Federal Requirements

Summary

- To qualify for tax credits, a property must meet either the 20/50 or 40/60 test (see ***Chapter 1, Introduction,*** for explanation of the 20/50-40/60 test).
- All affordable unit Households must have their anticipated income for the next 12 months certified at time of initial occupancy (see ***Chapter 5*** for more details on income qualification)
- 3rd party-verified recertifications of qualified households' eligibility must be completed only on the first lease anniversary (for 100% income-restricted projects). Self-certifications of household income may be used in subsequent years.
- 3rd party-verified recertifications of eligibility must be completed *every year* on restricted units at a **mixed income project** (tax credit property with market rate units).
- Certification of student status is required for **every** member of **every** qualified household at **every** tax credit project **every** year, regardless of project type or where the project is in its Regulatory Agreement period.
- Individuals in a Household don't have to be related.
- All affordable units must be rent and income-restricted. Income and rent limits are updated each January and accessible from our website.
- The maximum Resident rent that can be charged is determined after subtracting out a utility allowance for any Resident-paid utilities.
- Rules specify which utility allowance to use, depending on whether buildings receive HUD or Rural Development (formerly FmHA/RHS) assistance, or whether a Resident receives Section 8 assistance. Other allowance types may be used, but require Commission approval – see ***Appendix O*** for more information.
- Affordable units must be suitable for occupancy and be rented to the general public on a non-Transient basis.
- A unit is not "qualified" until it is initially occupied by a qualified Household.
- If an affordable unit becomes vacant, and the last occupant was a qualified Household, the vacant unit continues to be considered an affordable unit, as long as the next available unit of comparable size or smaller is rented to a qualified Household ("Vacant Unit Rule").

- If an affordable Household's income increases above 140% of the elected applicable minimum election income limit (50% or 60%), the next available unit of comparable or smaller size must be rented to a qualified affordable Household ("Available Unit Rule").
- Certain Households are not qualified for tax credit housing, e.g., if all the occupants of a unit are fulltime Students, the unit is generally not eligible for tax credits.
- Properties must comply with **all** Fair Housing regulations.
- Properties must comply with all requirements of the Violence Against Women Act (VAWA).
- All tax credit properties must have a Regulatory Agreement (extended use agreement) recorded as a restrictive covenant against the property.
- Owners must make annual certifications regarding compliance and must maintain records verifying Household qualification.
- Noncompliance is reportable to the IRS and may result in recapture of credit claimed.

For Use by the General Public

If a residential rental unit is not for use by the general public, the unit is not eligible for tax credits. A residential rental unit is for use by the general public if the unit is rented in a manner consistent with housing policy governing non-discrimination, as evidenced by rules or regulations of the Department of Housing and Urban Development (HUD) – see following **Fair Housing** section.

Units may be used by Residents to operate a home business, as long as the unit is still *primarily* used for residential purposes. In general, this standard can be measured by making sure the Resident maintains the unit as their principle household, does not attach business-related signage to the unit exterior and does not have excessive customer traffic in and out of the unit that might interfere with the peaceful enjoyment of other property residents.

If a residential rental unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for tax credits. In addition, any residential rental unit that is part of a hospital, nursing home, sanitarium, lifecare facility, trailer park, or intermediate care facility for the mentally and physically disabled is not for use by the general public and is not eligible for tax credits.

Authority:

IRS Regulation 1.42-9

Fair Housing

Tax Credit projects are governed by Fair Housing laws. These laws outline ways in which Owners must refrain from discrimination in their housing practices. Federal Fair Housing regulations are supplemented by laws in city, county or other geographic jurisdictions. It is vital for Owners to be familiar with the Fair Housing laws in their jurisdictions as well as the federal regulations. Note that the Commission is required to notify the IRS when we receive notices of Fair Housing Act administrative and legal findings issued by HUD or the Department of Justice against a property owner or management company. See our website for links to Fair Housing resources**.**

Violence Against Women Act (VAWA)

The Violence Against Women Act (VAWA) protects victims of domestic violence, dating violence, sexual assault and stalking from being evicted or denied housing assistance based on acts of violence committed against them. The Violence Against Women Reauthorization Act of 2013 extends VAWA's housing protections to include the Low Income Housing Tax Credit program, and are enforced by the Department of Justice.

