OHCS

2011

OREGON HOUSING & COMMUNITY SERVICES

Elderly/Disabled Loan Program

Bond Program Compliance Manual

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ICON KEY:

Valuable Info

Exhibit

The Elderly and Disabled Housing Program is not a subsidy or grant program. Oregon Housing and Community Services (OHCS) issues tax-exempt bonds to provide funds for financing below-market interest rate long-term mortgages for the development of housing for low and very low income elderly and disabled. The term of the loan is usually 30 years, and the interest rate remains fixed. Because of the involvement of tax-exempt bond proceeds, the program is governed by both federal and state requirements.

As a condition of receiving the benefits of the tax-exempt bond financing, project owners agreed to reserve a percentage of units in the project for income-qualified residents. This percentage is referred to as a "set-aside". This "set-aside" agreed to by the owners will continue for a period of time described in the Loan Documents, and other documents that contain the various commitments of the owners.

In addition to restricting income on placements to properties, owners also agree to maintain compliance with various OHCS requirements for the program. These requirements were originally set not only to achieve affordability for low-income Oregonians, but also to ensure that projects are financially solvent and do not pose a risk to the bond rating of the Agency.

Program Compliance Section

The monitoring responsibility for the Department is within the Program Compliance Section of the Asset & Property Management (APM) Division.

Each project funded by OHCS has an assigned Compliance Officer (CO) for monitoring purposes.

THE MANUAL:

Purpose of the Manual

This Compliance Procedures Manual (the "Manual") was designed to supply owners, management agents, and other staff involved in management and operations of OHCS projects, with a working knowledge of federal and state compliance requirements for projects that received tax-exempt bond financing from the Department under the "Elderly/Disabled Loan Program". It is intended to be a "working manual" - easy to use and an aid to owners and agents in determining how to best achieve compliance with the program's requirements during the **"Qualified Project Period"**.**

Step-by step instructions on how to fulfill property management and ownership compliance responsibilities are located in this Manual. ***This manual is not intended to provide an in-depth discussion on all facets of tax-exempt bond financing.***

BASIC CONCEPTS/COMMON TERMS

Qualified Project Period

"Qualified Project Period"**

IRS Tax Code stipulates that a Qualified Project Period begins at the time specific events have occurred as the project is renting up, and will last for 15 years, requiring the owner to meet the set-aside for 15 years. **However, bond indenture requirements are more stringent in this case, and any references made in the Loan Documents of events that must occur during the Qualified Project Period are for the term of the loan (usually 30 years).**

Use restrictions will remain in effect until the end of the Qualified Project Period as defined in the Loan Documents. Per the Loan Documents, program requirements, and bond indenture, the Department does not accept pre-payment of the loan.

"Loan Document" Definition

"Loan Document"

For purposes of simplicity, use of this term in the manual shall include one, or all of the following documents:

- Loan Agreement
- Trust Deed
- Trust Deed Note or Note
- Regulatory Agreement
- Commitment Letter
- Borrower Tax Certificate
- Housing Council write-up
- Any other documents **associated** with the loan of Bond Proceeds to the Borrower for the project.

Project Loan Documents contain specific information outlining the requirements based on the date of funding The majority of OHCS projects are financed with bond proceeds issued <u>after</u> the August 16, 1986 change to Section 142 of the Internal Revenue Code (IRC). The use restrictions required by the IRC, based on the funding date, are outlined in this Manual.

GENERAL INFORMATION: ELDERLY/DISABLED BOND–FINANCED PROPERTIES:

Types of Properties

Types of Properties:
Congregate, Assisted Living Facilities (ALF), Residential Care Facilities (RCF), Adult Foster Homes, and other Specialized Group Care facilities.

Target Population

Resident Qualification (Target Population):
Elderly households whose head of household is 58 years or older; and Disabled individuals with a physical or mental impairment that substantially limits one or more major life activities.

INCOME RESTRICTIONS

Use Restrictions-Income

Income Restrictions:
Tax exempt bond-financed properties are required by the IRS to restrict income on the "set-aside" units. The income restrictions are based on income data that HUD collects and publishes annually for each county in the U.S. The county that projects are located in affects the "set-aside" income limits. Some counties in Oregon have very high, or very low average income levels, from which the limits for the "set-aside" units are calculated, as a percentage of the "Area Median Income" (AMI). Therefore, projects in different counties may have different limits.

Income Restrictions by Project Bond Series Date/IRS Tax Code Changes:
Projects under the Elderly/Disabled Housing Loan Program, are financed by various issues of tax-exempt General Obligation bond proceeds, beginning with the 1980-A Series. During the time since 1980, changes have taken place in the program provisions and requirements. These changes are a result of revisions to the Internal Revenue tax laws.

