

Introduction

Washington State Requirements

Section 42 grants authority to each state to adopt additional requirements to address local housing needs and priorities. In Washington, some requirements are imposed on all properties. Other requirements tie to commitments made by the Owner in the application for an allocation of credit. Following are various commitments that may apply to a property, depending on whether or not the commitment was made as part of the tax credit application. The Regulatory Agreement identifies which of the following apply to a given property.

Summary of State Requirements

- ◆ Owner may elect Additional Low-Income set-asides below the federal minimum of 50% or 60% AMGI.
 1. Commission's Additional Low Income Set-Asides are 30%, 35%, 40%, 45% and 50% AMGI.
 2. The percentage of units set aside is based on the lesser of the Unit Fraction or Floor Space Fraction of the units in the set-aside.
- ◆ Owners may elect Special-Needs Housing Commitments, such as for the Elderly, Large Households, Persons with Disabilities, Housing for the Homeless or Farmworker Households.
- ◆ Special-Needs Housing Commitments must be met upon initial lease-up of units. After the Commitment level is met on a project-wide level, subsequent vacancies that cause a Project to fall below its commitment level invoke the "30-Day Rule," described later in this Chapter (except Elderly and Homeless units which must always be reserved for that population).
- ◆ All affordable unit leases must attach the most current form of Commission lease rider (posted on Commission website). The lease rider describes the various set-asides and commitments in the property and rights and remedies available to Residents (see our website at www.wshfc.org/managers/forms-RC.htm).
- ◆ Annual public notices must be sent regarding the availability of affordable units in the property to the local public housing authority and to two local community agencies.
- ◆ Up-front charges imposed on new Residents must be limited to no more than one month's gross rent (described in detail later in this Chapter).

Additional Low-Income Housing Use Period

- ◆ Transfers of the property (whether actual property is sold or a change in Ownership interest occurs) can only be made after notice to and prior approval from the Commission.
- ◆ Properties must use Commission-provided forms for reporting to allow for efficient and consistent reviews of properties.
- ◆ The Commission requires a third party-verified recertification of all qualified households on the first lease anniversary for all 100% income-restricted properties. Self-certification forms are allowed in subsequent years.

An Owner may commit to an **Additional Low-Income Housing Use Period**, during which time the Owner agrees to maintain the property as affordable and waives the ability to terminate the Regulatory Agreement. All of the commitments made in the Regulatory Agreement extend throughout the Additional Low-Income Housing Use Period. In more recent properties, it is common for the Additional Low-Income Housing Use Period to extend to 40 years following property completion. The term of the Additional Low-Income Housing Use Period is identified in the Regulatory Agreement.

Additional Low-Income Housing Commitments

An Owner may make a commitment to target Households at lower income levels than the minimum federal requirements. The targeting, called **Additional Low-Income Housing Commitments**, (formerly called “set-asides”) may apply to all or part of the affordable units. The portion of the property subject to the Commitment and the percent of AMGI targeted are both identified in the Regulatory Agreement. The number of units set aside is determined using the lesser of the Unit Fraction or the Floor Space Fraction. Units in the Commitment must be income- and rent-restricted, using the targeted income level to determine rents.

Example: Sunrise Apartments has 24 units of the same size, 12 of which are subject to an Additional Low-Income Housing Commitment targeting Households at 30% AMGI. The Owner has selected the 40/60 election and an applicable fraction of 100% committing all units to 60% AMGI or below. The 12 units in the additional state set-aside must be leased to income qualified Households at or below 30% AMGI, with the balance of the units leased to income qualified Households at or below 60% AMGI. Additionally, to remain qualified, the twelve units leased to qualified Households at or below 30% AMGI, must maintain rents at or below the 30% AMGI maximum rent levels, including any applicable utility allowance. Likewise, the 12 units rented to qualified Households at or below 60% AMGI, must maintain rents at or below the 60% AMGI, including utility allowance.

