

# WASHINGTON STATE HOUSING FINANCE COMMISSION TAX CREDIT COMPLIANCE FREQUENTLY ASKED QUESTIONS Revised January 2018

*These FAQs are based on WSHFC staff interpretations or understanding of IRS rules and guidance for the LIHTC program. 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.*

## **CERTIFICATIONS & LEASING**

### **Overcharging Rent**

**Q:** What happens if I accidentally overcharge a resident on their rent?

**A:** If a resident's gross rent (utilities + fees + rent) exceeds the **federal** (i.e., 50% or 60%) tax credit maximum rent limit for any month during the reporting year, WSHFC is obligated to issue Form 8823 to the IRS for owner noncompliance. This is still true even if you have promptly notified WSHFC of the problem and corrected the issue.

The IRS takes overcharging of rent very seriously. In fact, once a unit is determined to be out of compliance with the rent limits, the unit ceases to be a low-income unit for the remainder of the year. This means that the potential financial repercussions for the owner could be significant. The unit isn't back in compliance until the first day of the next year, even if the owner has already lowered the resident's rent and refunded them any overpayments made.

If the owner has overcharged rent on a unit meeting a State income set-aside (under 50%), WSHFC will issue a letter of State non-compliance and will require the owner to reimburse the resident all overpaid monies. Failure to timely adjust the rent and reimburse the resident could hinder the owner's future applications for credit.

### **Acquisition/Rehab Properties Financed with Tax Credits and Bonds**

**Q:** Does it matter when the Owner takes credits, i.e., 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 tax credit 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.

## Annual Recertification of Income

**Q:** I'm completing recertifications for residents at my property. Do I have to get third-party verification of everyone's income?

**A:** Not after the first lease anniversary. WSHFC requires Owners of 100% income-restricted properties to complete **one third-party annual recertification** on the first anniversary of the lease. Subsequent recertifications may be fulfilled using the **Self-Certification of Annual Income** form.

**Q:** Since third party-verified recertifications aren't required after the first recertification, why do I need to get residents to fill out the **Self Certification of Annual Income** form?

**A:** Each household must complete the WSHFC **Self Certification** form in order to continue certifying the Student Status of each household member, as well as providing minimal compliance information needed for WSHFC monitoring purposes. The **Self Certification** form is also used by several other Washington state public funders for purposes of fulfilling their recertification requirements.

**Q:** What happens if I find out at recertification that one of my residents was over-income at the time they moved in to my property?

**A:** If an Owner/Management Company discovers non-compliance they should contact the Portfolio Analyst for the property and let them know what they found and how they plan to correct the non-compliance. In most cases, non-compliance that is found and corrected prior to a state agency review does not need to be reported to the IRS as long as it is disclosed and corrected.

If any household is discovered to have been over-income at move-in during a WSHFC audit, WSHFC staff will determine the appropriate remedy, which could include reporting the non-compliance to the IRS and/or requiring 100% third-party recertifications to be re-established for a minimum period on all buildings in the project.

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

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

Note: Properties that are allowed to utilize the **Self Certification** for the first annual recertification (because they are qualified with an IRS issued Recertification Waiver and/or are approved for Post Year-15 Monitoring Procedures) should obtain verification of the start date for any new income source if the household gross income exceeds 140% at the first recertification, or if the household income has increased by a significant degree (e.g., +10K or more).

**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:** We manage a 4% tax credit/bond-financed property. Our property is 100% low-income restricted below 60% AMI by our tax credit agreement, but 20% of our units are also bond restricted. Do we need to third-party recertify the bond units every year?

**A:** No. You can follow the rules outlined above for 100% income-restricted properties.

## **Certifying Households after Year 15**

**Q:** Do we still need to recertify households after Year 15?

**A:** That depends on the type of property you manage:

1. If a property has been approved by the Commission for Post-Year 15 Monitoring Procedures (see **Chapter 11** of WSHFC's Tax Credit Compliance Manual) **and** the property is 100% low-income restricted (60% AMI or lower), then no annual third-party recertifications are required. Each household is still required to annually complete WSHFC's **Self-Certification** form.
2. If a property has **any** market units, annual third-party recertifications on all households must still be completed for the duration of the Regulatory Agreement.