"Post September 3, 1982" but "Pre August 15, 1986" IRS Tax Code changes
(projects funded between these two dates)

- A minimum of 20% of units must be occupied by or reserved for occupancy by low income households (80% of area median income)
- **Resident certification of income must be obtained at move-in only;**
- Calculation for imputed asset income to determine gross income for eligibility purposes uses 10% of net family assets (explained further in "Qualifying Tenants" section of the manual).
- IRS implemented a "Qualified Project Period", new language with clarification of the affordability period;

"Post August 15, 1986" IRS Tax Code changes: (projects funded after this date)

- Allowed owners the election to select 20% of units at 50% (very low) income range residents; or 40% of units at 60% income range residents
- Implemented "Qualified Project Period"**
- **Resident certification of income must be obtained at move-in for all residents. Residents in the set aside units must also provide verification and certification annually.**
- Calculation for imputed asset income to determine gross income for eligibility purposes uses 2% of net family assets (explained further in "Qualifying Tenants" section of the manual).
- Owner must file an annual certification of program compliance to the IRS (IRS Form 8703)

Non Transient Use:

Non Transient Use

- "Federal regulations prohibit the use of a low-income bond-financed project for transient housing. Accordingly, tenant leases generally should reflect an intent to accommodate permanent residency. Federal regulations do allow a project to continue to treat a unit previously occupied by a qualified low-income tenant as being occupied by a low-income tenant for federal compliance purposes even if it is occupied on a temporary basis by persons whose income exceeds the applicable limit so long as that temporary occupancy does not exceed an aggregate of thirty (30) days. Allowing such temporary use of an affordable unit for longer than an aggregate of thirty (30) days prior to its re-occupancy by a qualified low-income tenant not only will disqualify the unit as a low-income unit, but could result in the entire project flunking the ban on transient housing."

State Restrictions:

Use Restrictions - Rent

- "State law imposes certain rent and occupancy restrictions in addition to the foregoing federal limitations. If the project owner contractually committed with the Department that the project would operate pursuant to additional levels of affordability, the project must satisfy that commitment. Additionally, ORS 456.620(4) allows only one-third of the units in low-income projects to be rented to household with an income level exceeding 120 percent of the state median family income level. If the income level in any unit of the project (at placement) exceeds 120 percent, the project (to the extent practicable as determined by the Department) must maintain a percentage of low-income units that is higher than the 20 percent of units at 50 percent of median family income or 40 percent of units at 60 percent of median family income required under ORS 456.120(1) for Housing Authority financing."

ELDERLY/DISABLED LOAN PROGRAM: IMPORTANT DOCUMENTS - PURPOSE/FUNCTION

Important Documents

Trust Deed

The Trust Deed is defined by statute as a lien. There are three parties in a trust deed: the grantor, who is the borrower; the trustee, to whom the property is conveyed; and the beneficiary, who is the lender (in this case, the Department).

The Trust Deed is the document that secures the obligation on the real property for the loan. It contains the provisions outlining the requirements of the obligation and what constitutes default and OHCS remedies for the same. This is the ultimate security document that retains an interest in the property for OHCS.

Note

The Note (sometimes entitled the `Trust Deed Note') contains the borrower's promise to pay the loan back, the amount of the loan and interest rate and term (number of years).

Regulatory Agreement

Describes the contractual obligation between OHCS and the party (borrower), used on all Elderly project loans prior to the tax code change in 1986. This document contains requirements and provisions that in most instances run with the term of the loan and relate to the use of the property. There are some elderly program loans for which this document contains a provision regarding use of the premises for a certain period of time, which may or may not coincide with the term of the loan; and cannot be nullified if the loan is paid off.

Regulatory Agreement/Declaration of Restrictive Covenants

This document is used for loans funded out of Post August 86 bond proceeds. It contains provisions regarding the use of the property. It contains conditions that run with the `Qualified Project Period' regardless of whether a loan is in place or not. That is, if the loan has been paid off, or there is a foreclosure, this document is still binding until the end of the `Qualified Project Period' or repayment of the outstanding bonds, whichever is longer.

Personal Property and Intangibles Security Agreements

A UCC filing establishes OHCS security interest in personal and intangibles related to the project but not necessarily affixed to it. Sometimes these provisions are incorporated into the Trust Deed, Loan Document or separate document.

Loan Agreement
The Loan Agreement contains covenants that run with the term of the loan, and conditions of the loan relative to the use of the property (some reporting requirements, controls etc.) The purpose of this document is to outline additional OHCS control over the operation of the project, for loan protection purposes. The Loan Agreement provides remedies of a lesser nature than those listed in the Note and Trust Deed, such as taking over management, etc. This agreement is very similar to the older Regulatory Agreement.

Management Agreement
This document is generally between the owner and the management agent, approved by the Department, unless the owner is the management agent - then the Agreement is between the owner as agent and the Department. The Management Agreement contains provisions outlining the requirements relative to management of the property, including occupancy requirements and restrictions, reporting requirements, use of project funds, maintenance of the physical structure, management fee, insurance requirements, approved tenant fees, and term of the agreement, etc.

Owner Certification of Continuing Program Compliance:
One of the requirements in place for projects financed post 1986, in which the IRS requires borrowers utilizing tax-exempt bond financing to file IRS Form 8703 (Exhibit #E.10E) on an annual basis. OHCS will prompt the borrower to complete IRS Form 8703 by mailing a reminder letter (Exhibit #E.11E). The borrower must forward a copy of the IRS filing to OHCS along with the required "OHCS Owner Certification" (Required Form OHCS.1E).

COMPLIANCE RESPONSIBILITIES

Compliance Responsibilities

For the purposes of clarification, the responsibilities of the various parties and monitoring processes are outlined below.

The Department

OHCS (The Department)
All projects financed through the Elderly/Disabled Loan Program will be monitored by Program Compliance under guidelines established by the IRS and OHCS on an ongoing basis throughout the period of affordability.

OHCS monitoring activities include:

- Annual Site Visits of the property, to monitor physical condition and appearance of the project, including a small sampling of units for physical inspection.