Special-Needs Housing Commitments

Note: 30-Day Rule does not apply to Elderly or Housing for the Homeless units.

“Once Qualified, Always Qualified”

Newly Placed-in-Service Acquisition/ Rehab Properties

Large Households

Persons with Disabilities

Failure to maintain the Additional Low-Income Housing Set-Aside is a violation of the Regulatory Agreement and may result in Commission-imposed sanctions.

Special-Needs Housing Commitments are for groups requiring special targeting under the Tax Credit Program due to a lack of affordable housing. Owners may set aside units for Large Households, the Elderly, Persons with Disabilities, Farmworkers and permanent or transitional Housing for the Homeless. The Special-Needs Housing Commitment, if any, and the percentage of units to be targeted is identified in the Regulatory Agreement.

For all Commitments, an Owner must maintain documentation to demonstrate affirmative marketing, referrals, and other best efforts used to fill the units with Residents from the target group. Upon initial lease-up, properties must reserve a sufficient number of units to meet the level of Commitment. Once the Commitment level is met, the “30-Day Rule” (except for Elderly and Homeless units) for active marketing applies each time the level of Commitment falls below required minimum levels promised by the Owner in his/her Regulatory Agreement.

All Special-Needs Commitments are administered under the assumption that once the Special-Needs household is qualified, it is always qualified (assuming at least one person from the originally qualified household still resides in the unit). None of the Commitments listed here need to be re-verified at a recertification, **only at the time of initial qualification.**

Newly Placed-in-Service Acquisition / Rehab properties may meet Additional Low Income and Special Needs Housing Commitments through attrition. Upon unit turnover, Owners must rent vacant units to Households that meet Commitments made by the Owner in the Extended Use Agreement.

A **Large Household Unit** means an Affordable Housing Unit that contains three or more bedrooms that is occupied by four or more Residents. The Residents of a large Household unit do not necessarily need to be related. Market-rate units do not count toward this Commitment.

Persons with Disabilities means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, such as taking care of oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, or learning. To meet the Commitment for persons with disabilities, at least one person in the unit must be Disabled.

Housing for the Homeless

Market-rate units can satisfy the Commitment for Persons with Disabilities but cannot be counted toward the property's Low Income Housing Units. Owners must take care not to violate federal rules prohibiting discrimination against persons because of a disability. Owners must notify all applicants that certain units are set aside for persons with disabilities and ask **every** applicant whether s/he claims Persons with Disabilities status for the purpose of meeting the Persons with Disabilities Commitment. Each applicant must complete the *Disability Certification* form.

If the applicant claims Persons with Disabilities status, s/he must provide written verification from a relative, social worker, or caregiver that states that the applicant falls within the definition of Disabled using our *Disability Verification* form. The person completing this verification form should have personal knowledge of the applicant's disability. Therefore, the form cannot be completed by property staff. If the applicant receives Social Security or Supplemental Security Income benefits as a result of a disability, s/he may submit a benefit letter as verification of his/her disabled status.

The written verification should be kept in the Resident's lease file.

Property staff *should never inquire into the nature or severity of an applicant's/Resident's disability.*

Units set-aside for persons with disabilities may be either affordable units or market-rate units.

There are two categories of Housing for the Homeless. The **first category** is defined under Section 42, as **Transitional Housing for the Homeless** and means a Housing Unit that contains sleeping, kitchen, and bathroom facilities and is located in a building:

1. That is used **exclusively** to ease the transition of homeless individuals to independent living within 24 months, and
2. Where a government entity or Qualified Nonprofit Organization (QNO) provides those individuals with temporary housing and supportive services to assist them in finding and keeping permanent housing.

Generally, SROs (single-room occupancy units) do not qualify for Transitional Housing for the Homeless units, since they usually do not contain kitchen and bathroom facilities. Also note that if **any unit** in a building is included in the Transitional Housing set-aside, **all** units in the building must be reserved exclusively for Transitional Housing.