Owners are responsible for meeting the requirements of this law. Owners should implement the following practices to ensure VAWA compliance:

- Prohibit eviction from housing (consistent with state eviction laws) on the basis that an applicant or resident is a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or resident otherwise qualifies for housing;
- Provide notices similar to HUD-5380 (Notice of Occupancy Rights Under VAWA) and HUD-5382 (Certification of Domestic Violence) to all residents in existing developments;
- Allow bifurcation of resident leases in order to evict or terminate assistance of the perpetrator and continue housing assistance for the victim;
- Develop policies on acceptable unit transfers, referencing guidance from HUD-5381 (Model Emergency Transfer Plan) and HUD-5383 (Emergency Transfer Request); and
- Train property management staff who interact with applicants and residents on VAWA requirements.

  A link to HUD's forms is available on the Resources page of our website.

Please note that following VAWA requirements does not exempt the Owner from being in compliance with LIHTC program requirements.

Suitable for Occupancy

Tax credits are available only for units that are suitable for occupancy and that are used other than on a Transient Basis. Section 42 states that "suitable for occupancy" will be determined under regulations issued by the IRS, taking into account local health, safety, and building codes. Part of a property's occupancy suitability requirement involves making sure that vacant units are always rent-ready. Additionally, Owners must be able to prove that they are making reasonable attempts to market their units so that units are not vacant for extended periods of time.

Authority:

IRS Regulation 1.42-5

Non-Transient Use

"Transient" is not defined in Section 42 or other IRS regulations, but the legislative history of Section 42 describes a "safe harbor" which states that leases with an initial term of six months which can then revert to a month-to-month tenancy are considered "non-Transient." Section 42 specifically provides that a single-room occupancy (SRO) unit may be rented on a month-by-month basis without it being considered "Transient." This is also the case for units set aside for the *Transitional Housing* Special Need Commitment. Such units may use month-to-month leases, although the Commission recommends using six-month leases on all initial lease terms for all tax credit and/or bond properties.

General Prohibition Against Student Housing

Generally, tax credits are not available for units occupied entirely by Students. A "Student" is an individual who is a **fulltime** student at an educational organization which maintains a regular faculty and curriculum, **<u>for at least five calendar months during a calendar year.</u>** The official out-of-compliance date for a Student household is the first day of the fifth month in a calendar year in which students attended school full time. However, if the Student household moves out before *the last day* of the fifth month, there will be no reportable noncompliance.

Note:

- "Fulltime" status is determined exclusively by the educational institution.
- School attendance at night or online does not exempt a Resident from "Student" status.
- Minors who are in school fulltime meet the definition of "Student" because they are enrolled **fulltime**.

- An individual who attended school fulltime for five or more months (consecutive or not) in the calendar year **prior** to move-in is considered a Fulltime Student for the entire calendar year.

It is permissible for one or more Students to be part of an otherwise qualified Household or for part-time students to be part of a qualified Household, but **if *all* the Residents of a unit are fulltime students, the unit will not be eligible for tax credits unless the Students fall within specified exceptions.** The following are the exceptions where occupancy by all fulltime students is allowed and does not affect the tax credits:

1. At least one individual is receiving assistance under Title IV of the Social Security Act (i.e. TANF);

2. At least one individual is enrolled in a job training program receiving assistance under the Workforce Investment Act or under other similar federal, state, or local laws;

3. Household consisting of a single parent and his/her dependents, where neither the single parent nor their children are dependents of another individual (other than a parent of such children);

4. Household consisting of persons who are married and eligible to file a joint tax return;

5. At least one individual was previously under the care of a state foster care program.

Note: Documentation required to verify certain exceptions to an all-Student Household are as follows:

For 1.: Verification of TANF benefits

For 2.: Fulltime Student Job Training Exception Verification

For 3.: Signed tax return required or completed Student Exception Affidavit

For 4.: Marriage certificate

For 5.: Written verification from Washington State's Department of Social and Human Services that the student was previously in foster care, or similar documentation if the person was in foster care in another state.

"**Dependent"** means that half of one's support for a calendar year was received from another person, or was treated as received in the case of multiple support agreements or in the case of divorced parents of a dependent.

Example: *Louise, her 19-year old daughter Stella, and Stella's six year old son, Max, are initially qualified and sign a one-year lease. Louise does not attend school. Stella is a fulltime student at the local community college and Max is in elementary school. Four months into the lease, Louise moves out. This is now an all- Student Household, since both Stella and Max are fulltime students. However, assuming Stella is not the dependent of another person, and Max is either her dependent or that of his father, this household remains qualified under student exception #3.*

Owners should consider having leases include a prohibition against occupancy entirely by fulltime students, and that if a unit includes any fulltime students, management must be notified of any change in the occupancy of the unit during the lease term. Occupancy by Student Households not falling within the exceptions should be identified in the lease as potential cause for termination of the tenancy.

Keep in mind that the Commission continues to monitor **every** tax credit project for compliance with the Fulltime Student rule **for the duration** of the Regulatory Agreement.