- Annual Management Review to assure property is managed according to approved Management Plan and Management Agreement

- Monitoring Resident Eligibility through collection of copies of the Verification of Income "**Part A and B**" forms (Required Forms #OHCS.16E & #OHCS.17E), resident rosters, review of resident files during site visit

- Monitoring Monthly "**Marketing Reports**" (Rec. Form #R22.E)

- Reviewing Monthly "**Marketing Reports**" (is required if vacancy rates are over 10%)

- Reviewing Rent Levels

- Reviewing Requests for Funds from "**Replacement Reserve**" Accounts (Exhibit #E.8)

- Ongoing Compliance Monitoring, as needed to assure compliance with all regulations

THE BORROWER

Compliance Responsibilities – The Borrower

Each borrower has chosen to participate in the Elderly/Disabled Loan Program to take advantage of lower interest rates. In exchange for these benefits, certain requirements must be met by the borrower that will benefit qualified low-income tenants. Some of the requirements relate to the maintenance of the elected minimum set-aside requirement, charging appropriate rental rates and maintaining accessible documentation and verification of each low-income tenant. *Although a borrower may have a managing agent acting on his or her behalf, the borrower is ultimately responsible for ensuring compliance with all applicable programs and their regulations and rules.* ***Some of the responsibilities and requirements include:***

- Residential Care Facilities (RCFs) and Assisted Living Facilities (ALFs) must be licensed by Senior and Disabled Services Division;

- Dependent upon the IRS set-aside requirements in place, at the time of funding, maintain and achieve the income set-asides promised;

- Submit annually, to the Department, an updated Resident Eligibility Certification form for each resident;

- Submit annually, to the Department, a certification of continuing compliance with the requirements of the Regulatory Agreement and Declaration of Restrictive Covenants, and Section 142(d) of the Code;

- Submit FORM 8703 to the IRS by March 31 after the close of each calendar year;

Compliance Responsibilities – The Borrower

- Comply with applicable Fair Housing laws, which includes acceptance of tenants with Section 8 certificates or vouchers for federal housing assistance;

- Allow the Department to inspect the books and records pertaining to the income of low or moderate income residents at the time of the annual inspection or any other reasonable time.

- Submit to the Department an annual audited financial statement of project operations. (Review level statements are not acceptable);

- Submit to the Department, a proposed schedule of rental rates for the property not later than sixty (60) days prior to the date of a proposed rent increase. A new rental rate schedule must be submitted and approved prior to any changes in rental rates. Upon written approval, the proposed schedule of rental rates shall be effective after all required notifications.

- Obtain prior, written approval from the Department of **ANY** transfer of ownership.

- Take distributions of cash flow (surplus cash) only annually and after submission of the project's financial statements and review by the Department.

MANAGEMENT AGENT AND ON-SITE PERSONNEL

Compliance Responsibilities – Management Agent

The management agent and on-site personnel are responsible to the borrower for implementing the Elderly/Disabled Loan Program requirements and the provisions of the project Management Plan. Anyone who is authorized to lease apartment units to tenants should be thoroughly familiar with and follow all applicable federal and state laws, rules, and regulations governing certification and leasing procedures.

The management agent must provide information requested by OHCS and submit, on behalf of the borrower, all required reports and documentation in a timely manner.

Management agents should ensure that tenant occupancy information remains confidential but is accessible to authorized representatives of OHCS.

ADMINISTRATION AND RECORD KEEPING

Record-Keeping Requirements

Record-keeping is vital to maintaining compliance with regulations and requirements. These requirements include:

On-Site Record-Keeping:
As set forth in the Loan documents, all records concerning the property must be kept separate from the borrower's other business unrelated to the property and in a reasonable condition to allow for proper audit. The records must be maintained as required by OHCS, and, upon appropriate notice, representatives of OHCS may examine or photocopy documents pertaining to the property during regular business hours.

Borrowers must keep a tenant file for each unit on site. Each tenant file must contain at a minimum the following:

- The tenant's rental application
- Required Forms Part A and Part B (OHCS.16E & OHCS.17E)
- Back-up verification for resident income/asset calculation for the 20% at 50% required by Loan Documents (tax return or bank statements are acceptable forms of verification, see (Exhibit #E.1) for income and assets included and Handbook 4350.3 REV-1 Chapter 5 for other methods of verifying income)
- Lease form (no prescribed format)

Note: All tenant files must be maintained for at least six (6) years after the date the tenant moves out.

Monthly Vacancy Reports:
Per OHCS current policy every borrower must **submit** monthly project vacancy reports to the Program Compliance section. This report is due by the 10th of the month and should be completed by personnel involved in leasing activities for the project. (Required Form #OHCS.18ER)

Marketing Activities:
Owners and agents must demonstrate that marketing and outreach is sufficient to attract the targeted population and that occupancy levels are not affected by a lack of marketing. Part of the annual OHCS management review includes a review of all marketing activities and their effectiveness.

Monthly Marketing Report: Vacancy Rate of 10% or More:
If projects have a vacancy rate of 10% or more, OHCS will require a "Monthly Marketing Report" (Rec. Form #R.22E) be completed and sent by the 10th of each month to the assigned Compliance Officer. When occupancy levels are improved, the required submission of this form may be discontinued by the project upon approval of the CO.

