qualified – whether the unit is designated as "low-income" or "market." For 100% affordable properties, this rule is usually not an issue, because all units are always rented to income qualified households.

The penalty for violating the NAU rule can be substantial. If the NAU is not rented to a qualified household as described above, all over income units in the building, (based on the last certification) are subject to loss of tax credits.

17 Year Old Resident

Q: An Owner may start a certification 120 days before the effective date (whether for initial qualification or recertification). One household resident is under 18 at the time the certification paperwork is completed, but will turn 18 during the 12 months after the certification effective date. Do I need to have the 17-year-old complete paperwork?

A: Yes. Since we are required to determine anticipated income, any household member who will be an adult (18 year old or emancipated minor) within 12-months of the certification effective date needs to have complete paperwork. Accordingly, you will need to complete the paperwork for a 17 year old that will be 18 on the **Resident Eligibility Application** (REA). Have them complete an REA questionnaire (pages 2, 3, 4) and obtain income verifications to support what the resident puts on the questionnaire. Only count the anticipated income of the 17-year-old for the months after he/she will turn 18.

Certification Effective Date

Q: What is the effective date of the initial certification and when is the first recertification due?

A: The effective date of the initial certification is the same date as the commencement date of the lease. This is the date when a resident can move in to the unit. The income verifications must be dated within 120 days of the commencement of the lease. Recertifications can be done up to 120 days ahead of the certification date and must be effective on the anniversary date of the initial certification date. For example, if a household moves into a unit on April 23, 2008, their initial certification date is 4/23/08 and their recertification date is 4/23/09.

Verifications are only valid for 120 days. If beyond 120 days, the income/assets must be re-verified with the third-party source. When updating this information by telephone, be sure to clearly annotate the file indicating the date of your call and the name and title of the individual who verified the information.

Change in Set-Aside Percentage

Q: A property has elected two low-income set-aside levels (e.g., 80% of the units at 60% AMI and 20% of the units at 40% AMI). A resident moves in and is qualified under the 60% set-aside. However, during the year, the resident's income declines and at the time of re-certification his income now falls below 40% of median. Can the Owner re-classify the resident to the 40% set-aside?

A: Yes, as long as the appropriate rent (40%) is also charged. Keep in mind that the Owner is under no obligation to do an interim review to re-determine the resident's income, nor is the Owner obligated to re-classify the resident to a lower income set-aside at the time of recertification. The Owner may assign a lower income set-aside to a resident even if the property has met its minimum set-asides.

Q: Can a property reassign a qualified household to a **higher** income set-aside at recertification?

A: Yes, provided that the property's minimum set-aside has been met AND the lease allows for such a change, AND proper written notice is given to the household of the increase.

Social Security Numbers

Q: Is there any way to income-qualify household members who do not have any verifiable Social Security numbers or alternate numbers?

A: Yes. Verifying income of household members without SSN's is difficult, but not impossible. An alternate method of verifying income is to provide picture identification to employers, allowing the employer to verify the individual who works for them and how much the individual earns. The Owner ultimately is responsible for proper documentation of income and must be able to demonstrate that all income has been verified. **NOTE:** Some management companies, funders, investors or syndicators may be more restrictive than the IRS in this matter. You must follow the *more restrictive* rules, if any, that apply to your property.

Q: What if I have a household where some or all household members do not have Social Security numbers or other approved citizenship documentation?

A: This household could still be eligible. The Tax Credit and Bond programs do not require proof of citizenship or legal status. As long as the certification process confirms that a household is income-qualified, the household may reside in the property. The property may need to use alternative methods to confirm income sources for affected household members. Individuals with no social security number, no appropriate substitute number (see **Rental Eligibility Application** instructions), or, for privacy

reasons do not wish to disclose their SSN, should fill out box #2 of the **Identification Certification** form.

Q: Can I ask applicants to provide proof of citizenship or immigration status?

A: Yes, but requests must be uniform (all applicants are asked the same questions) and nondiscriminatory.

Q: Is a Social Security Number the only acceptable documentation of identity?

A: No, several types of documentation are acceptable such as Work Visas, picture identification and Alien Registrations. Additional acceptable documents are listed on the last page of the **Rental Eligibility Application**.

Leases — Term

Q: We are using a lease that has a month-to-month term, but requires the residents to stay a minimum of 12 months or else pay a penalty to get out of their leases earlier. Is this okay?

A: No. All initial leases must state clearly that their term is for a minimum of six full months or longer. After the initial six month term, leases may convert to month-to-month, but residents cannot be charged additional penalty fees for moving out during a month-to-month tenancy. Residents who vacate a unit without written permission during a lease are obligated under state Landlord/Tenant law to pay the rent for the remaining term of the lease or until the unit is re-rented, but they may **not** be charged additional fees.

Q: Are SRO Units (Single Room Occupancy) required to have a six month lease?

A: No, SROs are allowed to have month-to-month agreements.

Q: We have Transitional Housing for Homeless units. Do they require six-month leases?

A: No, technically units that meet this federal designation may have month-to-month leases. This is different from the Commission's "Homeless" category where initial six-month leases are always required. However, we recommend that Owners strive to have all residents sign initial six-month leases.

Section 8 and RD Subsidies

Q: Can the resident's portion of a rent payment, for both Section 8 and RD subsidies, exceed the tax credit limit?

A: If the units are project-based, residents may pay over the tax credit Maximum Allowable Rent limit as long as they are receiving at least \$1 of subsidy. If the units are tenant-based, i.e. voucher, their portion of rent cannot exceed the federal limit (50% or 60% AMI).

In the case of Rural Development assistance, the Owner must refund payments over the federal limit back to RD.

Leases — Co-signers

Q: Is it okay to have co-signers on tax credit leases? Do we count their income for purposes of qualifying the household?

A: Co-signers are acceptable as long as they don't sign the lease; they are used solely for financial back-up. Co-signers are not part of the household and have no rights to the unit; their income is not counted toward the household's gross annual income.

Leases — Signing with an “X”

Q: Is something special required when an applicant or resident signs his or her name with an “X” or is physically unable to sign?

A: We recommend that managers add a simple attestation (by the person witnessing the signature) or a notary acknowledgement below the resident signature block. The attestation should state something like “On (insert date) I witnessed (insert full name) make an “X”. Or, “On (insert date), (insert name) reviewed this REA with me and acknowledged it to be accurate and complete. He/she is physically unable to sign the form and asked that I sign on his/her behalf.”