Authority:

Code Section 151(c)(4).

Reference: Code Section 42(i)(3)(D) – Student defined

Reference: Code Section 152. – Dependent defined

Evictions

Pursuant to Revenue Ruling 2004-82, the Owner may only evict residents during the Compliance Period for "good cause" as defined by the state or local jurisdiction. Non-renewal of a lease by the Owner without cause is also prohibited. Per the language of the Commission's Lease Rider, "*The Owner is prohibited from evicting [the Resident], and is prohibited from refusing to renew [the Resident's] lease or rental agreement, other than for "good cause." Generally, good cause shall mean the serious or repeated violation of material terms of the lease or a condition that makes [the Resident's] unit uninhabitable. All termination and non-renewal notices served upon residents must include a list of the specific violations constituting "good cause" so as to enable the tenant to prepare a defense. Under federal law, [the Resident has] the right to enforce this requirement in state court as a defense to any eviction action brought against [the Resident]"* (emphasis, bracketed language added). It is important to note that violations by the Resident of Tax Credit program requirements **are** considered "good cause." Increases in household income that occur after move-in are not considered "good cause" unless they are the result of failure to report all income at move-in.

Common Areas

Tax credits are only available for qualified affordable units and "Functionally Related and Subordinate Facilities," called Common Areas. These are facilities that are reasonably required for the property and include swimming pools, other recreational facilities, community buildings, and parking areas. For further information on parking areas, see ***Chapter 4, Rents & Tenancy Issues***. Common Areas can only be counted for tax credits if they are available to **all** Residents on a nondiscriminatory basis at **no charge**. For example, a weight room that required payment for use would be counted as a commercial facility, not eligible for tax credits. If there is a change in use, where a property facility that was available for Resident use at no charge becomes available only if a payment for use is made, the change could affect the amount of tax credits available to the property and could trigger a recapture of credit. Before making any such changes in use, an Owner should consult with qualified tax credit professionals and notify the Commission of the impending change.

Common Area Units

Units provided for fulltime resident managers, maintenance personnel or security personnel are called Common Area Units and are considered part of the Common Area of the property. The number of hours that constitutes "fulltime" may differ from project to project, depending on the needs of each property.

The Common Area Units are not considered residential rental units because they are not for rent to the general public — they are provided for property or management employees and are considered functionally necessary to the project.

The Owner must be able to defend the need for a Common Area Unit at the property and the exclusive use of that unit by a fulltime employee at that property.

There is no tax credit penalty for having Common Area Units in a property. When the percentage of affordable use is calculated, the Common Area Units are ignored.

Example: *A building in a 100% affordable property has 10 units, and one unit is the manager's unit. Calculate the affordable use of that building (based on Unit Fraction) as follows:*

Affordable Units:	*9 units*
Total Residential Units:	*9 units*
Affordable Percentage:	*9/9 = 100%*

Under the Commission's rules, Common Area Units are not counted in determining any Additional Low-Income Use Housing Set-Aside Units or Special-Needs Housing Units.

Example: *A property has 50 total units, which include a manager's unit and a maintenance person's unit that have been designated as Common Area Units. The total number of Housing Units is therefore 48. If 24 units were set aside for Households at or below 35% AMGI, for example, that would constitute 50% of the units (24/48), based on the unit percentage.*

No changes in location of Common Area Units can be made without prior Commission approval.

The Commission requires that an Owner designate any Common Area Units (and the buildings in which they are located) prior to the property being Placed-in-Service. The Commission also requires a written request from the Owner prior to any change in designation of Common Area Units. While moving a Common Area Unit from one building to another ***may*** be allowed by the Commission, if the change would result in a reduction in the affordable use of any building in the property, the move will not be allowed.

Example: *The Riverview Apartments consists of two buildings, each with ten identically-sized units. Building A has six affordable units and four market-rate units. Building B includes a manager's unit, so it contains only nine residential units, six of which are affordable and three of which are market units. Following is the affordable use of the property:*

Building A	*Building B*
*6/10 = 60% LI**	*6/9 = 66.67% LI*

** LI=Low Income*

Assume one of the affordable units in Building A becomes vacant and the Owner wants to move the manager's unit from Building B to that unit. First, the change in affordable use of each building must be analyzed. Converting the vacant affordable unit in Building A to a manager's unit would reduce the number of residential units in Building A to nine units and would change the affordable use as follows: Five affordable units/nine residential units = 55.56% LI use. Since this would be a reduction in affordable use, the change would not be allowed.