PROJECT ACCOUNTS

Cash and Accounts

Prior to or on the closing date as required by OHCS, the borrower shall establish and maintain a Project Operating Income and Expense Account with a depository approved by OHCS. All operating income shall be immediately deposited in the account, and the borrower shall promptly pay all operating expenses out of this account. No other use of the Operating Income and Expense Account deposits may be made by the borrower without prior written approval by the Department.

Surplus Cash

Surplus Cash:
Borrowers are entitled to distributions from the project operating account **only** at the end of each fiscal year of project operation and **only** after all operating expenses, including loan payments, have been paid, or funds have been set aside for payment, and all reserve requirements have been met. Before each distribution is made, OHCS shall have received the project's audited financial statements, and the borrower shall have obtained written approval from OHCS authorizing the distribution. Consideration for release of surplus cash shown in the annual audited financial statement **is contingent upon Borrower compliance with OHCS and IRS requirements**.

Available surplus cash is released, only by OHCS written authorization, as based on the annual management review, ongoing project management, and a review of the annual audited financial statement.

Note: Certain projects have been authorized to receive a monthly release of any surplus cash.

Replacement Reserves

Replacement Reserves:
At loan closing, monthly deposits are designated for the Replacement Reserve account.

The Replacement Reserve account must be maintained with a minimum balance of 12 monthly deposits. Funds available over the required minimum balance may be used for:

1. Future replacement of capital items
   Capital items are defined as items in need of replacement as a resulting from " wear and tear" with an estimated life of 5 years or more.

   Parts for fixtures or appliances will be considered capital improvements only if the part increases the original estimated life of the fixture or appliance by at least one year; the part costs over $500; and it is more cost effective to repair the fixture or appliance than it is to replace it.

2. Extraordinary repairs or maintenance
   Extraordinary maintenance or repair is defined as maintenance or repair that will extend the life of the item for five years or more.

3. Improvements to enhance livability or to increase the project's value or to improve the marketability of the development.
   This account is primarily used to pay for capital replacements not typically budgeted from the operating income of the projects. The "Replacement Reserve Policy" (Exhibit #E.8) outlines in full OHCS policy and procedures for release of funds.

COMPLIANCE MONITORING PROCEDURES

Compliance Monitoring Procedures

In compliance with the Loan Documents, borrowers agree to follow a set of requirements designed to assure the project provides decent, safe, and affordable housing to lower income persons or households. Program Compliance staff will monitor the project's occupancy and physical plant status, to assess whether or not the borrower is complying with these requirements. If the borrower fails to meet Department and/or IRS standards, Program Compliance staff may take enforcement actions to compel the borrower to bring the project into compliance.

Compliance Training - OHCS

Compliance Training:
Program Compliance staff will provide periodic individual training to owners and management agents as time allows. Because of the variety of housing funded under the Elderly/Disabled bond program, a generic training has not been offered. If owners and agents, after reading this manual, wish to receive additional training, a request should be made to the assigned Compliance Officer.

Note: Program Compliance does not assume the responsibility for assuring that owners and agents are knowledgeable in the requirements for the program. It is anticipated that owners and agents will train new staff in the requirements.

New staff should never be placed in a position responsible for compliance with the requirements, with the expectation that they will be trained by Program Compliance staff.

Review of Management Agents

Review of Management Agents:
Since the activities of the management agent (or owner, if the project is owner-managed) ultimately affect project compliance, OHCS must approve, in advance, all management agents.

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The Department will not approve applicants, who do not have any property management experience with Elderly/Disabled projects having the same or similar restrictions on occupancy and rent. Exceptions to this policy will be made at the discretion of the Department.

Change in Management Agent

OHCS will determine whether the proposed management agent is qualified to manage the project under consideration. The nature of the development and the agent's abilities and past performance in managing comparable developments shall be considered during this analysis. This same process will be used for the initial proposed management agent and for any subsequent proposed changes in management agents. ***All management agents must have OHCS approval before the Borrower will be allowed to proceed***.

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Evaluation of the qualifications of the management agent will include:

- Complete **Management Plan**
- Complete and signed **Management Agent's Qualifications** form with all required attachments;
- Complete marketing plan and summary of marketing agents qualifications
- All other factors as established in the OHCS policy, which are subject to modification at the discretion of the Department.

All proposed management agents must submit the required information, per the policy, **at least 60 days prior to the desired change.**

Management Agreement/Management Fee:
Upon OHCS' acceptance of the management agent and management fee, the OHCS Management Agreement will be executed, and signed by all parties to the Agreement, including OHCS.

Management Fees

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Definition - Management Fees:
Unless approved by OHCS as an operating expense, Management Services Fees, Incentive Management Fees, Investor Services Fees, Social Services Fees, Asset Management Fees, Management Advisory Fees, Partnership Management Fees, and *similar fees paid to Partners and owners,* **may be accrued and paid from available surplus cash only.**

Note: Changes in Management Agent Employees:
Changes in on-site management personnel should be reported to one's assigned Program Compliance CO as they occur. Prior approval is not required for staffing changes. However, it is important to keep Program Compliance staff notified of all changes, in order to maintain an efficient coordination of monitoring activities.

OHCS ON-SITE REVIEWS

Annual On-Site Project Reviews

Cooperation with OHCS during on-site reviews:
Throughout the Qualified Project Period Program Compliance staff will conduct periodic on-site reviews of the properties and their records, in order to evaluate borrower compliance with the Loan Documents.