## **Certification Effective Dates**

**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 prior to the commencement of the lease.

Recertifications can be done up to 120 days ahead of the certification date and must be effective as of the anniversary date of the initial certification date. For example, if a household moves into a unit on April 23, 2015, their initial certification date is 4/23/15 and their recertification date is 4/23/16

For administrative ease, managers may choose to make recertification dates the first day of the month for residents with move in dates within that month. Example: Mary Smith moves into Greenwood Manor on 10/15/14. Her subsequent recert effective dates can be 10/15 **or** 10/1 each year. Mike Jones moves into Greenwood Manor on 6/2/14. His subsequent recert effective dates can be 6/2 **or** 6/1 each year. The key is to ensure that the recertification effective date occurs within 12 months of the previous recertification effective date.

## **Certifying 17 Year Old Residents**

**Q:** We have a family applying for housing and one of the household members is 17 now, but will turn 18 within the next 12 months. Do I need to have the 17-year-old complete a **Resident Eligibility Application (REA)** and get verification of his/her income?

**A:** Yes. Since owners 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 certify their income and assets. Have the 17 year old complete the REA (pages 2, 3, 4) and obtain income verifications to support what s/he puts on the questionnaire. Only count the anticipated income of the 17-year-old for the months **after** s/he will turn 18.

**Q:** What if I'm certifying a household with a 17 year-old and the parent/guardian doesn't want the 17 year old signing the REA because they're not an adult?

**A:** You can allow the head of household to certify on behalf of the 17 year-old (e.g., signing the REA on the 17 year-old's behalf), but the 17 year-old's income and assets must be counted toward the household's gross annual income – see **Chapter 5** in WSHFC's Tax Credit Compliance Manual - to determine household eligibility.

## Live in Aides and Their Family Members

**Q:** An applicant has indicated on their REA that they want to include a live-in aide. The issue is that the live-in aide is married with two kids. Are the live-in aide's spouse and kids allowed to live in the unit with this applicant?

**A:** In order to treat the live-in aide as a Live-in Aide (LIA) as defined by HUD (meaning that the LIA's income is excluded from gross income and she has no rights to the unit), the LIA's family members cannot live in the qualified unit with her and the applicant. However, if the applicant is willing to consider the LIA a member of the household, then you can qualify the LIA and her family members. In this case, the person would not be classified as a Live-in Aide according to HUD's definition - all their income would be counted and they would all have rights to the unit and be parties to the lease.

## 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 WSHFC's interpretation of the IRS' guidance on this issue. However, you can avoid some problems with this issue by re-qualifying the household when a new adult 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.

### Changes in Set-Aside Percentages

**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 income set-aside commitments have been met AND the lease allows for such a change, AND proper written notice is given to the household of the increase.

### Changing Status of Low-Income Units to Market Units

**Q:** I have ten Market-Rate Units in my property. If a previously qualified low-income household's income goes way up, when can I raise their rent to market?

**A:** The best time to change status for a household is at recertification. Be certain that you continue to satisfy requirements of the 140% Rule. As long as you continue to have enough low-income qualified units **after** raising the rent of a household to "market rent," the household's rent can be increased.

Conversely, if you choose to lower rent for a unit to count that household as "low-income" (switching the status of a unit from market-rate to low-income), be certain that the household is third-party income qualified before making the change. The right of the Owner to make changes of this nature should be spelled out clearly in the lease.

### 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 — 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 Vouchers/Project-Based and RD Subsidies

**Q:** If a resident receives Section 8 or an RD subsidy, can they pay *more* than the applicable tax credit rent limit?

**A:** If the Owner receives a Section 8 Housing Assistance Payment (through a resident-based voucher or project-based Section 8) or an RD rent subsidy specific to the resident's unit, then the residents may pay over the tax credit Maximum Allowable Rent limit as long as they are receiving at least \$1 of subsidy and at an RD subsidized property any rent overage is paid back to RD. Keep in mind that other public funders may restrict residents' rent payments to no more than the applicable rent limit.

## 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 SSNs 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**.

## **COMMON AREAS & COMMON AREA UNITS**

### **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 Portfolio Analyst. The request should include:

1. The proposed changes in Common Area Units and the rationale for each proposed change.
2. The bedroom size and square footage of the current Common Area Unit and the size of the proposed Unit.
3. 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.

### **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. 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. The building(s) in which Common Area Units are allowed are shown on Exhibit B to the Regulatory Agreement.

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

**A:** Yes.

**Q:** Can a staff member residing in the Common Area Unit pay for their own utilities?

**A:** Yes.

**Q:** If the unit is not needed to house an employee, can I rent the unit at Market Rate?

**A:** No. If the unit is not needed as a Common Area Unit, then it should be rented to an income-qualified household at the highest AMI level at the property and the rent should be restricted accordingly.