If a market-rate unit in Building A became available, the manager's unit could be moved to that unit, since the affordable use of Building A would not decrease, but in fact would increase to 6/9 = 66.67%.
The vacated manager's unit in Building B would have to revert to an affordable unit to maintain the affordable use of that building. If the manager's unit became a market-rate unit, the affordable percentage of Building B would be reduced to 6/10 = 60% LI, which would not be permitted. Therefore, the vacated unit would need to be rented to a qualified affordable Household, with the effect of increasing the affordable percentage of Building B to 7/10 = 70%.

Note: *That in this example, to prevent a reduction in the percentage of affordable use for either building, the total number of affordable units in the property must be increased if the manager's unit is moved from Building B to Building A.*

If the property has no need at the time for a manager, or the manager lives off-site, it is permissible to rent a Common Area Unit to a qualified household (in order to maintain the percentage of affordable set-asides of the property). It is not necessary to recalculate any Special-Needs Commitments of the property if the Common Area Unit is rented to a qualified Household. To maintain 100% affordable use, any Common Area Unit which becomes a residential unit **must** be rented as a qualified affordable unit.

If at a later date the Common Area Unit is needed for a manager or other service personnel, then it may revert back to being used for on-site staffing.

Example: *Assume a maintenance person who had been provided a unit as part of his/her employment is laid off and chooses to remain at the property as a Resident. For the property to stay in compliance, an income certification must be done for this Household, using the information from his/her new job, and the rent must be restricted according to the property income set-asides. Property managers may want to consider adding conditions to Common Area Unit leases to allow for this possibility.*

Authority:

Revenue Ruling 92-61: Manager's unit is Common Area Unit, eligible for credit.

PLR 9330013: Maintenance personnel's unit is Common Area Unit, eligible for credit.

PLR 9538015: Security personnel's unit is Common Area Unit, eligible for credit.

Mixed-Income Properties

The most difficult issues in tax credit compliance are related to properties that are mixed income, with both affordable units and market rate units. A property which has set aside 100% of its units for affordable use and further targets units for residents whose income is lower than the selected minimum 50% or 60% AMGI is *not* considered a mixed-income property.

Example: *The Golden Arms Apartments consists of 50 units. The Owner selected the minimum 40/60 election. The Owner set aside 20 units for residents at 60% AMGI, 20 units for residents at 50% AMGI, and 10 units for residents at 40% AMGI. This is a 100% affordable property with no market rate units.*

Owners of mixed-income properties should have competent tax credit consultants review the property's lease-up and on-going management plan to ensure rental procedures maintain compliance with the program.

Generally, the percentage of affordable units *in a building* is determined and must be maintained at that same percentage to maximize the amount of tax credit at the end of the first year credit is claimed. Each building does not need to meet the 40/60 or 20/50 test — that test can be applied property wide. However, a building's particular percentage becomes fixed at the end of the first year credit is claimed. The percentage of affordable use is the *lesser* of the Unit Fraction or the Floor Space Fraction, determined building by building. The Unit Fraction is the ratio of affordable units to total housing units in the building; the Floor Space Fraction is the ratio of the floor area of the affordable units to the floor area of all housing units in the building. If all the buildings are 100% affordable, this is insignificant since *all* units must be rented to eligible affordable households.

Example: *Twin Teepee Apartments consist of two buildings, each with ten identical units. The Owner has selected the 40/60 election, and the property will be mixed income, with 40% of the units as affordable. At the end of the first year credit is claimed, the property is fully occupied. At that time, Building A has three affordable units and seven market-rate units, and Building B has five affordable units and five market-rate units. The total property affordable use is 20 units x 40% percent affordable use equals eight affordable units. However, for the entire Property Compliance Period, the property must be maintained so that Building A has at least three affordable units and Building B has at least five affordable units. If at a later date, the mix changes so that each building has four affordable units (eight totals), there would be a recapture of credit from the reduction in affordable use of Building B, from five units to four affordable units. However, you do not receive credits for the additional affordable unit in Building A.*

Available Unit Rule

Under the Code, special rules apply when an originally qualified Household's income increases above 140% of the applicable income limitation (i.e., 140% above either 50% AMGI or 60% AMGI). Provided the Available Unit Rule is followed, a unit continues to be treated as Qualified even if the household's income exceeds 140% of the applicable income limitation on recertification.

The Available Unit Rule states that if a unit becomes an over-income unit, that unit can continue to be treated as a Qualified Unit ***only*** *as long as it remains rent-restricted and as long as no nonqualified resident occupies any Comparable Unit that is available or that subsequently becomes available in the building.*

Once a unit becomes over-income, if a nonqualified resident then leases a Comparable Unit in the building, the original over-income Household is no longer treated as qualified, and the building may be subject to recapture. The following definitions apply to the Available Unit Rule:

"Comparable Unit" means a residential unit in the building that is of comparable size or smaller than an over-income unit. For purposes of determining whether a residential unit is comparably sized, a Comparable Unit can generally be understood as a unit of the same or smaller **bedroom size** as the over-income unit.