Acquisition/Rehab Properties Financed with Tax Credits and Bonds

Scenario: *A bond property certifies residents at bond closing to meet bond income set-aside requirements (20@50 or 40@60). During the rehabilitation, new residents move in who are also income-qualified. At completion of the rehabilitation, units are Placed-in-Service (PIS).*

The Owner determines when to take credits. S/he may try to take acquisition credits from the bond closing date or s/he may not take any until PIS. The Owner may take Acquisition and Rehabilitation credits at PIS or wait until the year after PIS to take credits. In the meantime, the Owner continues to income-qualify households and re-certify annually during the rehab.

Q: Do households that initially income-qualify at bond closing or during rehab remain qualified as long as they are re-certified annually?

A: Yes, households qualified at acquisition continue to qualify as long as they are re-certified annually.

Q: If the above is true, does it matter when the Owner takes credits? At closing (for acquisition), at PIS or the year after PIS?

A: The bond closing isn't important. The first year for both the acquisition and rehab credits is the year the rehab is placed in service or, if the Owner elects, the following year.

Q: If the Owner takes acquisition credits from bond closing, do the units need to be rent-restricted in addition to being income-restricted and non-transient?

A: Yes, if the Owner takes credits from the date of bond closing, the units must be rent-restricted from that date.

Q: If the Owner doesn't take acquisition credits until PIS, or the year after, then can the units be income-restricted for qualification only and not rent-restricted until credits are taken?

A: There is no guidance about whether units should be rent-restricted prior to the beginning of the compliance period. However, as a matter of policy, if households are qualified at acquisition, it makes sense to limit the rents at that time as well.

Q: Does the Owner initially have to sign six month leases with qualified households?

A: Since the Owner is eventually taking tax credits, six month leases must be signed with all qualified households at initial move-in. Only bond-financed properties *with no tax credits* may initially sign month-to-month leases with their qualified households. Existing households who remain after bond closing do not need to sign new leases. However, they must be tax credit-qualified and sign the Commission's Tax Credit Lease Rider.

SPECIAL-NEEDS HOUSING COMMITMENTS

Elderly Commitment and Households with Children

Q: We have a property that has an Elderly Commitment for 55 and older residents. Must we allow children in our property?

A: It depends. Fair Housing laws allow Elderly properties to exclude children as long as all rental eligibility and marketing information clearly identifies the property as an "adult" elderly facility. Also, if you allow a child in one unit, you must allow children in all other units. For more information, please contact the Fair Housing agencies listed on the Compliance website at: http://www.wshfc.org/managers/f_h_resources.htm.

Q: Do all household members in an Elderly property have to be 55 or older?

A: No. However, you must actively market and rent each unit to elderly households, and each unit must have at least one individual who is 55 or older.

Q: What happens if a 55 year old and a 30 year old live together at a 55+ property and the older person leave or dies?

A: The 30 year old may remain in the unit. HUD allows up to 20% of the units to be under 55 for purposes of attrition (the 80% Elderly rule). If, at any time, the percentage of units with elderly residents falls below 80%, the property is no longer considered Elderly, and must be open to all age groups.

Q: Does the 80% Elderly rule apply to 62 or older properties?

A: No, **all** residents in a 62+ property must be age 62 or older.

Q: What about Elderly properties with HUD or Rural Development financing?

A: If a property was specifically financed as a HUD or RD Elderly property, the occupancy rules of those programs apply. For instance, many of these agreements allow Elderly properties to house elderly *or* disabled persons.

Initial Occupancy

Q: If I elected the Large Household, Disabled or Farmworker Special-Needs Commitment and my property cannot fill the units with the required population at initial occupancy, can management rent the units to the general population?

A: No, for new construction, the **initial occupant(s)** of a unit **must** meet the specified Special-Needs Commitment or the unit must be held vacant until it can be rented to a Special-Needs household. For acquisition/rehab properties, Special Needs Commitments may be met through attrition.

Double Counting

Q: A property has elected the Large Households and Disabled Special-Needs Commitments. If a household of four, one of whom is disabled, moves in, can this household be used to meet the Special-Needs Commitment in **both** categories?

A: In this case, the answer is no. The same household cannot be used for more than one of these Special-Needs Commitments, regardless of whether the household is eligible for both. These Commitments are based on a minimum of 10% or 20% of the Total Housing Units for each category.

The exception would be if the property has two Commitments, one for 100% Elderly or one for 75% or greater Farmworker or Homeless/Transitional housing. Under these scenarios, a household could qualify for more than one set-aside. Contact your

Compliance Officer if you are unsure whether or not a household can qualify under two Special-Needs Commitments.

Once Qualified, Always Qualified

Q: A property elected the Large Household (defined as a unit with three or more bedrooms occupied by a household of four or more) Commitment. A household is initially qualified and during the re-certification process it is found that one of the household members has moved out, would this unit still be in compliance with the three household members left?

A: Yes, as long as the next available, three-bedroom unit is rented to a qualified large household. For all Special-Needs Commitments, once the household qualifies at move in, the household remains qualified (as long as at least one member of the initially qualified household remains in the unit).

Q: Do I have to re-confirm that my Disabled residents are still disabled at recertification?

A: No.

Disability Verification

Q: Can Social Security and Supplemental Security Income benefits statements be used as third-party verification of disability?

A: Yes, Social Security disability payments are adequate verification of an individual's disability status. Receipt of veteran's disability payments may also qualify a person as disabled, depending on the amount of information included on the third-party document. The resident must also acknowledge that they have a disability by checking "yes" on the Disability Addendum form.

30-Day Marketing

Q: Our property made the Large Households Commitment. We met the requirement at initial rent up but now we are having a hard time filling these units. We hate leaving them vacant. Is there any thing we can do?

A: Yes, since you met your requirement at initial occupancy, if you market your unit in a rent-ready condition for a period of 30 days and you cannot find a qualified household, you may rent the unit to a household that is not considered a large household but *is* income-qualified. You must document your marketing efforts to the desired population. The next 3-bedroom unit that becomes available must go through the same process. The 30-day recruitment procedure applies to all Special Needs Commitments **except** Elderly, Homeless or Transitional. Elderly, Homeless or Transitional units must always be rented to qualified applicants from those populations.

Marketing Vacant Units

Q: Do I need to advertise our vacant units in newspapers or can I advertise them through other media?

A: There are many ways to advertise units that will meet your marketing requirement, at least annually, the Owner must notify (1) the relevant public housing authority, (2) at least two agencies in the area of the Project, and (3) the general public. To satisfy requirement number three, Owners may use the Internet and/or other media. You should be able to demonstrate that the media method chosen is an effective method of marketing to your property's targeted population in the general area of your property and is in compliance with the Fair Housing Act and state and local law.