**Q:** Can a staff member continue to reside in the Common Area Unit if they are no longer employed at the property?

**A:** When a staff person ceases employment, they must either move out of the Common Area Unit or be income-qualified and pay the appropriate restricted rent. It is recommended this language be included in their lease or employment contract.

## **FEES & CHARGES**

### **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. Your marketing materials and application forms must clearly explain these fees as optional. Written materials should include rules for opting in or out of service packages and staff should be trained to explain options to residents.

### **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.

### **Month-to-Month Fees**

**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."

### **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.

### **Pets**

**Q:** Can I charge pet fees/deposits?

**A:** There is no restriction on pet fees. The WSHFC's Tax Credit 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.

## **Surety Bond**

**Q:** I work for a property management company that wants to implement surety bonds at our property. Is this okay?

**A:** Yes, as long as the surety bond is only an option and is not required. As long as an applicant has the choice to either pay a security deposit OR purchase a surety bond, then there is no problem.

## **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 tell a potential resident that he or she may not rent a particular unit because they don't want to pay extra for the washer/dryer and management doesn't want to move the appliances.

## **Other Fees**

- Security Deposits must be refundable.
- Break-lease fees are permitted if they 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.

## ***INCOME AND RENT LIMITS:***

**Q:** How are income/rent limits calculated for tax credit properties?

**A:** HUD annually creates 50% and 60% limits for the tax credit program. States like Washington which also have additional set-asides (30%, 35%, 40%, 45%) then calculate the limits for those set-asides based on the HUD 50% limit. Limits may go up or down from year to year based on the latest census data and other household income data HUD uses to calculate the limits.

As a result of federal legislation passed in 2008, tax credit properties which placed in service prior to 2008 are safeguarded from seeing their applicable limits go down. If limits in a particular county go down, pre-2008 properties can use higher "HERA" limits for their properties, rather than the current, lower limits.

**Q:** What if my tax credit property was funded with assistance from other public funders in Washington State?

**A:** If your property is monitored by additional public funders, your property will be required to apply the lowest income/rent limits to each household, depending on which funder is involved, and which set-asides are shared by which funders. At this time, all other public funder agencies use HUD's Section 8 income/rent limits for their properties. HOME units use HOME income/rent limits.

**Example:** Happy Valley Apartments is funded by WSHFC, State Housing Trust Fund, and King County. The property has three income set-asides – 30%, 40%, and 60%. The 30% and 40% set-asides are shared by all three funders. The 60% set-aside is required only by WSHFC. For 30 and 40% households, the owner must compare the Section 8 and tax credit limits sets and apply whichever amounts are lower. Since only WSHFC requires the 60% set-aside, the owner can apply tax credit limits to any 60% household.

**Q:** Is WBARS set up to pick the lowest applicable limits based on the set-asides and the funders involved in each project?

**A:** Yes.

## **Annual Income Limits for Nine or Ten Person Household**

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

**A:** Tax credit income/rent limits may be found on our website. 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.

## **INCOME CALCULATIONS AND VERIFICATION:**

### **Rules for Rounding**

**Q:** How/when should I round a household's income and/or assets during calculation?

**A:** Per HUD, round only the **final total** household gross income amount. Example: Mary Smith receives \$944.60 per month in pension benefits, and \$250.00 per month in gift income from her daughter. She also receives \$150.33 in asset income per year. Calculate the annual amounts as follows:

$944.60 \times 12 = 11,335.20$

$250.00 \times 12 = 3,000.00$

$150.33 \times 1 = 150.33$

Add all annual amounts together. In this case, the total gross annual household income is \$14,485.53. Because the final total is greater than 50 cents, the final total should be rounded to \$14,486.00.

### **Acceptable Income Verifications**

**Q:** Can we use documentation provided by the applicant/resident to verify income?

**A:** Printed statements from state or federal agencies may be used to verify income as long as they are current within 120 days of the certification date and provide all of the necessary information. (Note: we will accept statements or printouts from Social Security beyond 120 days that show the set gross benefit for the current year.)

**Q:** Can we accept pay stubs in lieu of an **Employment Verification** form?

**A:** We will only accept pay stubs in lieu of an **Employment Verification** when three (3) documented attempts to obtain a verification over a 2 week period fail. Documentation of the attempts must be submitted with the pay stubs.

Note: see below for instructions on using The Work Number or other 3<sup>rd</sup> party verification companies.

## Anticipated Social Security Income

**Q:** If an applicant anticipates Social Security Income on their application but benefits have not been awarded yet, do we still have to verify and count the income?