"Nonqualified Resident" means a new occupant or occupants whose aggregate income exceeds the applicable income limitation.

"Over-Income Unit" means an affordable unit in which the aggregate income of the occupants of the unit increases above 140% of the applicable income limitation under IRC Section 42(g)(1), i.e., 140% above either 50% AMGI or 60% AMGI.

"Qualified Resident" means an occupant either whose aggregate income (combined with the income of all other occupants of the unit) does not exceed the applicable income limitation and who is otherwise a low-income Resident under Section 42, or who is a current resident.

Available Unit Rule and Mixed-Income Properties

The Owner of an affordable building must rent to Qualified Residents all comparable units that are available or that subsequently become available in the same building to continue treating the over-income unit as an affordable unit. Once the percentage of affordable units in a building (excluding the over-income units) equals the percentage of affordable units on which the credit is based, the over-income unit may be converted to a market-rate unit if the committed percentage of affordable use of the building is maintained (this will only be possible in a mixed-income building).

Example: *A building with ten identically sized units is mixed income, with six affordable units set aside for residents earning 60% or less of AMGI. At recertification, one of the affordable units is found to be over-income, i.e., the household now earns more than 140% of 60% AMGI. To comply with the Available Unit Rule, any unit that becomes available* ***must*** *be rented to an income-qualified household or the over-income unit will not be treated as affordable. If a market-rate unit becomes available, it must be rented to a qualified affordable household. When the building once again has six affordable units, excluding the over-income unit, the over-income unit may then be converted to a market-rate unit.*

No available comparable unit may be rented to a nonqualified household before the Available Unit Rule is complied with.

Example: *A building with ten identically sized units is mixed income, with six affordable units set aside for residents earning 60% or less of AMGI. At recertification, one of the affordable units is found to be 140 % over-income. At that time, three market-rate units are vacant. The first occupant of any of the vacant units* ***must*** *be income-qualified, or the over-income unit will cease to be treated as an affordable unit. Holding one unit open for a new income qualified household will* ***not*** *comply with the Available Unit Rule.*

Example: *A building with ten identically-sized units has seven affordable units and three market rate unit, all of which are occupied. At recertification, it is determined that four of the affordable units are 140% over-income. As long as there are no vacancies, and all the affordable units remain rent-restricted, the building will continue to be treated as 70% affordable. Later, two of the market-rate residents move out of the building, and their units are rented to income-qualified households. The remaining market-rate Resident then moves out and his unit is rented to another market-rate Resident. Once that occurs, the above-income units are no longer treated as affordable units, and the building has only five affordable units (three of the original affordable units which were not over-income plus the two new affordable households). Since the percentage of affordable use has dropped from 70% to 50%, there may be recapture of credit.*

The Available Unit Rule is applied building-by-building.

The Available Unit Rule applies separately to each building in a property. In a mixed-income property, the affordable use must be identified and maintained building-by-building, and the Available Unit Rule is applied building-by-building.

Example: *A property has two buildings, each of which contains ten identically-sized units and each of which is 60% affordable (six affordable units and four market rate units). At recertification, two affordable units in Building A are 140% over-income, but no units in Building B are over 140%. If a market-rate Resident moves out of Building B, that unit can be rented to another market-rate Resident without violating the Available Unit Rule, because the over-income units in Building A do not affect Building B.*

Mixed-Income Buildings with Different Sized Units

Mixed-income buildings where units are different sizes may need to increase the percentage of affordable use over time to maintain compliance with the Available Unit Rule.

Example: *The Peyton Place Apartments consists of a single building with 20 units:*

Unit Size	# of Units		Sq Footage		
One Bedroom	*10 Units*	x	*750 sq ft/unit*	=	*7,500 sq ft/unit*
Two Bedroom	*10 Units*	x	*1,200 sq ft/unit*	=	*12,000 sq ft/unit*
TOTAL:	*20 Units*				*19,500 sq ft/unit*

The property is mixed-income, selecting the 40/60 minimum election. The minimum number of affordable units is 20 units x 40% = 8 affordable units (rounded up). At the end of the first credit year, the building has rented up so that there are five affordable one-bedroom units and four affordable two-bedroom units. The Applicable Fraction **is the lesser of** the Unit Fraction (8/20 = 40%) **or** the Floor Space Fraction (5 x 750 sq ft) + (4 x 1,200 sq ft) = 8550 sq ft/19,500 sq ft total = 43.8% rounded to 44%.