Definitions

Q: What is the definition of a **Farmworker**?

A: A Farmworker is someone who earns at least \$3,000 per year from farm work. There are many definitions of farm work, which we have compiled on our web site at: <http://www.wshfc.org/managers/forms06/21AFWReferen.pdf>.

Q: What is the difference between the two **Housing for the Homeless** Commitments?

A: One type, **Transitional housing**, requires that any building having a transitional unit must have 100% transitional units. The other type, permanent housing for the homeless, allows the set-aside units to float throughout the property (i.e., a building may contain less than 100% homeless units). There are a number of other requirements associated with each option, but these are the main differences; please review the Special-Needs Commitments information in your Compliance manual, as well as required forms and instructions, for additional information.

INCOME AND ASSETS

INCOME:

Annual Income Limits and the HUD Hold Harmless Policy (Sec. 3009 of HERA)

Q: How does this change affect future changes to Annual Income Limits?

A: This section of HERA modifies the determination of the Area Median Gross Incomes (AMGI) limits for purposes of tax-exempt bonds and tax credits. HERA continues HUD's existing "hold harmless" practice that ensures AMGI will not decline for a project, even if the area median income declines. It also appears to provide for a minimum increase in median incomes in 2009 and beyond and resets the clock for some projects, using 2008 as base year. We believe HUD will publish new income limits in 2009 that reflect this change. It is possible (though we are not certain) that projects in the same county may have different median income levels, depending on the Placed-In-Service date. No action is necessary by Owners at this time.

Rent and Income Limits

Q: Where can I go to find the income limits for a 9- and 10- person household?

A: Statewide income limits can be found at <http://www.wshfc.org/limits/map.asp>. The base for a household of four is 100% of median income levels. This base number is then adjusted up 8% for each additional household member. So the figure for 8 is 132% of median, 9 is 140% of median and 10 is 148% of median, etc. For example, in King County in 2004, the maximum household income for household of four @ the 60% set-aside is \$46,740. Multiply that by 140% and you will see that the maximum income level for household of nine is \$65,436.

Area Median Gross Income – Rural Areas (Sec. 3004 of HERA)

Q: If my property is in a "Rural Area," does the income limit change to a higher or lower number, based on the national median income level?

A: No, this allowance will not change income levels in Washington State anytime soon. In Rural Areas (as defined in Section 520 of the Housing Act of 1949), where median income is less than national median income (\$49,300 in 2008 for a household of four), HERA allows the use of the greater amount to determine the median income for a property and corresponding rent and income limits. In 2008, eight counties in Washington State had a median income level lower than \$49,300. However, those counties benefited from the

statewide non-metro median income level of \$52,500. Per HUD guidance, median income levels in those counties falling below the statewide non-metro "number", are calculated using the higher statewide number (a total of twelve counties benefited from this higher number in Washington State). Since the purpose of this legislation was to address the problem of abnormally low county and statewide numbers, we do not believe any adjustment downward to the nationwide number is necessary in the eight counties that fall below the national number. In 2009, if the national median number is higher than our Washington State non-metro average, we will use the higher median income level.

HOME Rule Change (Sec. 3002 of HERA)

Q: Did HERA eliminate the annual HOME compliance test to ensure that at least 40% of the units in a project are at or below 50% of AMGI?

A: Yes, HERA eliminated the 40/50 test for projects Placed-in-Service **after July 30, 2008**. Projects financed after this date with HOME funds no longer need to meet this test to prevent a reduction in Eligible Basis. This change does not appear to affect compliance requirements for properties previously financed with HOME funds.

Tips

Q: Are tips included in income? If so, how should tips be verified (e.g., a resident is a waitress, hairdresser, barista or casino worker)?

A: Yes, tips are income and must be included when determining annual gross income. If tips are not included on the **Employment Verification** form, and the employer cannot verify a tip amount, the Owner must add in 20% of the resident's verified gross annual income for those residents working in the service industry. For casino workers that do not list tips on the **Employment Verification** form, the Owner must add 40% of the resident verified annual gross income. The 20% or 40% amounts are to be used only after attempts to clarify the actual tips with the employer are unsuccessful. If an employer verifies a higher or lower tip amount than the amount verified should be used.

Zero Income

Q: How do I verify the circumstances of an adult household member with no income from any source?

A: The individual must complete the **Certification of Zero Income** form and provide written explanation of how they will pay their rent and living expenses.

Q: A prospective resident does not currently have a job and has no other income. However, he or she is looking for and expect to find a job soon. How do I calculate their income?

A: Generally, the Owner must use current circumstances to determine anticipated income. Thus, the property Owner would calculate the resident's projected annual income by annualizing the resident's current income. If the current income is zero, then the annualized income is zero. However, if written third-party verification confirms that changes are expected to occur during the upcoming year, then the property Owner should use that verification to determine the total anticipated income. Thus, if the prospective resident is now earning zero, but is under contract to start a job mid-year, and anticipates receiving \$12,000 in income from that job during the year, then \$12,000 should be included as income. If the prospective resident is receiving unemployment, calculate it for 52 weeks or until the planned start date of another job. However, we will accept alternative calculations if your investor/syndicator has stricter requirements.

Student Income

Q: Do I count all of the income from a fulltime student over 18 when calculating the households' annual income?

A: If the student is employed but **is not** the head, co-head or spouse, and is a dependent of the Household, you count only the first \$480 of their wages for the entire 12-month period. Also, count **all unearned income** (Social Security benefits, TANF, unemployment, etc.) for any students.

For students who **are** the head, co-head or spouse, count all earned and unearned income.

Q: Are Educational Scholarships and Grants considered income for the Tax Credit Program?

A: No. Per 4350.3 Rev-1, 5-6, E., "All forms of student financial assistance (grants, scholarships, educational entitlements, work study programs, and financial packages) are excluded from annual income." However, students receiving Section 8 assistance must count financial assistance, in excess of tuition, as income, **unless they are living with their parents or are over the age of 23 with dependents**. Loans are not counted as income.

Child Support

Q: How do you handle single parents who have dependents living in a unit with them, but receive less than a court ordered child support amount, OR, are recently separated and have no court order for support?

A: Use our *Child Support Affidavit* form to document 1) the amount of support owed; 2) the amount actually received and projected to be received in the next 12-months; and 3) that reasonable attempts have been made to collect support. The form must also be notarized.

Owners may have more stringent requirements regarding child support. However, we encourage Owners not to deny housing simply because the parent has failed to complete or not had time to complete all possible collection efforts.