To meet the Transitional Housing set-aside, an Owner must either be a Qualified Nonprofit Organization providing supportive services to the Residents or must have an agreement in place with a Qualified Nonprofit Organization or government entity to provide supportive services, and must be able to demonstrate that those services are being provided.

Transitional units are still subject to the rule against transient use and Residents must sign leases, but the leases do not need to be six months or longer. However, it is highly recommended that Residents sign long-term leases as one means of demonstrating that these units are not being used on a transient basis. The rules regarding Transitional Housing units are contained within Section 42. Failure to meet these rules constitutes material noncompliance reportable to the IRS.

The second category is Permanent Housing for the Homeless. Owners who select this category must set aside 10%, 20% or 75% of the total units in the Project for homeless Households. Unlike the first category, there is no requirement that the units be segregated from other units or that an entire building be reserved exclusively for homeless Households. Additionally, Residents in these units are not required to move or transition to other housing after 24 months. Residents in these units must execute long-term initial leases of at least six-months in duration.

As part of this Commitment, Owners must provide supportive services designed to promote self-sufficiency. Services may be provided by the Owner (if the Owner provides such services as part of its housing mission) or by a QNO or government entity (known as the Service Provider).

Both the Transitional Housing for the Homeless and Permanent Housing for the Homeless Commitments require that the Service Provider provide the Commission with proof of the qualified Household's homeless status by use of the Commission's *Homelessness Certification* form or similar form used by the service-providing agency. **The Commission will not accept self-certifications of homelessness completed only by the Household as adequate verification of the family's homeless status.**

The *Homeless Certification* form must be completed only at initial certification of the homeless Household; **it is not necessary to redo these forms annually or upon recertification.**

Annually, the Service Provider completes the *Homeless/Transitional Report* (or similar agency report) that provides a list of Households assisted during the calendar year.

Housing for the Elderly

If the Owner contracts with a separate Service Provider who is no longer able to provide services, the Owner **must obtain Commission approval to change Providers or to provide the services directly**. An Owner's written request to change Providers (or move to self-provision of services) must be sent to the Director of the Asset Management & Compliance Division and include the following:

- Development and operational capacity and experience with this type of service intensive supportive housing;
- A comprehensive service plan;
- A comprehensive funding strategy;
- A comprehensive operating subsidy strategy; and
- A description of the target population, including a marketing plan and screening criteria.

(Items above are excerpted from the Commission's *Housing Tax Credit Policies* found on the WSHFC website)

A property which includes a Commitment for the Elderly must conform to the federal Fair Housing Act rules pertaining to Elderly properties. The Act prohibits discrimination in residential rental activity and prohibits adults-only housing unless the housing falls within stated exceptions for housing of older persons. The Fair Housing Act lists the following permissible exceptions of housing for the Elderly:

- 1) Housing intended for and solely occupied by Residents who are 62 or older;
- 2) Housing intended and operated for persons 55 or older, where, at all times, at least 80% of the total housing Units are occupied by at least one Resident who is 55 or older; or
- 3) Housing which is financed, constructed, and operated under the RD Section 515 program for the elderly or a HUD Elderly program.

Although the Fair Housing Act stipulates that 80% of the total housing Units are occupied by at least one 55+ Resident, the language of the Act states that *all* units must be advertised and leased with the intent of leasing to 55+ Households. Therefore, the 20% stated in the Fair Housing Act should be used for attrition. For example, if a 60-year old and a 50-year old are residing in a unit and the 60-year old moves out the 50-year old may still reside in the Unit without jeopardizing the Elderly status of the property.

Farmworker Housing

The Commission does not administer or enforce the Fair Housing Act. However, Owners of properties with Units for the Elderly must demonstrate they are operating in conformance with the Fair Housing Act as listed above. Properties must also verify the age of Residents using driver's licenses, identification cards, benefit statements from Social Security, birth certificates or other forms that prove a person's age. This verification must be part of the Resident's annual income certification.