At recertification, it is determined that 2 two-bedroom units are now 140% over-income, triggering the Available Unit Rule. The next two units that become available for rent are one-bedroom market units. To comply with the Available Unit Rule, the Owner rents these units to income-qualified affordable households. However, if the Owner raises the rent of the over-income two-bedroom units to market rates, the Applicable Fraction will drop, because the Floor Space Fraction will drop to 39.2% (because the floor area of the one-bedroom units is less than the two-bedroom units). While the drop in Applicable Fraction is not a large one, it may trigger recapture and reduction of credit. The alternative is to retain the over-income units as rent-restricted, increasing the number of rent-restricted units in the building from 14 to 16 affordable units, and lowering the gross rental income for the building.

The changes in the number of rent-restricted affordable units resulting from maintaining compliance with the Available Unit Rule may or may not be significant, depending on the difference between tax credit and market rents. However, the additional complexity imposed on management practice is substantial for mixed-income properties financed in part with tax credits. Failure to follow the Available Unit Rule will result in reports of noncompliance and recapture and reduction of credit.

Available Unit Rule and 100% Affordable Properties

The next available unit in a 100% affordable property is *always* rented to an income-qualified household, so the Available Unit Rule does not change normal rental practice for a 100% affordable property. However, if a unit is rented inadvertently to a nonqualified household, all over-income units in the building will cease to be treated as affordable units, and the building may be subject to recapture.

Example: *A property consists of a single building with 20 identically sized apartments, all of which are set-aside for households at or below 60% AMGI. Over time, 9 units become 140% over-income, determined at the annual recertification of household income. As long as the units remain rent-restricted, the building is counted as 100% affordable. All the 140% over-income residents continue to live in the building, and two years later the property manager inadvertently leases a unit to a household earning 62% AMGI. At that time, there is potential recapture for the unit rented to the nonqualified Household, as well as for the nine 140% over-income units. The affordable percentage of the building drops from 100% to 50%. Even if the nonqualified Resident moves out and is replaced with an income-qualified Household, the over-income units are no longer treated as affordable units.*

Effect of Resident Moving to Another Unit (100% Affordable Properties)

As long as a Household was qualified at initial occupancy, it will continue to be qualified if the Household moves to another unit in the Project, even if the Household income is above the applicable income limit at the time of the move. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current Resident. The newly occupied unit adopts the status of the vacated unit. Since the IRS no longer requires annual recertification of income on 100% affordable properties, a Household that was properly income-qualified at move-in remains qualified even as their Household income increases.

The Commission does require one third-party recertification of eligibility for every new household at the first lease anniversary. Self-certifications of household eligibility are acceptable for all subsequent recertifications.

Unless a critical error is found during a recertification that disqualifies the original certification, increases in income do not disqualify a household.

Assuming a 100% affordable property, each building is also 100% affordable. Therefore Household moves from one unit to another, anywhere in the Project, are permitted.

If a Household moves to another building, the Owner can simply swap status with the unit they left. **However, if a Qualified Household adds an adult member, the income of that new member must be verified and added to the total household income. If the new total income is over 140% of the federal limit (50% or 60% AMI), we do not believe the Owner should allow this "new" household to move to another building.**

Authority:

Treasury Regulation 1.42-15

Utility Allowances

The gross rent limit for a unit includes the cost of any utilities (other than telephone or cable TV) paid directly by the Resident. The utility cost is determined by using a utility allowance as described in this section. The utility allowance is an estimate of utility usage for a given unit. From the gross rent tables provided by the Commission, an Owner must subtract the appropriate utility allowance to determine the maximum rents that may be charged to Residents. Utility allowance deductions only apply to low-income units, and not to market-rate units.

Because gross rents are based on an imputed Household size and the utility allowance is an estimated figure, a Resident's actual rent plus utility costs might exceed 30% of their actual income.

It is the Owner's responsibility to obtain and use the appropriate utility allowance schedules.

Utility allowance tables are generated by the local public housing authority (PHA), Rural Development (RD), HUD or a local utility company. In certain circumstances, an Owner may be required to use different utility allowances for different units in a single property. **It is the Owner's responsibility to obtain and use the appropriate allowance figures.** Overcharging rent is an instance of noncompliance reportable to the IRS. Since using the incorrect utility allowance can result in overcharging rents, care should be taken in making a correct calculation and in using current utility allowance figures.

Utility Allowance Documentation

The form of utility allowance documentation varies. Sometimes, the utility allowance form identifies various possible uses, such as gas or electric cooking or heating, and estimated usage for the various major appliances in a unit. In that case, the applicable utility allowance is the sum of the uses in the unit. Other times, the utility allowance is a letter identifying the unit size, with a lump sum allowance.