Basic Allowance for Housing ("BAH") for Military (Sec. 3005 of HERA)

Q: Is Basic Allowance for Housing (BAH) for military now excluded from income for purposes of income qualifying a household?

A: Yes. However, this exclusion applies **only** to the following seven counties in Washington State: Kitsap, Mason, Jefferson, Pierce, King, Island and Snohomish. BAH may be excluded from income for residents living in properties located within the above seven counties. The exclusion of BAH from income is effective through January 1, 2012. This exclusion only applies to counties with a military installation with greater than 1,000 personnel, where the percentage of military has increased by 20% or more between December 31, 2005 to June 30, 2008, or in any adjacent county. We have received confirmation that the Bremerton Naval Station meets the requirement outlined in HERA. As a result, Kitsap County and all neighboring counties listed above are qualified for the exemption as described above. **BAH must continue to be counted as income in all other counties in Washington State.**

Rental Assistance

Q: Should Owners include rental/housing assistance when determining household income?

A: In general, yes. However, although there is no conclusive guidance from HUD or the IRS, the Commission would not consider rental assistance from a city, county or state government source, or from the HUD Section 8 program, as income to the resident. For example, funds allocated to Owners and managers from 2060 or 2163 funds that are used to supplement household rent, should not be counted as income to that household. The Owner should verify that the government source also does not consider the supplement as income to the individual and would not be issuing 1099s to those individuals.

Rental assistance from a non-government source, such as a church, charitable foundation, or individual, must be counted as income.

EIV System

Q: Can I use the EIV system to verify income?

A: Unfortunately, HUD does not currently permit Owners to use EIV information for verifications in the Tax Credit program or Rural Development program. To use EIV or any other income documentation, Owners must be able to provide back-up data for audit purposes.

HUD & RD Income Verification

Q: HUD certifies income using the HUD 50058 or 50059 forms. RD certifies income on the RD 3560 form. Do we still need to complete Commission forms if resident income is certified by HUD, RD or a PHA on behalf of HUD?

A: The only additional forms you need to complete are those associated with Commission Special Needs set-asides or Commitments for Homeless, Farmworker, or Disabled units, the ***Student Certification (HUD or RD)*** form, and the ***Tax Credit Lease Rider***. Proof of age would also be required on elderly properties.

Treatment of VA Disability Income (Sec. 2608 of HERA)

Q: Do we still need to count disability income from the Veterans Administration in calculations of household income?

A: Yes. However, deferred income payments from the VA, whether received monthly or in lump sums, are excluded from income. We believe this will result in a change to the HUD Manual, 4350.3 Rev-1, page 5-81, #13, under income exclusions, by adding this exclusion to the similar exclusion of deferred payments from Social Security. This does not apply to pension or regular, non-deferred disability payments. Lump sums are counted as assets, pg 5-32 4350.3.

ASSETS:

Asset with Multiple Owners

Q: A recent applicant had a Certificate of Deposit (worth \$100,000) she divided into quarters, distributing three portions to three other people (not members of the household), and keeping one portion for herself. She did this one month prior to moving into our property. How should we value this asset?

A: Include the entire amount of the CD when determining the applicant's income, but separate it into two different asset categories. The amount the applicant currently owns (\$25,000) should be counted as a regular asset and the earnings calculated accordingly. The \$75,000 that was given away should be counted as ***an asset that was disposed of for less than fair market value***. It should be counted for two years from the date of disposal, so count the \$75,000 at initial qualification and at the first annual recertification.

Valuing Real Estate

Q: Do I need to get a market analysis to verify the value of real estate owned by an applicant?

A: Real estate is one of those things that can be verified in a multitude of ways. The goal is to obtain approximate market value and to document your reasonable attempts to get this information. Copies of real estate tax statements (including those obtained from online county property value tools); a realtor's record of recent comparable sales in the real estate's vicinity, and letters from realtors can all be used to establish the value of real estate. One good indicator of value is a copy of the listing agreement if the property is currently for sale. The best indicator of actual value would be a copy of the HUD-1 Statement issued at closing, showing net proceeds to the seller.

In the event that there is a significant difference between the appraised and the market value of a property, and the applicant is close to the income limit, you might want to think about a market comparison, but it is not necessarily required. If all else fails, document the file with attempts to get information, and use a self-certification as the last option.

Q: Does market value equal the asset's cash value?

A: No. You must deduct the total amount of mortgages plus the cost of selling the real estate to determine the cash value of an asset.

Q: What if the resident sold the real estate on a contract and receives payments on a mortgage or Deed of Trust?

A: The mortgage or Deed of Trust current value (amount owed to Resident holding the DOT) is considered an asset. If the resident receives monthly principle and interest payments, the interest portion of those payments must also be counted as income.

Q: What do I need to get to prove that a house is in foreclosure? Is a notice on a credit report enough?

A: No. Foreclosures are handled by a trustee. The type of proof that you need depends upon the type of foreclosure.

TYPE	Proof Required
1. Regular Foreclosure	Notice of Sheriff Sale
2. Deed in Lieu of Foreclosure	Copy of the Deed
3. Judicial Foreclosure	Notice of Sheriff's Sale
4. Short Sale (before foreclosure for less than what is owed)	HUD1 Settlement Statement (Agreement from lender)

Q: Do I subtract the amount the household lost in the foreclosure from the Adjusted Gross Income?

A: No, you would not subtract the amount lost in a foreclosure when figuring income. Provided the foreclosure can be documented, no adjustment to income should be made for the house--positive or negative.

Timeshare Properties

Q: A prospective resident has a vacation timeshare that she occasionally rents to the public. Do I include the rent that the resident will receive when determining the resident's income? Is there anything else I need to know about vacation rentals or other like assets?

A: A vacation timeshare is considered an asset. Therefore, income includes any amount to which household members have access. If the **total** cash value of all the household's assets is more than **\$5,000**, then income includes the greater of a) the actual amount of money derived from the asset or b) 2% of the market value of all the household's assets (called the HUD imputed income amount). For example, "Sally" has an interest in a timeshare and the market value of her interest is \$25,000. Two percent of \$25,000, or the imputed income amount, is \$500. Sally occasionally rents the timeshare out, and next year, Sally expects to receive \$200 in rental income after paying all expenses. Because the imputed income amount is greater, you must include \$500 in Sally's gross annual income estimation.

IRAs, 401(k) Accounts, Annuities

Q: When valuing an asset, do I need to determine the resident's original investment?