Farmworker housing consists of units that are set aside specifically for those employed in Farm Work as defined in this Manual's *Glossary*. "Farmworker" means a household whose income is derived from Farm Work in an amount not less than \$3,000 per year and which, at the time of initial occupancy at the property, has an income at or below 50% of the area median gross income.

All housing units subject to the Farmworker Housing Commitment must be rented to qualifying Farmworker households at *initial* property occupancy. For the full definition of Farm Work, including an explanation of exceptions and clarifications, please review the Farmworker forms and their instructions on our website at www.wshfc.org/managers/forms-RC.htm, under the "Commission Special Needs Commitments" section. In the same section, we also provide a link, "Farm Work Reference," that cites RCW and WAC definitions and requirements pertaining to labor and agricultural work.

Double Counting

Generally, if a property has more than one Commitment, the same Housing Units *cannot* be used for more than one of the Commitments, regardless of whether a Household is eligible for more than one.

*Example: Ginkgo Apartments consists of 20 units. The property has two Special-Needs Housing Commitments, one for Large Households and one for persons with Disabilities. At least 20% of the units, four units, must be reserved for persons with Disabilities, and at least four **different** units must be reserved for Large Household units. If a Resident has a disability and is moving into a three-bedroom unit that will have four persons in the Household, that unit may be counted either within the Large Household or the persons with Disabilities Commitment, but not both.*

An exception to the general rule is that any property **with at least a 75% Special Needs Housing Commitment**, such as Elderly or Farmworker, may use the same housing units to satisfy more than one Commitment, so long as the actual resident is eligible for each set-aside.

Marketing and Good Faith Efforts (the “30-Day Rule”)

Example: *Gecko Apartments consists of 40 units. The property has two Special-Needs Housing Commitments, one for Elderly persons and one for persons with Disabilities. 100% of the units are set aside for the Elderly, and at least 8 units (20%) are set aside for persons with Disabilities. Janet Smith, a Resident of Unit 202, is both Elderly and Disabled. The Owner may count Unit 202 toward both Special-Needs Housing Commitments.*

Generally, Special-Needs Housing Commitment Units must be held vacant until a qualified Household rents the unit. Exceptions are made for units in the **Large Household, Farmworker and Persons with Disabilities** categories in certain circumstances. First, the Owner must demonstrate that they met the required Special-Needs Housing Commitment level upon initial lease-up. After the Owner meets the Commitment level, the “30-Day Rule” for active marketing applies each time the level falls below the required percentage. After good faith efforts, an Owner may rent a unit to a qualified Household that does not fall within the Special-Needs Housing Commitments.

“Good faith efforts” are defined as actively marketing any vacant housing units necessary to meet the Commitments to the proper group for at least 30 days. During this time, the unit must remain vacant until the Owner can rent it to a Household who meets the eligibility criteria for the Commitment selected. If an Owner is unable to secure a Household who meets the eligibility criteria after 30 days of active marketing, s/he may rent a unit to an otherwise qualified Household.

The minimum 30-day recruitment period begins once a previously rented vacant unit is ready for re-occupancy. Recruitment efforts, such as the use of the property’s Referral and Marketing Agreements, must be documented.

After completing the minimum 30-day recruitment period, if a unit is rented to an individual or Household who does *not* meet the eligibility criteria, the next time a unit of comparable size and type becomes vacant, the Owner must again follow the same recruitment procedures until the Special-Needs Commitment is achieved and maintained. The next available unit must remain vacant during the 30-day recruitment period, after which it may be rented to an otherwise qualified Household. The 30-day recruitment period, during which the unit must remain vacant, continues each time a unit becomes vacant in the property until the Commitment is met.