Appendix O

Appendix O contains a summary of the appropriate utility allowances to use and methods of calculating utility allowances other than the ones noted above.

Utilities Paid by Owner

No reduction of gross rent is made for utilities provided by the Owner. For example, if all utilities are provided by the Owner, no utility allowance is used and the rent that can be charged is the maximum gross rent from the rent tables. If the Owner provides centralized heat, a utility allowance is used only for the other utilities in the unit that the Resident pays. The Owner must select "Owner Pays all Utilities" as the utility allowance source in WBARS if s/he is paying ***all*** utilities.

Changes in Allowances

If at any time during the Project Compliance Period the applicable utility allowance for a unit changes, the new utility allowance must be used to compute gross rents of all rent-restricted units within **90 days after the allowance was changed**. For example, if rent must be lowered because the applicable PHA utility allowance shows a higher utility cost, the lower rent must be in effect no more than 90 days after the date of the effective date of the new utility allowance regardless of whether the change takes place in the middle of a lease term and regardless of the rent amount listed in the lease. **Note: Changes to utility allowances must be applied within 90 days after the change, regardless of whether the Owner or management is aware of the change.**

The Commission requires an Owner to obtain updated utility allowances at least annually.

> Example: *An Owner is unaware that the PHA has increased its utility allowances. After 90 days, the property could fall into noncompliance if the new utility allowance required a reduction in the maximum rent charged. The noncompliance would need to be corrected by refunding to the residents any overcharged rent, and the noncompliance would be reported to the IRS. The Owner must provide to the Commission evidence of all efforts to refund overcharges.*

Although the Code states it is the Owner's responsibility to obtain updated utility allowances at least annually, the Commission recommends that Owners check for updates with the applicable utility allowance provider every 90 days.

It is the Owner's responsibility to determine when the utility allowance is updated and to obtain that update. The Owner must have current utility documentation on-site or ***a letter confirming that the prior utility allowances are still applicable***. The Owner must provide this utility allowance documentation with its annual report to the Commission.

Example: *An Owner obtained a PHA utility allowance letter in May and the PHA then adjusted its utility allowances on June 1. The Owner must apply the new utility allowances to rents due within 90 days after June 1 (i.e., rents due on and after September 1). The Owner cannot wait until the following May to get an updated letter.*

Compliance Affordable - Use Periods

The Owner is responsible for maintaining the property in compliance with federal tax credit regulations and in compliance with any additional commitments made to the Commission for the entire Project Compliance Period. That period extends to the latest of the following: the Compliance Period, the Extended Low-Income Housing Use Period, the Additional Low-Income Housing Use Period; or the Three-Year Period, all described below.

There are specific terms used to describe the periods of time that various sections of the tax credit program apply to a building. Except for the Three-Year Period, described below, all time periods for a building begin the first year credit is claimed, which is either the year the building is Placed-in-Service or, at the Owner's election, the following year.

- Tax credits can generally be claimed each year for a 10-year period (the **Credit Period**).
- The **Compliance Period** runs for 15 years, during which time any non-compliance with Section 42 could result in a recapture of a portion or all of the credit.
- The Extended Low-Income Housing Use Period runs 30 years, and can only be terminated earlier at the end of the Compliance Period under special circumstances (such as when no purchaser can be located who is willing to maintain the property as affordable for the balance of the Extended-Use period after a one-year notice period).
- The **Additional Low-Income Housing Use Period** is a commitment to the Commission to maintain the housing for a specified period of years, which may extend beyond the Extended Low-Income Housing Use Period, with an agreement not to terminate the affordable use or Regulatory Agreement during that period Such a commitment also prohibits an Owner from terminating the Extended Low Income Housing

Use Period. Many Owners make the maximum time commitment in the application process.

- The Three-**Year Period** is the three years following the last of any of the above periods, during which time no existing low-income Resident can be evicted except for cause and rents must remain at the restricted level. The Three-Year Period is intended to allow a transition of use of the property following the low-income use under the program.
- The **Project Compliance Period** includes ***all*** of the above periods of time, and is the overall period in which all the commitments in the Regulatory Agreement must be maintained.

Note: See ***Appendix J*** in this Manual for a chart illustrating how all these periods work together in an example property.