**A:** Please be aware that if someone states on their REA or Income Asset form that they are applying for SS/SSI benefits within the next 12 months, you MUST attempt to verify what those future benefits might be. See below:

1. When someone indicates that they have or will be applying for SS/SSI benefits, you need to ask them when they expect to receive it and how much they expect to receive and document this in the file. If they know they will be receiving SS/SSI benefits of any kind in the near future, then you must count that income.
2. If they are of retirement age and have applied or plan on applying within the next 12 months for Social Security (SSA) benefits you must have them go onto the Social Security website at <http://www.ssa.gov/retire/estimator.html> and use the Benefits Estimator to estimate their benefit income.
3. If they have applied for Social Security Disability (SSI) you need to ask them if they have received anything back from SSI. If so, request a copy to see the status on their claim. If they have not been denied, then you must assume that they will be getting the full SSI benefit as income for the next 12 months. If they have been denied, ask if they have filed an appeal. If so, request anything that they have showing the status of the appeal. If there is no conclusive documentation that they may win the appeal, then you do not need to assume any SSI benefits. If they have an attorney working on the appeal for them you should request a statement from the attorney regarding the status of the appeal and likelihood that SSI will be obtained and at what amount – count this accordingly. If they indicated that they will be applying for SSI disability benefits you do not need to count any, as this process usually takes several months or longer before benefits are awarded.
4. If the household has immigrated or refugee and applied or plans on applying for SSI, you must assume that they will be getting the full SSI benefit as income for the next 12 months.

NOTE: An applicant who is widowed or divorced may be eligible to receive the higher of their own SS benefit amount or that of their deceased or ex-spouse. Therefore if an applicant is recently widowed or divorced their SS benefit amount may increase.

## BAH Military Income

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

**A:** It is at properties in the following counties that placed in service after 7/30/2008: Kitsap, Mason, Jefferson, Pierce, King, Island and Snohomish. BAH must be included in income calculations at properties in these counties that placed in service before 7/30/2008 and at all properties in all other counties in Washington. You can find the Placed in service date for your property at <http://www.wshfc.org/managers/TaxCreditProjectsAndPlacedinServiceDates.pdf>

### History of this exclusion:

- o July 2008 – The exclusion of BAH in the seven counties listed above was introduced as part of federal legislation (Sec. 3005 of HERA). It applied to all LIHTC properties within the specified counties for certifications effective until January 1, 2012.
- o Effective January 1, 2012, the exclusion of BAH from income was **only allowed at projects in the counties listed above which placed in service between 7/30/08 and 1/1/12**. A list of the affected properties was posted on our website.
- o Effective December 31, 2012, as part of the American Tax Payer Relief Act of 2012, the exclusion of BAH for all properties in the selected counties was extended until January 1, 2014.

- o Effective December 16, 2014, a one-year extension of the tax extenders bill was passed retroactively for 2014.
- o Effective December 15, 2015, the PATH act made the exclusion permanent.

## Changes to Minimum Wage

**Q:** If an applicant's wages might soon be affected by a minimum wage increase (either state or local), how do I verify the change?

**A:** If there is an imminent change to the minimum wage in the area where an applicant/resident is employed, a property manager should pay close attention to whether or not the employer has indicated an anticipated increase in the rate of pay on the *Employment Verification* form. If the employer says yes, then count the wage increase as of when the employer plans to implement it. If the employer indicates there will not be a change in the employee's rate of pay, then WSHFC does not require that one be added to the calculation. There are many variables in some of the minimum wage increase rules and WSHFC does not expect property management to automatically include a raise based on minimum wage publications for any particular area of the state.

If an employer indicates no anticipated change, but a property manager wishes to verify whether an imminent change to minimum wage will affect an applicant/resident's rate of pay, if the employer indicates they are not sure about a raise, or if the employer will not complete an *Employment Verification* form, the property manager should use the *Income Verification/Clarification by Telephone* form to ask the employer if they are anticipating an increase in the employee's wages due to a change in the minimum wage or for any other reason within the next 12 months.

## 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.

## EIV System

**Q:** Can I submit verification from EIV to prove a tax credit property applicant/resident's income eligibility?

**A:** No.

## Estrangement Certification and Income

**Q:** What is the WSHFC *Estrangement Certification Form* used for?

**A:** This form may be used for married individuals who are physically separated from their spouses and who receive no income or support from the spouse. This would include victims of domestic violence. To remain eligible the spouse cannot become part of the household for at least six months. In these situations it is not necessary to verify income of the absent spouse or to count the income of the spouse in total household income as they are not considered part of the household.