A: No, HUD changed this rule. To determine the value of an asset, start with the current value of the asset (annuity or IRS balance) and deduct any fees and penalties for converting to cash, plus any tax penalties.

Example:

Ms Hanson has an annuity with a current value of \$68,000, earning annual interest of approximately 4.85%. If Ms. Hanson withdraws the balance, she would need to pay \$7,500 in surrender fees plus \$2,500 in tax penalties.

The cash asset value of her annuity for purposes of determining her total assets is \$68,000 minus \$10,000 = \$58,000 (added to other assets to determine the imputed interest).

The income from Ms. Hanson's annuity is \$68,000 x 4.85% = \$3,298.

UTILITIES

New Utility Allowance Procedures

Q: The IRS published a final utility allowance regulation effective July 29, 2008. Has WSHFC changed its procedures regarding the review of annual utility allowances based on this final regulation?

A: Yes. Our Tax Credit Compliance Procedures Manual, Appendix O, now reflects these newly approved procedures. The new procedures allow Owners several methods to determine accurate utility allowances in addition to those methods previously permitted by the IRS. Our staff must approve requests for use of these additional methods and the proposed rates must be posted for resident comment 90 days prior to implementation.

Which Allowance Schedule Should I Choose?

Q: I am working on a potential development site in the Vancouver area, for which I intend to apply for tax credits through the Commission within the next month. When structuring my proformas I usually just plug in the area PHA Section 8 utility allowances. However, they tend to be high because the properties that go into those numbers tend to be older and less energy-efficient. If I'm not mistaken, I believe there is a provision that allows a property to use either Section 8 allowances OR estimates from the local utility company. What is the Commission's position on this issue?

A: Our Tax Credit Compliance Procedures Manual, located on-line at www.wshfc.org/managers, has a summary of Utility Allowance rules in Chapter 2 and detailed procedures in Appendix O. Utility allowance rules are governed by the IRS and outlined in Section 1.42-10. If the property is not regulated by HUD or RD, you may use an estimate from a local utility company or several other alternate methods described in our manual.

Briefly, if you choose to use alternate calculation methods, you need an updated estimate every year and you may not switch back and forth year to year between alternate methods and PHA estimates. **Estimates must be based on actual usage and be approved by the utility company or WSHFC**, and must clearly identify effective dates that cover the entire reporting period.

Water/Sewer Allowances

Q: The Owner of our property is interested in the possibility of our residents paying their own sewer and water. Is this a question for the Commission or a housing authority? What would be involved if he decided to go this route?

A: The residents may pay their own sewer and water. The costs of these utilities would need to be included in the utility allowance and subtracted from the Maximum Allowable Rents to determine the rent the residents can pay. To compute such an allowance, separate metering to each unit would be required.

Studio Unit Allowances

Q: If a utility allowance schedule doesn't show allowances for studio units, what utility allowance should I use?

A: It is permissible to use the rate for a one-bedroom unit if you are unable to obtain an allowance for a studio unit.

Q: The utility allowance schedule I use has a studio utility allowance, but not for the type of studios I have. What amount do I use for my type of studio units?

A: You can use the other studio allowances contained in the schedule.

FEES & CHARGES

Pets

Q: Can I charge pet fees/deposits?

A: There is no restriction on pet fees. The Compliance Manual does state that a reasonable fee may be charged but this has not been defined. Properties may determine a reasonable pet fee/deposit to charge residents. That fee can be partially, or all, non-refundable upon move-out. Any fee scale that is charged must be consistent for all residents (same amount for same size dogs, cats, etc.). If the pet is considered a service, therapy, or assistance animal, a pet fee/deposit cannot be charged.

Q: Can I charge a month-to-month pet fee in addition to an up-front pet fee/deposit?

A: Yes, since having an animal is optional, such a fee would not be considered as part of the rent calculation. Again, however, you may not charge a monthly pet fee for service, therapy, or assistance animals.

Month-to-Month

Q: May I charge month-to-month "fees" to residents who do not want to execute a new lease (after the initial required six-month term expires)?

A: The month-to-month lease "fee" is considered additional rent. As long as the rent + fee + utility allowance does not exceed the Maximum Allowable Rent limit, you may charge this "fee". We recommend simply having a different published rent for long-term leases vs. month-to-month leases and avoiding calling this a "fee".

Washers & Dryers

Q: May we charge extra for washers and dryers?

A: We assume your question about charging for washers and dryers is about putting them in units at the resident's request and that there are other laundry facilities on site or close by (coin washers and dryers). There is no problem with charging for these washers and dryers as long as it is optional and not a requirement of leasing the unit. You may not, however, tell a potential resident that he or she may not rent a particular unit because they don't want to pay extra for the W/D and management doesn't want to move it.

Cable/Phones

Q: A resident does not own a television, but she was told by the property manager that she had to pay an additional \$20.00 for cable. It was stated that this was mandatory since the majority of the residents voted in favor of having cable. Can the property manager do this?

A: Yes, but if the charge for cable is mandatory then it is treated as a utility and deducted from the Maximum Allowable Rent along with the other utilities. This also applies to mandatory telephone for security entrances as an additional fee.

Parking

Q: May a property charge for parking?

A: It depends. Parking is generally considered part of the property's common areas. If the Owner financed the parking areas with tax credits, they must be available to all residents on a non-discriminatory basis and the Owner *may not* charge a fee for their use. If an Owner has provided uncovered parking spaces for each unit and also has optional covered parking, or garages **that were not financed with credits**, it is then permissible to charge for the *optional* parking, if the covered parking is not included as a common area.

Assisted-Living Fees

Q: Can Owners charge fees for assistance with daily living, such as meals and medical professional assistance?

A: Yes, as long as these fees are entirely optional. Mandatory fees of any kind, including assisted living fees, must be clearly optional or the Owner risks loss of tax credits for those units affected.

Other Fees

- * Security Deposits must be refundable.
- * Break lease fees are permitted if they are after the first six month term and are in lieu of paying rent for remaining term of the lease.
- * Application/screening fees must not exceed "out of pocket expenses" to the Owner. No fee may be charged for recertifications.

COMMON AREAS & COMMON AREA UNITS

Differences

Q: What is the difference between a Common Area and a Common Area Unit?

A: **Common Areas** are areas that are reasonably required for the property and include such things as swimming pools, other recreational facilities, community buildings and

parking areas. These areas must be made available to all residents at no extra cost. If the property has a community room and one of the residents wants to use it for a meeting or similar use, the Owner is not allowed to charge the resident for using the area. The Owner is allowed to assess a reasonable charge for cleaning.