Resident Certification Packets

IRS Regulation 1.42-5 requires that the review procedures followed by the Commission must meet certain minimum requirements. Review requirements must be outlined in the state's Qualified Allocation Plan. **The Commission requires that the Owners of all tax credit properties provide to the Commission each year information on Resident income and rent for each Qualified Unit, in the form and manner designated by the Commission, and that all Owners must submit for compliance review:**

1) **Copies of all pertinent income certifications**
2) **Required documentation to support each certification**
3) **Rent records for each low-income Resident requested**

The Commission randomly selects the units it will review.

The certifications must be made under penalty of perjury. The forms used to document and report this information are described further in ***Chapter 6, Reporting & Records Retention***, and are located on our website at ***P:\wshfc\managers\forms-RC.htm***.

The Commission selects which Residents' records are to be inspected or submitted by the Owners for review. In accordance with IRS regulations, the records to be inspected must be chosen in a manner that will not give Owners advance notice that their unit and resident records for a particular year will, or will not, be reviewed.

The Commission reviews the certifications submitted by all Owners for compliance with Section 42 and for compliance with any additional commitments made to the Commission.

The certification and review process extends for the entire Project Compliance Period.

Demographic Data Collection

In 2008, federal legislation was passed that allows HUD to require that state housing finance agencies request certain Household demographic data from Owners on all Tax Credit-financed properties. This includes information on race, ethnicity, family composition, age, and income, use of rental assistance, disability status, and household rent payments, for all Tax Credit units.

The Commission asks Owners to collect this information by having all Households complete the *Household Demographics* form at the time of new move-in. Owners are then asked to enter the data into WBARS for each Household member.

Inspections

In addition to its review of the annual Owner certifications, the Commission conducts on-site visits which include a review of Resident files. On-site visits are separate from any review of low-income certifications, supporting documents, and rent records. In accordance with IRS regulation 1.42-5(d)(2), during property on-site visits, the Commission's Portfolio Analysts inspect units and buildings according to certain IRS standards.

Properties are inspected regularly by Commission staff or by one of our funding partners (currently Department of Community Trade and Economic Development, City of Seattle Office of Housing, City of Tacoma Community and Economic Development, USDA Rural Development and the Department of Housing and Urban Development via REAC). The property will receive a written notice before the inspection. Resident Managers must send a written notification to **ALL** residents at least 48 hours prior to the inspection in accordance with state Landlord/Tenant Law.

Section 42 states that housing finance agencies may use the HUD Uniform Physical Conditions Standards (UPCS) or local code for inspections of Tax Credit properties. Owners are required to abide by local codes, but Commission staff inspect to UPCS standards. Properties must be inspected a minimum of once every three years. At least 20% of the properties' units will be randomly selected for inspection. The IRS stipulates that Owners cannot be given advance notice of the units selected. Owners are required to submit copies of Resident Certification packages for all units inspected no later than 10 business days after the inspection per the instructions during the inspection. Most packages are sent to the Commission's Seattle office; properties monitored by our Spokane Portfolio Analyst should send their packets to our Spokane Office.

If there are items that need immediate attention or remedy, the inspector will complete an "**Items Needing Immediate Attention or Remedy**" form and leave a signed copy of this form at the property. After the inspection is completed, Asset Management & Compliance division staff will provide a written summary of any findings to the Owner and property manager. The Owner is responsible for maintaining the property and correcting deficiencies, other deficiencies could exist that were not detected by the inspector.

Additional information, forms and helpful links regarding Commission inspection procedures and requirements can be found on our website at ***www.wshfc.org/managers/prop_inspections.htm***.

Correction Period for Non-Compliance

The Commission notifies the Owner of any noncompliance, and provides a correction period of up to 90 days to supply any missing certifications and bring the property into compliance with the provisions of Section 42. Following the correction period, the Commission reports to the IRS the noncompliance and whether or not the noncompliance or failure to certify has been corrected. The IRS does not provide any notice to the Commission of any action the IRS determines in connection with an event of noncompliance. However, current program policies require that the Owner provide the Commission with true and complete copies of any and all notices, correspondence or other documents received from the IRS relating to the property within 15 days of receipt of same. Compliance with the requirements of Section 42 is the responsibility of the Owner of the building with an allocation of credit. **The Commission's obligation to monitor for compliance with the requirements of Section 42 does not make the Commission liable for an Owner's noncompliance.**

Tax Credit/Bond-Financed Properties

Combination Tax-Exempt Bond-Financed/Tax Credit Properties. For bond-financed properties in which the Commission is the bond issuer, the Commission has established a single compliance procedure. The Commission obtains property information and certifications on the forms it provides to the Owner, and internally determines both bond and Section 42 compliance. For tax-exempt bond-financed properties in which the Commission is not the issuer, the Commission follows the tax credit compliance procedures set out in this Manual. Bond compliance for those properties is administered by the particular bond issuer.