## HEN Program Assistance Voucher

**Q:** Should assistance from the Washington State Housing and Essential Needs (HEN) Program be counted as income?

**A:** No. WSHFC confirmed that all funds go directly to the landlord or utility company; the recipient does not receive a cash benefit and the recipient does not have to report the assistance to the IRS.

## HUD & RD Income Verification

**Q:** If a HUD-regulated or RD-regulated property uses HUD- or RD-approved forms to verify household and income/asset info, do they still need to complete Commission verification forms?

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

**Q:** For a household whose income I verified using HUD/RD forms, can I just send WSHFC the 50058/59/RD-3560-8?

**A:** No. A HUD or RD resident certification packet must include all the following:

- HUD 50058 or 50059 or the RD 3560-8
- Income and Asset Questionnaire for all adults (HUD/RD form or WSHFC's REA)
- Third-party verifications of income (cannot come from EIV)
- Third-party verification of assets or the *Sworn Statement of Net Household Assets*, as appropriate
- WSHFC forms for any WSHFC Special Needs Commitments at the property
- WSHFC Student Certification form
- WSHFC Tax Credit Lease Rider

## Post 9/11 GI Bill (also known as Post 9/11 VEAA)

**Q:** Is educational assistance that is part of the Post 9/11 GI Bill counted as income? What if part of the assistance is in the form of a housing allowance?

**A:** Per HUD guidance, Post 9/11 GI benefits for tuition and books **are not counted** as income, even if the household is receiving Section 8 assistance. The housing allowance should not be counted as income, based on IRS guidance that the benefits should be treated as a whole and not as separate components.

## Rental Assistance

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

**A:** It depends. Rental subsidy from a city, county or state government source that is sent directly to the Owner is not considered income to the resident. For example, funds allocated to Owners from 2060 or 2163 funds that are used to supplement household rents 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, should be counted as income. Any assistance received directly by the resident is counted as income.

## Self-Employment

**Q:** How do I tell if someone is self-employed?

**A:** If someone gets a 1099 or 1099-MISC instead of a W-2, then that person is considered self-employed. If the person is unsure how their income is categorized, contact the employer to see if they will complete a **Verification of Employment** form.

**Q:** How is income for UBER or LYFT drivers categorized?

**A:** UBER/LYFT drivers (or anything similar) are considered self-employed.

**Q:** How do I verify the income of someone who is self-employed?

**A:** The applicable household member must complete a **Self-Employment Verification** form and provide required supporting documentation. If they have been self-employed long enough to have filed a tax return, then this documentation should include a signed Return along with a Schedule C. If they have not been self-employed long enough for the income to show on a tax return, they should provide a Profit and Loss Statement along with any applicable back-up documentation. For example, UBER/LYFT drivers should provide a printout showing their monthly income.

**Q:** So if someone is newly self-employed and just gives me a Profit and Loss Statement, I can call them qualified, right?

**A:** Not necessarily. For the protection of your owner's credits, you should be very careful when verifying self-employment on a new business. You may wish to ask for a previous year's tax return and/or a statement from Employment Security to confirm that the applicant's previous wages are in line with their projections for the next 12 months (since you have no third-party verification of the projected income, just the applicant's statement) and that they are not already employed elsewhere or are already running another business that may impact your income calculations.

## 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. Verification of fulltime student status is required.

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

**Q:** Is student financial assistance considered income for purposes of qualifying a household for a tax credit unit? If so, what parts do I count?

**A:** No, **unless** the tax credit unit or resident is receiving some form of Section 8 rental assistance (e.g., Project-Based Section 8, or Housing Choice Voucher).

If the student receives some form of Section 8 rental assistance, you must count as income any amount of assistance **that is in excess of** the amounts which cover tuition and any other required fees and charges. If the student is over the age of 23 and has children or the student is living with his/her parents who are receiving Section 8, **all** financial assistance is **excluded** from annual income determinations.

For additional information about how to count a student's financial assistance, see Chapter 5 of HUD's Occupancy Handbook 4350.3. Also see HUD's PIH Notice 2015-21, published in December 2015, which provides good examples of how to define "required fees and charges."

## The Work Number for Everyone

**Q:** The Work Number no longer offers free verifications to LIHTC properties. Are we allowed to use pay stubs instead of obtaining a verification from this or other companies like it that charge a fee?