Scheduling Reviews:
The Compliance Officer prepares an annual anticipated inspection schedule at the beginning of each calendar year. Project on-site reviews should normally be conducted at approximately the same time of the year, from year-to-year. However, the CO has discretion to change the annual schedule.

Confirmation Letter:
When the review is due, the CO will contact the designated Management Agent, 30 days in advance, to confirm the date and time of the review. Once confirmed, a letter is sent announcing the date and time, with a request for any information that must be provided by the project prior to, or at the audit.

OHCS Pre-Site Visit Activities.

OHCS Pre-Site Visit Process

Prior to sending out the confirmation letter, The Compliance Officer will determine what information needs to be requested ahead of time, for review at the project, or for management submission prior to the review. Some of the more routine items are:

- Most Current Resident Roster, showing resident name, unit number, rent level, move-in date
- Current Marketing Brochure, and any attachments showing rent, care levels, services
- Current Activities Calendar and Sample Menu
- Copy of latest assessment completed by Senior and Disabled Services Division (for ALF and RCF facilities)

Some additional items asked to be provided might include:

- Copy of insurance renewal certificate or binder

- Copy of projected annual operating budget, and/or any updates that might be overdue
- Copy of five-year maintenance replacement schedule

Management Review Summary Sheet:
Included with the confirmation letter is the "**Management Review Questionnaire"** form, requesting property management complete specific areas. Some of the routine areas for management response are questions relating to:

- Preventative Maintenance Schedules
- Vacant Unit Preparation and Inspections
- Vacancy and Turnover Rates
- Marketing Efforts
- Waiting List
- Organization and Supervision

OHCS Annual On-Site Review:

OHCS On-site Review Process

Tour
The Compliance Officer will normally begin the visit with a tour of the entire facility. The tour should include all grounds, common areas (hallways, community rooms, craft rooms, laundry rooms, dining room, kitchen area), and approximately five units of various unit size and floor plans. Units selected for review should encompass recent turn-overs in addition to long-term occupancies.

Resident File Review
☆ The Compliance Officer will review a minimum of five current **low-income resident files.** The files should contain completed Verification of Income Part A form (or comparable income/asset questionnaire),Verification of Income Part B form, with Tax Return, bank statements, or other appropriate third party income/asset verification to validate information shown on the form. The Compliance Officer should also review one or two, non-low income files to verify that applicants are declaring their income at placement.

Management Review
During the visit, the CO will use the Management Review Questionnaire to complete any remaining questions on the Management Review Summary Sheet through interview of management staff. Areas of concern observed during the tour and/or file review, will be discussed, and assistance given to help answer/clarify any questions or concerns.

Post-Review Summary Report:
A letter summarizing the results of the annual site visit will be prepared and mailed within 30 days after the visit. If any exception items are noted that require a response, the response due-date in the letter will be 45 calendar days from the date of the report.

QUALIFYING TENANTS

Tenant Selection

Selection of Tenants

Handbook 4350.3 – REV 1:
Federal Regulations for tax-exempt bond financed projects state that determination of annual income of individuals must be made in a manner consistent with HUD Section 8 income definitions and guidelines. HUD Handbook 4350.3 REV-1 "Occupancy Requirements of Subsidized Multifamily Housing Program" contains the HUD requirements for Section 8, which are applicable in determining resident income and income from assets for the Elderly/Disabled Loan Program.

Income Restrictions – Federal and State Imposed:
Before admitting residents to bond-financed projects, income and assets are estimated and/or verified according to Section 8 guidelines, in order to determine whether the resident will qualify for residence under each project's income restrictions as outlined in the Loan Documents. Following are brief general restrictions:

Set-Aside Requirements - Income

If a project was **funded from a bond series** issued prior to the 1986 change in IRS regulations:

- **Federal:** 20% of the units must be rented solely to households or individuals with incomes not exceeding **80%** of AMI (county-based figure) at placement. This amount is adjusted for household size. OHCS supplies these figures annually to projects.

- **State**: On the balance of the units, no household or individual, at placement, can have an income over the State-wide median income figure. This amount is not adjusted for family size. OHCS supplies this figure annually to projects.

If the project was funded **after** the 1986 change in IRS regulations:

- **Federal:** **20%** of the units must be rented solely to households or individuals with incomes not exceeding **50%** of AMI (county-based figure). **Or**, **40%** of units must be rented to households or individuals with incomes not exceeding **60%** of AMI. This amount is adjusted for household size. OHCS supplies these figures annually to projects.

- **State**: "On the balance of the units, the project must comply with state limits as discussed on page 4, essentially limiting occupancy at placement by tenants with an income exceeding 120 percent of state median family income to not more than one-third of the units and mandating that if any unit is rented to tenants with an income exceeding 120 percent that the balance of the project must provide affordability greater than the 20% of units at 50% of area median income or 40% of units at 60% of area median income. OHCS supplies the state median income figure annually to projects."

Interview Tips

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INCOME/ASSET INTERVIEWS

The Initial Eligibility Interview:
Most applicants do not know what to expect and what is expected of them. Interviewers have the opportunity to establish a professional, service-directed relationship with prospective tenants. The attitude of the interviewer can either encourage or discourage cooperation and compliance.

An interviewer who is prepared, professional, alert and service-directed is more likely to obtain cooperation and prevent omissions and misrepresentations.

