

## *Rents & Tenancy Issues*

Income limits for the Low Income Housing Tax Credit (LIHTC) Program are calculated by HUD. Limits are broken into two pools, MTSP limits, and HERA limits (for projects which Placed in Service prior to 2008).

MTSP and HERA income limits are updated annually and available on HUD's program limits website. The determination of yearly income limits is the sole responsibility of HUD.

Using IRS rules, the Commission calculates the rent limits for each county in Washington State, using calculations based on the HUD-published MTSP and HERA income limits. The Commission then posts all LIHTC (MTSP and HERA) income and rent limits for each county on our website. Remember that a Project's applicable income and rent limits may be the most recent limits or may be an older set of limits, depending on geographic location (i.e., county) as well as Placed-in-Service date. Be sure to consult the Commission's income and rent limits web page to determine which limits apply to a particular Project.

### **Authority:**

**IRC Section 42(g)(2)(C)**

**IRC Section 42(i)(3)(A)**

**IRC Section 42(g)(2)(B)**

**IRC Section 142(d)(2)(b)**

From the applicable maximum rent limit, Owners *must* subtract the appropriate utility allowance for any *Resident-paid* utilities based on appropriate utility allowance schedules.

If adding rent and a utility allowance results in cents, Owners must round the total up, not down, regardless of the amount of cents.

**It is important to note that if a Project has public funding other than tax credits or bonds, another funder may require the use of more restrictive income and rent limits.** Owners are responsible for knowing which funder requires the most restrictive income and rent limits; the most restrictive limit sets will be applied to each Household record in WBARS.

## Restricted Rent Requirements

If an Owner has a concern about not being able to use a higher set of income/rent limits (because of cash flow issues, for example), the Owner should contact the most restrictive funder to discuss the possibility of using the more financially optimal income/rent limit set.

- ◆ Use correct maximum rent limits.
- ◆ Deduct correct utility allowance from maximum rent.

**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 and must be reported by the Commission to the IRS. A refund of the rent overpayment must be made to each affected Household and verified to the Commission.

## What Constitutes 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 lease should make clear what part of the monthly payment the Resident pays is rent and what part is for optional services.

## What Constitutes Rent (Continued)

In general, for a fee to be *optional*, Residents must have a viable alternative. For instance, to charge for parking in garages or carports, there should be other nearby parking areas and/or public transportation options. 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 in the Gross Rent.

Gross Rent does not include rental assistance payments made by government agencies or other entities, 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 intermediate care facility for the 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.

## Changes in Rent Limits

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 **increase** during the term of a Resident's lease, the owner must wait until the end of the lease term to raise the rent. If the lease term is month to month, the landlord can raise the rent in accordance with local and/or state landlord/tenant laws.

### **Changes in Rent Limits (Continued)**

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.

### **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. Note that other public funders may not allow the Resident's rent to exceed the applicable tax credit or Section 8 rent limit.

#### **Authority:**

**IRC Section 42(g)(2)(B)(i)**  
**IRC Section 42(g)(2)(E)**

### **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, a Household 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 landlord-tenant law as well as the Federal Violence Against Women Act (VAWA), a domestic violence victim can seek an emergency transfer and/or to 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.

For more information on this issue, Owners are encouraged to consult with their attorneys and review the Residential Landlord-Tenant Act found at RCW 59.18, as well as understand and carry out their responsibilities under VAWA.

*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 (LIA):

- ◆ 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.
- ◆ is not allowed to be classified as a LIA AND have their family members living in the qualified unit. HUD guidance associated with the **HUD Occupancy Handbook 4350.3** makes clear that the children or other family members of a LIA are not allowed to reside in the unit because they do not meet the definition or requirements to be considered live-in care providers.

*Live-in Aides  
(Continued)*

- **If a LIA has accompanying family members AND the Resident still wishes to have the LIA in their unit, then the LIA and their family members become full members of the household. They are counted for purposes of calculating income and they retain rights to the unit. If the Resident does not agree to this, then they must find a LIA without family members to reside in their unit.**
- ◆ 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 determining Household size, 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.