**A:** The bottom line with income verification is to show us that you attempted to obtain **third-party documentation**. Accordingly, when verifying wages for an employee whose employer utilizes The Work Number:

1. Send the Commission's **Employment Verification** form to applicant's employer.
2. If no response to **Employment Verification** form or the employer redirects you to The Work Number or other agency, contact the employer by phone to follow up using the Commission's **Income Verification/Clarification by Telephone** form. At the very minimum, try to get the applicant's job start date from the employer and confirm that employer only uses The Work Number.
3. Obtain enough pay stubs from applicant to show their wage activity for at least the past 3 months.
4. From the pay stubs, determine the resident's current pay rate and YTD information. If pay stubs do not give you enough info to determine the YTD wages or you do not have the job start date, you will need to obtain a printout from The Work Number or other agency to calculate YTD wages. Once you have both current and YTD wages, use the higher amount to determine annual gross income for the applicant.

**Q:** Can I charge the cost of obtaining the third party verification back to the applicant/resident?

**A:** Yes, it is permissible to pass the cost of obtaining the verification back to the applicant/resident. If an Owner/Management Company does not wish to use The Work Number they must follow the steps outlined above.

**Q:** Do I have to get pay stubs if I have a verification from The Work Number or other agency?

**A:** It is always a good idea to get at least one pay stub to compare to the information provided on The Work Number or other agency verification printout. We have found that the verifications are not always complete or correct.

## VA Aid & Attendance

**Q:** Do I have to include VA Aid & Attendance Benefits in household income?

**A:** According to HUD's RHIIP Listserv Posting #284, any money received by the family that is specifically for, or in reimbursement of, the cost of medical expenses for any family member is excluded from annual income. Because of this, the owner must verify any amount provided for A&A which is used for medical expenses and exclude the verified amount. Any portion of the benefit not being used for medical expenses must be included as income.

## 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 next twelve months, 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.

## **ASSET CALCULATIONS AND VERIFICATION:**

### **Debit Cards not Associated with Checking or Savings Accounts**

**Q:** We sometimes see applicants who have their government benefits or other forms of income deposited directly onto a debit card that is just a cash card, it doesn't connect to a checking or savings account. How do we verify the amount of money on these cards?

**A:** A print out from an ATM or similar machine which shows the card number and the balance on the card is sufficient for verification. Count the balance on the card as an asset. If money is being deposited on the card on a **periodic** basis (e.g., Social Security benefits, regular family cash assistance), count the periodic payments as income, and verify them based on what type of income they are.

### **Different Imputed Interest Rates**

**Q:** HUD recently announced it would adjust the passbook interest rate by which we determine the percentage of imputed assets to count. It may now change as often as annually. Will WSHFC change the imputed interest rate on all their forms going forward?

**A:** No, WSHFC will keep the imputed interest rate at 2% on its forms and in WBARS. This is because in the vast majority of cases, a fluctuation of the imputed interest rate will not cause a household to be ineligible for a tax credit unit. We are fine with owners/managers using the actual HUD imputed interest rate in their asset calculations; be sure to note clearly on all calculations if you are using an amount other than 2%. Making revisions on the HEC by hand to show a different interest rate is fine.

### **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.

### **IRAs, 401(k) Accounts, Annuities**

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

**A:** No. 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.

**Q:** Do I need to count the Required Minimum Distribution (RMD) on an IRA account as income?

**A:** Not if it is taken in one lump sum annually. Regardless whether the resident spends the RMD on vacation, new household items, or basic necessities, the income is not counted. If the resident decides to re-invest the money, or deposits the money into a savings or checking account, it will show up as an increase to the resident's assets. In this case, the IRA itself is counted as an asset.

If a resident chooses to take the annual RMD as periodic payments, then the RMD is counted as income. In this case, the account the RMD is drawn from **would not** be counted as an asset.

**Q:** How does WSHFC define the term "periodic"?

**A:** "Periodic payments" are those withdrawals or disbursements of income which occur at regular intervals, and occur two or more times per year.

## Real Estate Valuation

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

**A:** 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.

<b>TYPE</b>	<b>Proof Required</b>
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

**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.

## **REPORTING & RECORD KEEPING**

### **Annual Reports – Tax Credits**

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

**A:** Tax credit annual reports are due by January 31 each year. Refer to **Chapter 6** in the **Tax Credit Compliance Manual** for detailed instructions on what to submit in your annual compliance report. Also review the information on our website's Forms and Reports page for additional details.

**Q:** How do we submit our rental activity data to WSHFC?

**A:** WSHFC requires all tax credit owners to submit rental activity for each calendar year via our Web-Based Annual Reporting System (WBARS). The reports are required to be submitted via WBARS by January 31<sup>st</sup> of every year.