Common Area Units are provided by the Owner for use by full time managers, maintenance, or security personnel. These units are not considered residential rental units since they are not for rent to the general public. According to the IRS 8823 Guide, an Owner may not charge the manager, maintenance or security personnel rent on these units. The occupants of such units do not need to be income-qualified. The Owner must be able to clearly document the need for a common area unit as necessary for operations of the project. If you can income qualify the household, it's always a good policy to do so.

Rent for Common Area Units

Q: Can I charge any rent for a Common Area Unit?

A: In most cases, no rent should be charged to residents occupying a Common Area Unit. According to the IRS 8823 Guide, "...if the Owner is charging rent for the unit, the Service may determine that the unit is not reasonably required by the project..."

Q: Is the value of free rent to Managers, Maintenance and Security Personnel counted as income to the employee?

A: No. According to IRS Code Section 119, the value of meals and lodging to employees (and, generally, their spouses and dependents) is excluded from gross income *if they are furnished for the convenience of the employer on the employer's business premises.*

Owners must be able to demonstrate (through employment contracts or other written documentation) that staff are required to live on-site as a condition of employment. Staff may be responsible, for instance, to respond to resident requests after business hours or maintain ongoing security.

When a staff person ceases employment, they must either move out of the Common Area Unit or be income-qualified and pay the appropriate set-aside rent.

Changing Location of Common Area Unit

Q: How do I change the location of my Common Area Unit?

A: The following are the requirements for changing the location of a Common Area Unit:

The Owner must submit a written request to the property's assigned Compliance Officer. The request should include:

- * The proposed changes in Common Area Units and the rationale for each proposed change.
- * The bedroom size and square footage of the current Common Area Unit and the size of the proposed Unit.
- * The location (building and unit number) of the current and proposed Common Area Unit.

For 100% Low-Income properties: with Commission approval, a Form 8823 will not be filed notifying the IRS of the change.

For Mixed Income properties (Market Rate Units with Low-Income Units): IRS Form 8823 **must** be filed to inform the IRS of a possible change in qualified basis.

Fair Housing Act--Accessibility

Q: Do Tax Credit financed properties need to meet Fair Housing Accessibility requirements?

A: Yes. All properties built after 1992 must be accessible to disabled persons. Ground floor units on buildings with four or more units and all units (and common areas) in buildings with elevators must be accessible to disabled persons.

STUDENTS

Student Status and Foster Care (Sec. 3004 of HERA)

Q: Is there now another exception to the fulltime student household for those persons who previously received foster care assistance?

A: Yes. If you have a household composed entirely of income-qualified fulltime students and one of those students was previously under the care of a state foster care program, the household remains qualified for a tax credit unit.

The Owner must obtain written verification from a state foster care administrative entity (DSHS in Washington State) that the student was previously in a foster care program. Washington State DSHS has informed us that residents could obtain this information with a Social Security number. It's not clear whether the Owner agent, acting as a third party, could obtain documentation. If the Owner agent is unable to obtain written verification directly from DSHS, the Commission will allow copies of documentation directly from the resident as proof of this exception to the fulltime student rule.

Qualified Resident Goes Back to School

Q: An eligible resident moves in and two months later he goes back to school fulltime. Is he still qualified?

A: It is permissible for a unit to be occupied by a full-time student where there are other residents in the household that qualify. However, when a unit becomes occupied *entirely* by students (defined as individuals enrolled *fulltime* at an educational organization for at least *five calendar months* during the year), the unit becomes disqualified unless one of the following exceptions applies: The unit is occupied by at least *one* individual who is **(1)** enrolled in a job training program receiving assistance under the Workforce Investment Act (formerly JTPA) or **(2)** receiving benefits under Title IV of the Social Security Act (e.g. TANF), or if the unit is occupied *entirely* by fulltime students and each of the students are **(3)** single parents and the single parents are not dependents of another individual, nor are their children dependents of another individual *except another parent of such children*, or **(4)** the students are married and eligible to file a joint return, or **(5)** one of the students was previously under the care of a state foster care program.

Bond Student Rules (Sec. 3008 of HERA)

Q: Are the Student rules now the same for properties with Tax Credits and Bonds?

A: Yes. HERA aligns Tax Credit and Tax-Exempt Bond rules that previously conflicted, for jointly funded properties. HERA allows Owners to apply the more lenient Tax Credit Student rules and exceptions. Based on the way this rule was changed in Section 142 of the Code, we believe this rule *also applies* to Tax-Exempt Bond properties that have no Tax Credit funding.

Verifying Student Status

Q: Regarding a current resident that is intending to start college - how often do we need to verify the fulltime or part-time status? If she goes fulltime one quarter and then part-time the next, does that allow her to continue to live here?

A: Students that are "fulltime" for more than five calendar months during the calendar year are generally prohibited from tax credit housing unless they meet one of the exceptions described above. Whether a student is attending school "fulltime" is determined by the school that the student is attending. Property management would need to make an initial determination of whether a household was likely to exceed the five-month rule during the calendar year, and if so, the resident should not be allowed to move in (unless the student is part of an otherwise qualified household). It is important to inform prospective residents about the student issue in their lease and ask that they inform management immediately of any student status changes. Many management agencies are checking quarterly to prevent a recapture problem, but there is no requirement to check any more often than annually at re-certification.

Exceptions

Q: If I have a written confirmation from an applicant's ob-gyn that this applicant is pregnant, and she is a full time student, may I rely on the pregnancy verification that one other person in the household is not a full time student, therefore it will be a two-person household: Mom is full time, baby is not?

A: We are uncertain how the IRS would view this. While an unborn child can be counted toward household size when determining the income limit (or determining qualification for the Large Household Commitment, we don't think it would count as an exception to the student rule.

Q: Do married students need to actually file a joint return to qualify as an exception?

A: No. It is only necessary to verify that married students are eligible to file jointly, not that they actually did.

REPORTING & RECORD KEEPING

Tax Credit Annual Reports

Q: When are tax credit annual reports due and what must be included?

A: Annual reports are due on or before January 31st of each year for the prior calendar year. Your submitted package must include the **Certificate of Continuing Property Compliance (CCPC) Part A** (mailed to property managers in December each year), **CCPC Part B/Table 1**, the **utility allowance** documentation used to calculate rents for the entire reporting period, an **Affirmative Marketing Report**, if applicable, and **household certification documentation** on the units selected by the Commission for our staff review. If you are scheduled to have an on-site visit from WSHFC, you will not submit resident packages until after the on-site visit has been completed.

Q: If more than one household occupies a unit during the reporting period, should I submit resident packages on all households?