Interview - Owner/Agent Responsibilities

Owner/Agent Responsibilities:
Every owner must ensure that eligible residents are placed in their facilities. The most important contributors to correct eligibility determinations are:

- Up-front, complete explanation by the owner/agent of the requirements
- Correct information provided by the family
- Effective owner verification and interpretation of the information provided

Interview - Applicant/Resident Responsibilities

Applicant/Resident Responsibilities:
The applicant/resident is required to provide complete and accurate information in an initial application. The applicant/resident must:

- Know what information is needed
- Be willing to disclose the information
- Be given the opportunity to disclose appropriate information

Guidelines for Interviewing:
OHCS does not specify the interview method owners/agents should use. Two methods are typical:

Two Interview Methods

- Applicant/resident completes forms before coming to the interview
- The interviewer completes forms while interviewing the family

Applicant/Resident Completes Forms:

Applicant/Resident Completes and Signs Form

The owner (interviewer) gives or mails the required forms to the applicant or resident with instructions for their completion. They bring the forms to the interview and the interviewer and family representative review the information together.

Advantages:

- Saves interview time because forms have been completed in advance.
- Information is provided in the applicant's own handwriting.

Disadvantages:

- Interviewer often reviews the forms but does not ask all of the primary questions that should be asked. They may not explore all questions to the necessary depth.
- Because they are filling out the forms alone, the applicants/residents may not understand what some or all of the questions mean.

Interviewer Completes Forms:

Interviewer Completes, Applicant/Resident Signs

The interviewer begins with a blank application or Part A form. The interviewer asks all of the questions and records the answers.

Advantages:

- The interviewer has the opportunity to explain what information is needed before the individual responds.
- The interviewer is better able to determine if the applicant/resident understands what is being asked.

Disadvantages:

- It requires an interviewer knowledgeable in all requirements because each question must be asked by the interviewer and the answer recorded.

INCOME AND ASSET VERIFICATION

Verification of Income and Assets - Methods

All regular sources of income, including asset income, must be verified **for the 20% of residents required** to meet the project set-aside. ***Verification must be received by management prior to the completion of Forms A and B and the actual move-in date***.

Verifications must contain complete and detailed information, and include, at a minimum, verification of all sources of regular income. Faxed and emailed verifications will be accepted as long as the verifiable source receives and re-submits the information.

EFFECTIVE TERM OF VERIFICATION

Third-party verifications of income are valid for 120 days. After 120 days, the information is outdated and must be re-verified.

METHODS OF VERIFICATION

Tax Return

A copy of the previous year's tax return is sufficient documentation to determine low-income status. If the applicant supplies a return, no further documentation is necessary.

Bank Statements

Six months of bank statements with direct deposits showing monthly income are sufficient to determine income status. If the applicant supplies six months of consecutive statements, no further documentation is necessary.

Written Verification:

Any request for written income verification sent to a third party must:

1. State the reason for the request;
2. Include a release statement signed and dated by the applicant; and
3. Provide a section for the third-party source to disclose the requested information. The signature of the third party source, their job title (if applicable), phone number and date must be included.

Verification Transmittal:

1. Income verification requests must be sent directly to and returned by the source, ***not through the applicant***. It is suggested that a self-addressed, stamped envelope be included with the request for verification.
2. Verifications may be hand-carried by the applicant only if reasonable attempts to mail or fax the request(s) for verification to the third-party have failed. When using this method, the file should be documented with a phone verification indicating the name and title of the person contacted and confirmation the information received by hand-carry method is accurate.
3. The management agent should review and check verifications for accuracy and completeness. Verifications should be date stamped as they are received.

Documents Supplied By the Applicant/Resident:
Households may supply documentation sufficient to verify income and assets (i.e., copy of Social Security Award letters, W-2s, Award Letters, Pension for Life Letters, etc.) In this case, management should copy all documents and retain the copies in the tenant file along with Forms A and B. These documents will be examined by OHCS should the file be selected for audit during an on-site review.

Interviewer Reviews Documents/Resident Retains Documents:
In some cases, the applicant/resident, or their extended family members, are reluctant to allow the project to take copies of some or all documents verifying the income and assets presented for eligibility purposes. If this is the case, it is permissible for management to review the documentation thoroughly, and transfer the pertinent information to calculate eligibility onto the **"Income/Asset Verification Statement"** Form (Rec. Form #R.20E), which the household then signs. The household does not leave the documents with management, but by signature agrees to provide the documents for review by OHCS if requested. This method requires the use of the referenced OHCS Form.

Explanation of the Need for Verification

Explaining Why Income/Assets Must be Verified:
Explaining up-front why the information is needed, and how the information will be used and maintained will help minimize anxiety and reluctance of the family and encourage confidence in the professionalism of the interviewer. **Typical language that may be used at the interview is:**

> "This project was able to be built, because the State of Oregon participated in the financing. The project benefited from a lower-than-market interest rate on the loan. The state loan program has some restrictions placed on the income levels of resident who may want to move into the project. Our job is to make sure we have the right mix of residents, at the right income levels, to keep in compliance with our loan documents. It is important for me to know, that you understand, that any information or documents you provide will only be used for the purpose of determining your eligibility for our restrictions, and for no other purpose. The information will not be shared with anyone except the persons in our office completing the paperwork, and the state of Oregon. We will place your application in an individual file, and it will be kept in a locked and secure location."

