

How to Determine Rent

Rents & Tenancy Issues

For a unit to be eligible for tax credits, it must be rented to an income-qualified Household *and* the rent on the unit must be restricted. The allowable income and rent level election is made at the application stage and these commitments are included in the property’s Regulatory Agreement.

The gross rent — that is, rent plus any Resident-paid utilities — on each affordable unit cannot exceed 30% of the imputed limit under which the Household qualifies. The assumption is that there are 1.5 persons per bedroom, regardless of the number of persons actually in the Household. This is called an “imputed Household size.” The rent schedules provided by the Commission already apply this rule, and identify the number of bedrooms in the unit and the income level served. Rents are based on the income level committed to and are *not* calculated on the actual income of the Household. The Commission updates the rent schedules annually based on changes to Area Median Gross Income as determined by HUD.

Example: A property is designed to serve Households at or below 60% AMGI. A prospective Resident’s anticipated income is 55% AMGI. The maximum rent charged for the Resident’s unit is based on 60% AMGI, the targeted income level.

While an Owner may charge rents *lower* than the maximum allowed, actual rents, including utility allowances, can never exceed the maximum allowed Gross Rent for the unit to be eligible for tax credits.

EXAMPLE of READING RENT TABLE

Tater Apartments is located in Adams County. The property is all two-bedroom units, and the Owner has committed to 25% of the units for Households at 40% AMGI, with the balance at 60% AMGI. The appropriate maximum rents for the two-bedroom units are bolded:

ADAMS COUNTY Effective: 2/13/08 (CURRENT)
2008 Median Income: \$47,200

Maximum RENTS for Projects Based on UNIT SIZE Low-Income Housing Tax Credit Program (Used for projects that received allocations in 1990 and after or pre-1990 projects which elected to switch in February 1994.)						
Set-Aside %	Studio	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	5 Bedroom
60%	\$552	\$591	\$709	\$820	\$915	\$1,009

50%	\$460	\$493	\$591	\$683	\$762	\$841
45%	\$414	\$443	\$532	\$615	\$686	\$757
40%	\$368	\$394	\$473	\$547	\$610	\$673
35%	\$322	\$345	\$413	\$478	\$533	\$588
30%	\$276	\$296	\$355	\$410	\$458	\$505

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

Use these tables rather than making your own calculations to avoid any rounding errors. Remember that from these rents, you **must** subtract the appropriate utility allowance for any *Resident-paid* utilities based on appropriate utility allowance schedules.

Restricted Rent Requirements

- ◆ Base rent on number of bedrooms, not Household size.
- ◆ Use correct maximum rent table provided by Commission.
- ◆ Deduct correct utility allowance from maximum rent:
 - ◆ PHA utility allowance
 - ◆ RD utility allowance
 - ◆ HUD utility allowance
 - ◆ Utility company or other estimates (see **Appendix O** in this Manual for further explanation of utility allowance calculation options)

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

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

What is the consequence of overcharging rent? The unit is no longer qualified; is subject to recapture; and must be reported to the IRS. A refund of the rent overpayment must be made to Resident and verified to the

What Constitutes Rent

Commission. It is always acceptable to charge a rent which is lower than the allowable maximum rent.

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

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

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

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

In addition, if a fee for a supportive service and rental assistance is paid to the Owner of the unit (on the basis of the low-income status of the Household) by any governmental assistance program or by a 501(c)(3) organization *and* if the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, the payment received for supportive services is not included in rent. The term "supportive service" means any service provided under a planned program of services designed to enable Residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or

Changes in Rent Limits

intermediate care facility for the mentally or physically disabled. In the case of a single-room occupancy (SRO) unit or Transitional Housing for the Homeless, such term includes any service provided to assist Residents in locating and retaining permanent housing.

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

If rent limits **rise** during the term of a Resident's lease, the rent may be increased depending on the terms of the lease and/or applicable landlord-tenant law. A change upward in tax credit rent levels does not automatically entitle an Owner to increase rents in the middle of a lease term.

The maximum Gross Rent that can be charged may fluctuate up and down as the county median income fluctuates from year to year. For the latest Area Media Gross Income limits by county, see the Commission's website at www.wshfc.org/limits/map.asp. However, the Gross Rent charged can never drop below an initial gross rent floor as applied to a unit. That initial Gross Rent floor is fixed by an election of the Owner no later than the date when the building was Placed in Service. Typically, Washington State median incomes for all counties and metropolitan areas either rise from year to year or remain constant.

Tax Credit Properties with Section 8 or RD Subsidies

In properties with Section 8 and/or Rural Development subsidies, a Resident's rent portion may exceed the Tax Credit maximum rent limit, as long as subsidy is being paid on the Resident's unit.

Restricting Up-Front Charges

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

Model Units

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

Household Composition Issues

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

Changes in Household Composition

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

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

Victims of Domestic Violence

A change to the Household may be requested at any time by a victim of domestic violence. Under the Landlord-Tenant Act, a domestic violence victim can get out of a lease early, and has the right to be free from discrimination by a landlord when entering into or renewing a lease.

To end a lease early, a domestic violence victim must present written verification of their situation. This may take the form of a valid order for protection or a record of reporting the incident(s) of domestic violence/assault/stalking to a "qualified third party", such as law enforcement officers, state court employees, healthcare professionals, licensed mental health professionals, clergypersons, or crime victim/witness program advocates.

A domestic violence victim must notify her/his landlord in writing that they are a victim of an instance of violence/assault/stalking, attach their written verification, and give notice that s/he will be moving out within 90 days of the incident.

For more information on this issue, consult with your attorney and review the Residential Landlord-Tenant Act found at RCW 59.18.

Live-in Aides

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

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

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

A Live-in Aide:

- ◆ qualifies for occupancy only as long as the Resident needing supportive services remains qualified and requires the Aide's services.
- ◆ *never* qualifies as a remaining family member who can continue to live in the Unit after the Resident moves out.
- ◆ does not count as a Household member when determining the income limit, their income is excluded from the Household income certification, and they are not included on the lease.
- ◆ cannot have their family members living with them in the unit.

Also,

- ◆ Relatives may be considered Live-in Aides; only if they would not otherwise be living in the Unit except to provide necessary supportive services to a household member. A spouse can never be considered a Live-in Aide.
- ◆ Owners are encouraged to use appropriate lease language to deny occupancy to Live-in Aides after the household member needing assistance is no longer living in the Unit, and to enable the eviction of Live-in Aides for violations of the terms of the lease (including house rules, if any).

Anticipated Children

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

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

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