A: No, you will only submit the most recent certification package for the last occupant of the unit during the reporting period. If any units were vacant for the entire reporting year, provide the most recent certification package for the last occupant in the unit the prior year.

Record Keeping

Q: How long must I keep resident income qualification paperwork?

A: Records must be retained for six years after the due date for income tax return filing (plus any extensions). For instance, if a resident moved in your property during 2002 and the 2002 partnership income tax return was filed in June of 2003, records for that resident must be retained until June of 2009.

First Year records must be kept for six years beyond the initial compliance period. (15 years plus six years after filing first return = 22 years).

Q: Can I keep records electronically?

A: Yes, as long as your electronic storage system meets requirements of Revenue Procedure 97-22.

Q: Does the Commission report noncompliance that happens before final 8609s are issued?

A: Yes, the IRS instructs us to report pre-8609 noncompliance directly to the IRS Headquarter analyst responsible for the Tax Credit program.

Q: Can an Owner file draft 8609s with their income taxes?

A: No. The IRS requires Owners to file tax extensions until final 8609s are issued or file without 8609s, then submit amended returns later.

UNIT OCCUPANCY

General Public Use (Sec. 3004 of HERA)

Q: Does HERA allow preferences in our properties for special needs and other types of housing?

A: Yes. HERA allows preferences for Special-Needs housing; housing targeted for groups under a state or federal program (such as the Commission's targeting of Farmworker, Large Household, Disabled, and Homeless); and housing preferences for individuals involved in artistic or literary activities.

Properties with set-asides that meet the requirements of this section of HERA may continue to provide preferences for households that meet the above stated criteria. All properties must continue to abide by Federal Fair Housing laws.

Turning a Unit

Q: What's a reasonable amount of time to turn a unit?

A: The IRS expects that vacant units are always rent-ready and available to the public. That said, the Commission considers no more than 15 to 30 days to be a reasonable amount of time to prepare a vacated unit for occupancy by the next household; depending on the level of repairs needed. Your Management Company or Owner may have stricter expectations for this timeframe.

Q: Can we maintain a Model Unit at our property?

A: Yes, but Model Units must be rotated on a regular basis and be available to interested renters.

Daycare/Home Business Use of a Unit

Q: Can my residents operate a home business in their unit, such as a small daycare or other small business.

A: Yes, but the Owner must ensure that strict guidelines are placed on any home business. We suggest that Owners develop House Rules including the following:

- * The unit must be the principle residence for all household members included on the lease.
- * No sign should be displayed that advertises the home business.
- * If a daycare, it must meet state and local laws and ordinances and be properly licensed for the number of children they care for.
- * Any business, including daycares, should not infringe on the rights of other residents in the building. Your House Rules, for example, should outline acceptable hours for a daycare or other business; number of children cared for in various sized units; number of children who can be cared for from outside the property; number of clients who may visit a home business in a given day; extra deposits required, if any, for daycare or other business.
- * Residents who are self-employed should list all income on their tax returns and must be reviewed to properly calculate all income during recertifications. In determining annual income, it may be necessary for Owners to analyze whether deductions related to the percentage of a unit used for any home business are reasonable.

Moving Over-Income Households

Q: In a **mixed-income** tax credit property, can a previously qualified over-income household move to another unit and remain qualified?

A: Yes, as long as the household moves/transfers within the same building, they remain qualified. The IRS clarified that a household *may also* move to a different building and remain qualified, *if* their income at the last certification did not exceed 140% of the qualifying limit. The units essentially “swap statuses.”

These rules are particularly important during the first credit year. If a qualified household moves from one unit to another, the unit they occupy at the end of the first credit year is “qualified”. The unit they left would revert to its previous “empty” status and need to be occupied by another income-qualified household to be considered a tax-credit-qualified unit.

Q: What about moving households in a 100% tax credit low-income property?

A: Since the IRS no longer requires annual recertifications of households (Section 3010 of HERA) in a 100% low-income property, households that were initially income-qualified may move from building-to-building, without restriction.

Q: Does this also apply to 100% tax credit properties, that were also financed by **Tax-Exempt bonds**?

A: Yes, as long as the property is 100% low-income restricted, and all units are income-qualified at move-in.

Next Available Unit/140% on Bonds (Sec. 3008 of HERA)

Q: Are the 140% rules now the same for properties with Tax Credits and Bonds?

A: Yes, for *jointly financed* properties. HERA aligns previously conflicting tax credit and tax-exempt bond rules for jointly funded properties. The Next Available Unit Rule is now a Building Rule vs. a Project Rule. In other words, if the income of a household in a

bond and tax-credit financed property increases above allowable levels, that household will continue to be considered “qualified” if the next available unit in the same **building** is rented to an income-qualified household. This provision **does not apply** to properties financed with bonds and other sources, but with no tax credit financing.

Move-out After Lease Signing

Q: We have an applicant who qualified for a unit at our property. They signed a six month lease, took the unit keys and gave us a rent check on Monday. On Tuesday the applicant came in, turned in the keys and told us her check would bounce and that she was not going to rent the unit. Can we count this unit as initially qualified by this applicant?

A: As long as you have thoroughly documented the circumstances leading to this vacancy, emphasizing that all signs indicated this applicant intended to rent long-term, you may count this unit as qualified.

Casualty Loss

Q: I know there has been some guidance by the IRS regarding the treatment of casualty losses. I understand that we must report casualty loss that takes a unit out of service for an “unreasonable” period of time. My understanding is that a two-year period is not a reasonable amount of time. Is this correct?

A: The IRS did provide further guidance regarding the treatment of casualty losses in an IRS Chief Counsel Memorandum dated May 4, 2002 (CCA 200134006). According to the memorandum, state housing agencies must always report a casualty loss that takes low-income units out of service. The taxpayer cannot claim the credit while the unit is out of service. However, if the property is in an area designated as a **federal** disaster area, the Owner likely still can claim credits.

What is “reasonable” depends on the damage, but under the CCA, the two years following the end of the tax year in which the casualty loss occurred is a “reasonable” time period to repair the damage or replace the property. Thus, for severe damages, two years is likely reasonable. **However, most damages can and should be repaired within a few months.**

Q: Units are vacant for a variety of reasons, including fires, floods, mold issues, or residents who trash units upon move-out. What exactly is considered a “casualty loss”?

A: Casualty losses are sudden, unexpected damages – generally due to natural causes such as hurricanes, tornados, floods and earthquakes. Damages incurred over long periods of time like dry rot, termites, mold damage, poor construction or resident-caused destruction, do not qualify as “sudden” casualty losses. However, regardless of the cause, Owners must make repairs to units with damages in a timely manner to maintain qualified basis and prevent possible loss of credits.