Annual Income Recertifications

Annual Recertification Interviews:
Owners have the advantage at an annual of having background information about the resident from the previous year's certification. **However, when completing annual recertifications owners/agents should not assume that family circumstances are the same as the preceding year**

OHCS Provided Form – Certification Part B

OHCS Provides Certification Form
By state statute, the State Housing Council must approve all new income limits used by the Elderly/Disabled Loan Program. When the income limit changes, as published by HUD, OHCS presents the limits with a recommendation, to the State Housing Council. If the Housing Council approves the limit recommended by the Department, then the Eligibility Certification form "**Part B"** will be revised to reflect the new limit. A notification, along with the revised form, will be sent to all the Elderly Program project owners and management agents. The notice will indicate the effective date of the change for program use, which will be no sooner than the date the Housing Council approved the change

Applicant/Resident Refusal to Provide Information

Refusal to Provide Income/Asset Information:
If an applicant refuses to provide information, the project may not allow them to move in. If a current resident refuses, at the time of recertification, management should contact the assigned Compliance Officer for the project to discuss the situation. (Rec. Form #R.21E)

NOTE: Projects should include a clause in the rental agreement stipulating the resident agrees to provide appropriate information. Also remind site management to document their resident files of resident refusal and their efforts to work with resident.

ASSETS

Explanation of Assets – Included and Excluded

Because many elderly residents have a variety of assets, the following explanation is provided for help in the determination of eligibility. The Handbook 4350.3 exhibit also contains a more lengthy explanation.

ASSET INCLUSIONS AND EXCLUSIONS
Assets are items of value, other than necessary personal items. Income from assets is added to regular income to determine the eligibility of a household. Asset information (total value and any income) must be obtained from the applicant/tenant.

If an applicant declares a combined total net asset value of $5,000 or more, the greater of the actual income from assets or the imputed income of the total value of the assets must be added to regular income. (See HUD Handbook 4350.3 for more detail on imputed income.)

Assets include:

Asset Inclusions

- Cash held in savings accounts, checking accounts, and safety deposit boxes. For savings accounts, use the current balance to determine the value. For checking accounts, use the average balance for the last six months.
- The principal value of any trust available to the household. Do not include irrevocable trusts or trusts that no family member can control.
- Equity in real estate, rental property, and other capital investments. Include the current market value less any unpaid balance on loans secured by the real property and less any reasonable costs that would be incurred in selling the asset (prepayment penalties, broker fees, etc.).
- Stocks, bonds, treasury bills, certificates of deposit, money market funds, etc.
- Individual retirement accounts (IRA) and Keogh accounts, as well as 401K accounts to which the individual has access. If the individual is withdrawing from an IRA or Keogh account, determine the amount of the asset by using the average balance of the account for the previous six months. Do not count the withdrawals as income.
- Retirement, pension funds, and annuities;
  1. While the person is employed, include only amounts the individual can withdraw without retiring or terminating employment; and
  2. At retirement or termination of employment, if benefits will be received in a lump sum, include benefits in net family assets. If benefits are paid in periodic payments, include the benefit amount in annual income. Do not count any remaining amounts in the account as an asset.
- Lump sum receipts including inheritances, capital gains, one-time lottery winnings, insurance settlements, or other claims and the delayed receipt of Social Security or SSI benefits.
- Personal property held as an investment such as gems, antique cars, coin collections, etc.
- Cash value of life insurance policies available to the individual before death. Term life insurance is not included as an asset because it has no cash value to the individual before death.
- A mortgage or deed of trust held by an applicant/tenant. Payments are usually received as one combined figure of principal and interest. Separate the principal and interest portions (by using an amortization schedule) and include only the interest for the future 12 months as income. Determine the amount of the loan outstanding at the end of the 12-month period following certification and include that amount as the asset value.

Note: Assets owned by more than one person should be prorated according to the percentage of ownership.

Assets do not include:

Asset Exclusions

- Necessary personal property such as clothing, furniture, automobiles, personal jewelry, etc.
- Vehicles specially equipped for the handicapped.
- Interest in Indian Trust Land.
- Value of term life insurance.
- Equity in a cooperative unit in which the family lives.
- Assets that are a part of an active business ("business" does not include rental properties that are held as investments and not a main occupation).
- Assets held in the applicant's/tenant's name but are actually owned by someone else, such as;
  1. Assets and earned income that is accrued or paid to the benefit of someone else; or
  2. A situation wherein another person is responsible for income taxes incurred on income generated by the asset(s); or
  3. An applicant/tenant is responsible for disbursing someone else's money, such as in the case of having Power of Attorney, but the money is not his/hers and no benefit is received.
- Assets that are not accessible to and provide no income to the applicant.

SALE OR DISPOSITION OF ASSETS

Sale/Disposition of Assets

At the time of application or annual certification, all adult members of the household must declare any assets sold for less than fair market value in the past two years before the effective date of the Certification. If there is more than $1,000 difference between the amount received for the asset and the fair market value, then include in asset value the entire difference. If there is less than $1,000 difference, do not count it.

Example: Six months before move-in, an applicant sold his house to his nephew for $5,000. The house could have been sold on the open market for $60,000. The difference between the value and the sale price is more than $1,000. Include $55,000 as the asset value. This "disposed of" asset must be counted for 2 years.

Note: Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, or divorce or separation settlement are **not** to be included in the fair market value determination. However, if an individual is still the owner of record of property, include as an asset the value of the individual's share of the property.