The “good faith efforts” described above *do not apply* to the Special-Needs Housing Commitments for **Housing for the Homeless** (whether transitional or permanent) or for **Elderly Persons**. Vacant units in a property that would meet the Housing for the Homeless Commitment must remain vacant until a

Restricting Up-Front Charges

Deposits are refundable, subject to condition of apartment.

Additional Fees

qualified Household meeting the requirements rents the unit. The Commitment for Elderly Persons applies to the entire property, consistent with the Fair Housing Act.

For Special-Needs Housing Commitments, Owners must notify the relevant public housing authority (PHA) and at least two community agencies in the area of the property of the availability of low-income and Special-Needs Commitments set-aside units. If no PHA exists, Owners must notify an agency authorized to act in lieu of a PHA. For each vacancy, Owners must notify each local nonprofit organization with which they have Referral and Marketing Agreements.

Additionally, Owners must notify the general public, via general circulation advertisements in the area of the property, of the availability of low-income and units set aside for Special Needs Housing Commitments. Advertisements may be made in local newspapers/newsletters, in television or radio, and via the Internet.

Properties must limit up-front rental charges to Residents. Acceptable items to charge a Resident are as follows:

- 1) A reasonable damage or security deposit no greater than the maximum applicable monthly Gross Rent;
 - If the Household is unable to pay this amount, the property shall charge no more than 50% of the applicable Tax Credit maximum rent limit up front and then provide a payment plan for the remaining amount over at least a five-month period.
- 2) A reasonable pet deposit;
- 3) A reasonable credit check fee. Note that application fees cannot exceed the out-of-pocket expense to the Owner.

Under the Landlord-Tenant Act, the term “deposit” can only be applied to money which can be refunded to the tenant. If Owners are concerned about being reimbursed for cleaning expenses, for example, they should itemize expenses at the time of move-out and then refund the deposit portion not used specifically for cleaning or repairs.

Per the Regulatory Agreement, Owners may not charge any other up-front charges or fees, such as the last month’s rent (except as noted below), or application fees. The Owner may collect last month’s rent in advance only if the payment made is charged over a six-month or longer term on a prorated

basis beginning on the second month (e.g. one-sixth of the last month's due each month from the second through the seventh month).

A "Transfer Fee" that is charged to a Household when they move from one unit to another is not allowable. Transfers should be treated as any move-out and new move-in; therefore, the regular security deposit, and any additional cleaning fees would apply.

Mandatory Assisted-Living Services fees can cause a project to lose all tax credits for the year in which such fees are charged. However, charging for meals is acceptable as long as meals are *optional* and not a requirement of residency. All optional services must be clearly described in writing as optional; these descriptions must be included with all leases and must be readily accessible to Residents upon request.

If the Owner wishes to charge a month-to-month rental fee, it must be included in the gross rent calculation.

Washer/dryer hook-up fees or garage/carport fees are not permitted unless they are optional, i.e., there must be reasonable alternatives for the residents.

The Owner cannot charge any "lease-breaking" fee to the Resident if s/he moves out in the middle of a lease term. Landlord/Tenant law already makes tenants responsible for the remainder of any rent owed on an outstanding lease term, so it is inappropriate to charge additional fees in this situation.

After the initial six month period, if an Owner wishes to charge a break lease fee **in lieu of collecting the remaining rent on an outstanding lease term**, the Commission has determined this is an acceptable alternative. In this case, the Owner's lease must explicitly state that the Resident is not liable for the remaining rent on the outstanding period of their lease as long as they have paid the break lease fee.

Some properties that received credit allocations prior to 1998 and did not elect to limit up-front fees may be exempt from this requirement. However, the Commission recommends that all properties abide by these guidelines.

For further discussion of fees related to tenancies, please refer to the Revised Code of Washington's Residential Landlord-Tenant Act at RCW 59.18.

For additional information related to rents, leases and tenancy issues, please review *Chapter 4, Rents & Tenancy Issues* in this Manual.