MISCELLANEOUS

Data Collection Requirement (Sec. 2835 of HERA)

Q: Do we need to start collecting and reporting demographic information on all tax credit financed properties?

A: Yes. HERA requires states to begin collecting and reporting specific information on all tax credit financed properties. Beginning in 2009, Owners should begin collecting information on race, ethnicity, family composition, age, income, use of rental assistance, disability status and household rent payments, for all units in tax credit financed properties. It is unclear at this time whether the demographic information will be required for the Head of Household only or for all members of the household.

HERA requires states to work with HUD to establish a reporting system. Our state and others are working out the details of this requirement. WSHFC will create forms for Owners to use that satisfy this requirement. In 2009, we also hope to have our **Web Based Annual Reporting System (WBARS)** on-line, at which time Owners will be able to enter this data directly into the system or download information to WBARS from their own systems. Further guidance on this will be issued in early 2009.

Reporting Resident Misrepresentation of Fraud to IRS

Q: Should fraud be reported to the IRS?

A: Yes, Owners and managers should report instances of resident fraud to the IRS Fraud Hotline at 1-800-829-0433.

Q: Is fraud considered reportable noncompliance?

A: It depends. If the Owner corrects fraud issues and informs the state agency, noncompliance is not reported. If the state agency discovers fraud, an IRS Form 8823 must be filed.

Regulatory Period

Q: How is the expiration date for the regulatory agreement period calculated?

A: For tax credit properties, the date is keyed off of the first year the Owner takes credits, which can be either the Placed-in-Service year or the following year.

Selling a Tax Credit Property

Q: What kinds of restrictions apply to the sale or transfer of a Commission-financed property?

A: Selling or transferring a property that has an existing regulatory agreement requires written approval by the Commission, and may require a regulatory agreement amendment. Transfer requirements are similar for bond-financed and tax credit properties. See the instructions in each Compliance Procedures manual for further guidance.

Bond Posting Requirement (Sec. 3004 of HERA)

Q: Do Owners need to post a bond upon transfers of Ownership?

A: If the seller can meet the requirements of HERA, posting a bond is not necessary. Briefly, HERA eliminates the requirement for a seller to post a bond on transfers of ownership as long as there is a reasonable expectation that the project will remain low-income (in compliance with federal requirements). It also extends the IRS recapture period for transfers of ownership to three years beyond the time when an Owner notifies the IRS of a recapture event. All transfers of ownership, including managing member and general partner changes must also be approved by WSHFC and abide by our transfer process requirements.

Recertification Waiver

Q: Since the IRS no longer requires annual income recertifications, is WSHFC still reviewing requests for waivers?

A: Yes. Since WSHFC still requires one annual recertification on every new household until properties are approved for Post Year 15 Procedures, Owners who wish to eliminate all third-party recertifications may still apply for a waiver. The process will be the same as before, including a third-party auditor review to determine 100% "in-compliance"

status. However, upon completion of a satisfactory review, our staff will approve the waiver "in-house," without the need for IRS approval.

Q: We are interested in pursuing the recertification waiver, but we have a question: Since the Commission has Memorandums of Understanding with CTED, King County, and Seattle's Office of Housing, is it safe to say that these partners will be okay with us using the Annual Self-Certification form?

A: Yes, these funding partners will accept the annual *Self-Recertification* form, but may have other requirements.

Q: Please clarify the statement: "Buildings receiving funding from agencies that require annual third-party income certification including, but not limited to RD and HUD *may not* be eligible for the waiver."

A: The Owner may be approved for the recertification waiver, but this will apply only to Tax Credit-financed units. The Owner will still have to perform the required certifications for other units affected by funding programs which require annual third-party certifications, such as RD and HUD.

Q: How is the recertification waiver applied to "combo deals," i.e. properties financed with both tax credits and bonds?

A: Recertification is still required for the bond set-aside units (20% or 40% of the total units) but the remaining tax credit units would not need to be recertified. To qualify for the waiver, 100% of the units in the property must be reviewed by the auditor.

Q: How will we be expected to monitor for lower state AMIs? Will we only have to meet the requirements at move in, will we adjust the AMIs at multi-level properties based on the Annual Self-Recertifications, or will we need to do full recertification on households at lower AMIs to stay in line with state requirements?

A: Households occupying any AMI level must be initially certified below the AMI income limit and the rent must remain restricted at the corresponding level. It is not necessary to make adjustments based on any information disclosed by a household in their *Annual Self-Recertification* form. However, Owners with financing from other public funders may have a requirement to make adjustments as incomes increase.

Q: How will we be expected to monitor for state Special-Needs Commitments? Will we have to meet the requirements only at move in or will we need to do a form to go with the annual self-certifications to disclose these Special Needs and if so, will we need to verify the Special Needs upon recertification?

A: As is the current policy, once a household is initially qualified for a Special-Needs Commitment, they remain qualified. Special-Needs households still need to be documented on the Part B/Table 1 report.

Q: What is the timing between when we submit an application to WSHFC and when we receive notification to proceed with our audit?

A: Once we receive your application it will take approximately two weeks to get back to you regarding whether or not you are eligible to proceed.

Q: Can our external auditor review *copies* of our original certifications or do they have to audit the originals?

A: If the auditor is thorough, they will require **original** resident packages. However, reviewing scanned documents is permitted. If that is the way you decide to go, make sure the scanning company will certify that the items they scanned were originals.

Q: After our auditor completes their review, how long will it take before we receive Commission approval?

A: Typically less than two weeks.

Q: Exactly which files does our external auditor need to review?

A: Your WSHFC-approved auditor will review the initial certifications for every household occupying your property as of the end of the calendar year immediately preceding the year in which you request the waiver. In addition, the auditor will review the initial certifications for the last household to occupy a unit that is vacant as of the end of the calendar year. For example, if you submit the written request for the waiver in 2008, your auditor must review initial certifications for all households living at the property (or previously in vacant units as just described) as of December 31, 2007.

Government Accounting Office (GAO) Study (Sec. 3004 of HERA)

Q: What is the purpose of the GAO study described in HERA?

A: HERA requires the GAO to submit a report to Congress on the impact of HERA by December 31, 2012. GAO will be evaluating the success of changes imposed by HERA. State agencies agree that any changes implemented as a result of HERA must demonstrate improved efficiencies and benefits while upholding and preserving the integrity of the Tax Credit and Tax-Exempt bond programs.