DETERMINING THE VALUE OF AN ASSET:

Asset Value

When computing asset value, use the cash value of the assets. The cash value is the amount an individual would receive if the asset(s) were converted to cash. Expenses which may be deducted from the value include:

- Penalties for withdrawing funds before maturity;
- Broker and/or legal fees assessed to sell or convert the asset to cash; and
- Settlement costs for real estate transactions.

DETERMINING INCOME FROM ASSETS:

Income From Assets - Determining

When the value of net family assets is less than $5,000, add to the total verified income the amount of actual income from the asset(s). When assets are $5,000 or more, add to the total verified income ***the greater of:***

1. The actual income from assets; or
2. The imputed income from assets based on the passbook rate established by HUD (currently 2%).

Example: An applicant has $6,400 in assets. Actual income from assets has been verified at $168. Imputed income from assets is calculated at $128 ($6,400 x .02 = $128). Use the greater amount, or in this case $168, to add to annual income.

Income and Age Waivers

INCOME AND AGE WAIVERS:

Income Limit Waiver:
If an applicant is over age 58 and over the maximum income limit, an income waiver must be obtained by the project from your assigned Program Compliance Officer <u>prior</u> to move-in. To qualify for an income waiver any applicant aged 58 or older must meet the definition of a "Disabled Person" as outlined in the Oregon Revised Statutes (ORS), the language of which is included on the Verification of Income Part B form. The resident and site management determine if it is appropriate to request the waiver based on the applicant's need of the services offered at the facility. **Third party verification of disability is <u>not</u> required.** A waiver for income must be obtained by the project **prior** to the household move-in.

Age Limit Waiver:
If an applicant is under age 58, and over the maximum income limits, even if they qualify as a "Disabled person", they may not be admitted. The waiver for income only applies to 58 and older. **However, state statutes allow projects to admit**

younger Disabled individuals whose income does not exceed the "set-aside" limits. Third party verification of disability is <u>not</u> required. A waiver for age must be obtained by the project **prior** to move-in.

Waiver Limitations - Project

Waiver Limitations:
No more than 20% of the units are to be rented to households that are over the maximum income limit.

Student Status:

Limitations on Students – Federal Regulations

Federal regulations for tax-exempt bond financed projects prohibit the renting of set-aside units to households composed entirely of full-time students. This issue is rarely a problem in the Elderly/Disabled program. However, should a project contain only the minimum number of set-aside units, if one of the set-aside units contains a full-time student household, another unit must be selected to fill the required minimum.

RENTAL RATE INCREASES:

Rent Increase Request Procedures

Owners must submit requests for a rent adjustment at least 60 days prior to the proposed implementation date, but preferably 90 days. The complete procedure for Rent Adjustments is attached to the manual as (Exhibit: #E.15E) The request must include the following:

1. Current rental rates
2. Proposed rental rates by unit, not as a percentage of the current rates.
3. Annual budget if not already submitted for the fiscal year the rent is proposed to be implemented.
4. Current rent roster listing residents by unit number. A copy of the completed Resident Eligibility Certification must be on file with the Department for each resident listed on the rent roster. Any missing certifications must be furnished at this time.

Upon receipt of a complete package the CO will process the request as follows:

- Income eligibility requirements will be checked for compliance with applicable statutes and IRS tax code regulations.
- The low-/very low-income requirement must be met. The Loan Documents for the project determine the requirement for each particular project:

(1) 20% of units reserved for low-income residents (80% of median)
(2) 20% of units reserved for very low-income residents (50% of median)

APPROVAL OF RENT INCREASES

Approval of Rent Increases

All residents' income must be below the median income limit currently established by the Department unless a waiver was granted by the Department in accordance with the administrative rules and the procedure to waive the income limits.

If requirements are met, a letter is sent to the owner/agent **"Rent Increase Approval Letter"** (Exhibit #E.16E)

If requirements are not met, a letter is sent to the owner/agent denying approval of the rent increase, stating the reasons for the denial, and what needs to be done before we will reconsider the request for an increase.

If rents are increased without Department approval or after the Department has denied approval, a letter of non-compliance will be sent to the owner, with a copy to the agent, noting such non-compliance and indicating that remedies may be taken to obtain compliance in accordance with the applicable loan document.

TRANSFER OF OWNERSHIP

The Loan Documents and Oregon Administrative Rule (OAR) require prior written approval from the Department for certain types of transfers of ownership of bond financed projects. A transfer may also require payment of a fee to the Department.

Transfer of Ownership

When a transfer of ownership is approved by the Department, a deed, along with a "Consent to Transfer" (or other similar assumption document) are recorded with the county clerk where the project is located. If the current ownership entity differs from the exact entity described in the Loan Documents, or there has been a deed recorded without an accompanying assumption document, the Department may not have approved the transfer.

In general, any change in an individual's ownership (i.e., John Smith or Susan Smith), or a cumulative 25% change in the ownership entity (i.e., general partner or limited partner) requires prior written approval from the Department. Even if the transfer is actually the ***SAME PEOPLE***, approval may be required. Some examples requiring approval are: (1) transfer to a "Trust" or for estate planning purposes; (2) inheritance; (3) divorce; (4) stock buy-out; (5) transfer to additional parties (i.e., transferring from a husband and wife to themselves, plus their adult children); or (6) transfer from a limited partnership to a limited liability company (but maintaining same partners).

For further clarification about transfer of ownership, refer to the following OARs:

- OAR 813-030-0061 for Disabled Housing Program
- OAR813-030-0066forElderlyHousingProgram