



LIHTC Program Compliance Frequently Asked Questions

Supplement to:
The OHCS LIHTC Program Compliance
Manual (2016)

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FAQs Overview:

This Supplemental material is intended to provide additional guidance and answers to questions that are frequently asked regarding LIHTC program compliance. It was developed pursuant to Section 42 of the Code and the IRS Procedure for Monitoring Compliance and is intended for use by Owners, Managing Agents, and on-site personnel as well as others involved with OHCS procedures for monitoring compliance with the tax credit program. It is intended to be used as a supplement to the 2016 OHCS LIHTC Program Compliance Manual. The manual is located on the OHCS website at:

<https://www.oregon.gov/ohcs/APMD/PCS/pdf/2016-OHCS-LIHTC-Compliance-Manual.pdf>

This supplement is divided into Topics. The Frequently Asked Questions are preceded with a **Q** and the Answers follow immediately and are preceded with an **A**.

Rent and Income Limits:

Q: How are income and rent limits calculated for tax credit properties?

A: HUD publishes the 50% and 60% limits annually for the tax credit program. Oregon has additional set-asides (typically 30% and 40%) and calculates the limits for those set-asides based on the HUD limits. Under the Housing and Economic Recovery Act (HERA) Tax credit properties that placed in service prior to 2008 are grandfathered from having their applicable limits go down. If limits in a county go down, pre-2008 properties can use the higher “HERA” limits rather than the current, lower limit.

Q: If an existing pre-2008 LIHTC property receives a new allocation of tax credits, is the property eligible to use HERA limits?

A: No, the property must use the current Income and Rent limits or the rent limit established per the gross rent floor.

Q: What consequences result from overcharging rent?

A: Serious consequences can occur when rent is overcharged in an LIHTC unit. Once a unit is determined to be out of compliance with the rent limits, the unit ceases to be a low-income unit for the remainder of the calendar year. The potential financial impact for the owner can be substantial. Even though the Owner is required by OHCS to refund all over paid rent to the tenant, the unit will still be considered to be in non-compliance until the beginning of the next year.

Q: If the rent is over the State set-aside limit but not the Federal set-aside limit, is the unit still reported to the IRS?

A: No, however the units will be considered to be out of compliance and OHCS will require the overpaid rent to be reimbursed. If the Owner/Agent does not provide documentation demonstrating that the rent was refunded, the property will be considered to be out of compliance and other consequences of compliance will apply.

Q: Can I charge a tenant pet rent?

A: No, OHCS does not allow pet rent. A reasonable and refundable pet deposit is allowed. However, the refundable deposit must not be charged to those who have a pet that is considered a service, therapy, or assistance animal.

Q: Can I require a tenant to pay a higher rent if they refuse to sign a lease renewal?

A: You cannot raise a tenant's rent based on the fact that they do not want to and/or cannot renew their lease for a specific amount of time. However, you can offer a rent reduction to those who agree to sign a renewal for a specified amount of time. The key is to think incentive and not penalty. A reasonable rent increase when the lease expires is permissible consistent with the local market taking into consideration the maximum rent limit allowed.

Q: How much rent can be charged for a unit occupied by a Housing Choice Voucher Holder?

A: The total rent charged cannot impact the tenant portion of rent as normally calculated by the public housing authority (PHA). The Owner or Agent can charge the PHA up to the amount the PHA is willing to pay if there is no additional cost added to the tenant's portion of rent as calculated by their income. Some PHA's may allow an Owner or Agent to charge more than the payment standard and add the over charged amount to the tenant's portion of rent. This is not allowed by OHCS and can make the Owner at risk of losing tax credits. This may also be perceived as a potential source of discrimination against voucher holders.

Fees:

Q: What fees do I have to include in rent?

A: All non-optional fees charged to a tenant must be included in gross rent.

Q: Can I charge a non-refundable pet fee or a monthly pet fee?

A: No, however a refundable pet security deposit is allowed for non-service animals.

Q: Can I charge a fee or rent for a parking space, garage, carport, or storage unit?

A: Fees must not be collected for areas that were paid for by the tax credits. In order to charge fees for certain areas of the property, the Owner/Agent must be able to demonstrate that the area was taken out of the eligible basis for the calculation of the tax credit.

Q: Can I require renters insurance?

A: No, however you can recommend it. If you require it, the cost must be included in gross rent.

Q: Can I charge for cable or internet service if we have a contract established and receive a discount with a local provider?

A: Only if the service is optional and there is documentation indicating that the tenant was given an option to decline the service.

Q: Can I charge a fee for processing an application?

A: Yes, however the fee should be limited to the actual out of pocket costs associated with checking a prospective tenant's income, credit history and landlord references.

Q: May I charge month-to-month fee to residents who do not want to execute a new lease (after the initial first lease expires)?

A: No, a month-to-month lease fee is not allowed and a charge such as this would be considered rent and should be included in the units gross rent calculation.

Q: Can I charge a resident for excessive utility consumption?

A: No, only if the amount charged is included in gross rent.

Q: Can I charge non-compliance fees to tenants who have violated their lease agreement?

A: Only as allowed per Oregon Landlord Tenant Law.

Q: Can I charge a fee for rental of the community room?

A: No, not if the room was included in the eligible basis. You can charge a reasonable and affordable refundable deposit.

Q: Can I charge fees to use the swimming pool?

A: No, not if the swimming pool was included in the eligible basis.

Q: Can I charge a fee or rent for washers and dryers that are located in tenant units?