**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 requested packages for the last occupant of the unit during the reporting period. If any units were vacant for the entire reporting year, provide requested certification packages 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 to them.

## ***SPECIAL-NEEDS HOUSING COMMITMENTS***

### **Persons with Disabilities Commitment**

**Q:** What is the definition of a Disabled person for purposes of meeting my projects' commitment to serve persons with disabilities?

**A:** WSHFC follows HUD's definition of Disabled or Disability which is described as a physical or mental impairment that substantially limits one or more major life activities. Disabilities are typically long-term or permanent in nature.

### **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 Certification*** form.

### **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](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.

## Farmworkers

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

**A:** A Farmworker is someone who earns at least \$3,000 per year from farm work. For additional guidance, please review the Farmworker forms, instructions, references and video on our website at <http://www.wshfc.org/managers/forms-RC.htm>.

## Homeless Commitments

**Q:** What is the difference between Permanent Housing for the Homeless and Transitional Housing Special Needs Commitments?

**A:** **Transitional Housing for the Homeless** requires that any building having a transitional unit must have 100% transitional units. The **Permanent Housing for the Homeless Commitment** allows 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 WSHFC's *Tax Credit Compliance* manual, as well as required forms and instructions, for additional information.

**Q:** Transitional Housing units are intended to house residents for up to 24 months. Do I need to evict residents after they have been there for 24 months? Often there just isn't permanent housing available for residents at month 25.

**A:** No. It is not necessary to evict a resident who has been living in a transitional housing unit for over 24 months. Transitional housing was created in the Stuart B. McKinney Act as a program designed to move formerly homeless residents to permanent housing within 24 months. As long as there is a service plan for each member and the goal for the transitional building remains "transition to permanent housing," WSHFC will consider units to be in compliance with federal law regarding Transitional housing.

## Large Household

**Q:** What is the definition of a Large Household?

**A:** To qualify as a Large Household, the household must live in a three-bedroom or larger unit and have four or more occupants.

## 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 Portfolio Analyst if you are unsure whether or not a household can qualify under two Special-Needs Commitments.

## 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.

## Marketing: 30-Day Requirement

**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 anything 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.

## Once Qualified, Always Qualified

**Q:** A property elected the Large Household Commitment (defined as a unit with three or more bedrooms occupied by a household of four or more). 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.

## STUDENTS

### 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 fulltime student where there are other residents in the household that qualify. However, when a unit becomes occupied **entirely** by fulltime 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 other similar program funded by a state or local government agency.
2. receiving benefits under Title IV of the Social Security Act (e.g. TANF).
3. a single parent and the single parent is not a dependent of another individual, nor are their children dependents of another individual except another parent of such children.
4. married and eligible to file a joint return.
5. A student that was previously under the care of a state foster care program.

## International Students

**Q:** We have an international student who attends school fulltime but receives zero credits. Schools generally confirm student status by the number of credit hours taken, so it is possible that the college may verify their status as part time. Should we consider these students full time or part time?

**A:** International Students are almost **always considered** fulltime Students. This is because their Student Visa specifically requires these students to attend school fulltime to remain in the United States. Households with International Students would need to have at least one other household member who is **not** a fulltime student to remain a qualified household.

## Married Students

**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.

**Q:** Can legally married same-sex couples qualify for the "married, filing jointly" student exception?

**A:** Yes.

## Student Status and Foster Care

**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.

## Students with Unborn Children

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

## 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.

## UNIT OCCUPANCY

### 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:** According to the IRS, 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 generally, 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. When casualty losses occur, Owners should contact their Portfolio Analyst immediately to report the loss and to receive guidance in documenting the loss appropriately.**

**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.

### Daycare/Home Business Use of a Unit

**Q:** May 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 work with an attorney to include the following in their lease documents:

- 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.

### 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.

### 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 (in a 100% low-income property, households that were initially income-qualified may move from building-to-building, without restriction. Owners should ensure that they selected the multi-building project box on IRS Form 8609 (box 8b ) if there is more than one building in the project.

**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.



## 140%/Next Available Unit Rule

**Q:** Are the 140% rules now the same for 4% tax credit properties (i.e., tax credit property also financed with tax-exempt bonds) as they are for 9% properties?

**A:** Yes, 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.

## 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, Owner or investor may have stricter expectations for this timeframe.

It is important to understand that turning a unit quickly **and** keeping it in rent-ready status are equally important. Any units sitting for prolonged periods of time in a **non**-rent-ready condition constitute material non-compliance and will be reported to the IRS.

**Q:** What about when I have to store items abandoned by the resident for 45 days. Can I do this in a vacant unit?

**A:** No. Units must be made rent-ready and available to the public to be eligible for tax credits. They cannot be used to store items. We recommend that you check with your legal counsel regarding moving and storing abandoned resident items in a storage facility, garage or other secure area.

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

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

## UTILITIES

### Alternate Utility Allowance Calculation Methods

**Q:** I'd like to use an alternate method to calculate the utility allowances at my property. How do I get started?

**A:** Review **Appendix O** in WSHFC's *Tax Credit Compliance Procedures Manual*. Then contact Compliance staff to start the process. Our staff must approve requests for any alternate methods and the proposed rates must be posted for resident comment 90 days prior to implementation. We cannot retroactively approve utility allowance schedules.

**Q:** When structuring 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. What alternate methods are available?

**A:** Our *Tax Credit Compliance Procedures Manual* outlines detailed utility allowance calculation 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 **Appendix O**.

To encourage owners to use more accurate utility allowance estimates, specifically the Energy Consumption model, the Commission is now offering additional points in its 9% Tax Credit Application to owners who agree to use the Energy Consumption model to calculate the utility allowances for their proposed project.

For additional information about recent revisions to our policies as well as how the application points are applied, review a recording of a Utility Allowance webinar recently presented by the Commission's Sustainability Coordinator; the webinar links are located under the **Appendix O** link on our Tax Credit Manual web page.

## **Studio & SRO 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:** I have SRO (Single Room Occupancy) units; which allowance should I use?

**A:** You can use the Studio allowances contained in the schedule for any SRO unit.

## **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 is required.

## **MISCELLANEOUS TOPICS**

### **Households found to be over-income at the time of Move-In**

**Q:** What should I do if I find that a household was overqualified at move-in during a tax credit lease up? What do I need to tell the Commission?

**A:** If you determine that a household is found to be over the income limit at move-in on an initial lease-up certification, you should correct the noncompliance, and immediately email your Portfolio Analyst to inform them what was found, and how and when it was corrected. At that time the Commission is required to issue a notice of noncompliance to the IRS. The notice will be issued as corrected and with an explanation that the owner/manager identified, fixed and reported the noncompliance. The IRS will determine if credits can be taken on the unit. Additionally, this type of incident would be noted on Question #24 of the **Owner's Annual Certification** form.

**Q:** What if the household found to be over-income at move-in was not the one to initially qualify the unit for credit?

**A:** If this is not an initial lease-up unit and you discover noncompliance at any time prior to an annual report request, you should correct the noncompliance, immediately email your Portfolio Analyst to inform them what was found, and how and when it was corrected. This type of incident would be noted on Question #24 of the **Owner's Annual Certification**. If this procedure is followed, the Commission does not have to notify the IRS of the noncompliance.

If you do not identify the noncompliance, fix it, and notify your Portfolio Analyst prior to the Commission sending an Annual Report request, the noncompliance must be reported to the IRS. It does not matter if the noncompliance was due to management error or the resident failing to disclose all income sources.

## **Demographic Data Collection Requirement**

**Q:** Do we need to collect and report demographic information on our residents that reside in tax credit properties?

**A:** Yes. Federal legislation requires all state Housing Finance Agencies (like WSHFC) to collect and report information on race, ethnicity, family composition, age, income, use of rental assistance, disability status and household rent payments to HUD annually.

**Q:** How should we collect and report this data to WSHFC?

**A:** Have all applicants for housing complete our *Household Demographic Reporting Form* **after** you have confirmed that the household is income-qualified. Since the information is optional, residents may check a box on the form indicating their desire not to disclose the information. This data is then entered into WBARS to report to WSHFC. WBARS includes Demographic Data fields on each household's individual record which will capture this information.

## **Fair Housing Act--Accessibility**

**Q:** Do tax credit 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.

## **When Applicant/Resident signs with an "X"**

**Q:** Is something special required when an applicant or resident signs his or her name on a WSHFC form 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."

## **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 by completing and submitting IRS Form 211, which can be downloaded from the IRS website.

**Q:** Is fraud considered reportable noncompliance?

**A:** It depends. If the Owner corrects fraud issues and informs WSHFC, noncompliance is not reported. If WSHFC discovers fraud at the time of an annual review 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 calculated from the first year the Owner takes credits, which can be either the Placed-in-Service year or the following year.