A: It depends. If the eligible basis did not include washers and dryers when the property was funded and the tenants have other options available to them (such as an onsite laundry facility) then there is a possibility that washers and dryers can be offered to tenants for a nominal fee/rent. However, the tenant must have the option of returning the washer/dryers at any time without penalty if they cannot afford the lease/rent fee on the equipment.

Q: Can I rent the Community room to an organization for meetings or activities?

A: If the Community room was included in the eligible basis, the room cannot be rented to a local organization. It can be offered at no charge to a local organization for periodic meetings or activities, as long as the tenants have the option of attending the meetings or activities held by the organization.

Q: Can I charge a cleaning fee to prepare a unit for occupancy before a tenant moves in?

A: No, it is not permissible for Owners to charge tenants a fee for maintaining units in a condition suitable for occupancy.

Q: Can I charge a fee if the tenant pays rent late?

A: Yes, a reasonable and affordable fee may be collected consistent with Oregon Landlord Tenant law.

Q: Can I charge a security deposit?

A: All deposits charged must be offered as fully refundable.

Q: Can I charge a supportive service fee or fees for activities?

A: Only if the fees are optional and reasonable.

Q: Can I charge fees for assistance with daily living, such as meals, housekeeping, and professional assistance?

A: Yes, as long as these fees are entirely optional. Mandatory fees of any kind, including assisted living fees, must be clearly optional or the Owner risks loss of tax credits for the units affected. Marketing materials and application forms must clearly explain these fees as optional. Written materials should include rules for opting in or out of service packages with specific fees for each service detailed and described. Staff should be trained to explain the options to residents. Documentation should be available to demonstrate clearly that the fees are optional and that the general public can live at the property for the tax credit rent without services if they otherwise meet eligibility. The tax credit rents must be advertised.

Q: Can I charge a fee for medical alert devices?

A: Only if the fee is included in gross rent or documented to be optional.

Q: We have a large kitchen and provide meals to residents two times a day. Can I charge for the meals?

A: Yes, if the tenants have other options available to them for cooking (such as a fully functional kitchen in their unit) and the payment for meals is not a required condition of occupancy. The amount charged for the meals must be reasonable and affordable. The nominal fee should be designed to cover actual costs.

Q: Can I charge fees if a tenant pays rent with a credit or debit card?

A: Some properties may have a credit/debit card machine onsite (or contract with a third party company to provide this service) to allow tenants to pay rent using this method. The monthly fee incurred in having a machine onsite can be passed on to the specific tenants who elect to use this payment method as long as it is an optional fee and charged on a per-usage basis. The fee would be considered optional if the tenants have alternate methods of paying rent that do not include a fee (i.e. cash, check, money order, bank check, etc.). The fee charged to the tenant may not surpass the actual cost incurred from the machine (or third party service provider) and must be disclosed to the tenant prior to processing the transaction. Management must keep documentation showing the actual costs of providing the service and the amount of the fee charged to tenants.

Verifications and Documentation:

Q: Can I use documentation provided by the applicant or tenant to verify income?

A: In most cases no. However, printed statements from state or federal agencies may be used to verify income as long as they are current within 120 days of the certification date and provide all of the necessary information. For verification of Social Security benefits, we will accept statements or printouts from the Social Security office beyond 120 days, if the statement shows the set gross benefit for the current year.

Q: Can I use verification from EIV to prove LIHTC income eligibility?

A: No, EIV information must not be used to prove eligibility for a tax credit household.

Q: Can I use pay stubs instead of a Verification of Employment (VOE) form?

A: We will only accept pay stubs in lieu of a VOE when three documented attempts to obtain verification over a 2 week period fail. Documentation of the attempts must be kept in the file with the pay stubs.

Q: Why do I still have to verify information when the tenant questionnaire already asks for the same information?

A: The tenant questionnaire is meant to be utilized by the Owner/Agent as a guide for specific information that needs to be verified. It is not an actual verification form.

Q: When do I utilize the Under \$5000 Asset Certification form?

A: The Under \$5000 Asset Certification form must be completed by all adult household members and kept in every LIHTC tenant file unless the assets of the household are being third party verified.

Q: If an applicant anticipates Social Security Income on their application but benefits have not been awarded yet, do we still have to verify and count the income?

A: If the applicant indicates that they have applied or will apply for benefits within the next 12 months we ask that you verify what their award amount will be and count that towards their anticipated gross income.

a) The Social Security website offers a page which shows if an applicant is eligible and what the monthly award amount will be. The applicant must create an account at www.ssa.gov in order to access the information. Any documentation the resident may have from Social Security can be used as well.

b) If getting a benefits statement is difficult, ask the applicant for copies of any correspondence from Social Security Administration related to the status of their benefits application. If the applicant has engaged an attorney to help process their application, obtain a written statement from the attorney addressing the status of the application, likelihood of receiving benefits, and an estimate of the benefit amount to be received.

Q: How do I verify the specifics of an adult household member who indicates that they have no income from any source?

A: The individual must complete the Income Status Certification form providing details regarding how they will pay for their rent and living expenses.

Q: An applicant does not currently have a job and has no other income. However, he is looking for and expects to find a job soon. How do I verify their income?

A: Generally, current circumstances are used to determine anticipated income. In addition to the Income Status Certification form the Owner or Agent must calculate and verify all verifiable sources of income anticipated in the next 12 months (for example if the applicant indicates they have been offered a job and will start in the future). If the applicant or tenant has verifiable income then it must be verified. If they have unverifiable income (for example they expect to be offered a job but an offer has not come in yet) then there would be nothing to verify or calculate.

Q: How do I verify benefits that are loaded on EBT, Reliacards, Emerald Card & Direct Express type debit cards?

A: The benefit or money that is loaded on the card itself is considered income and the balance is an asset. There is no income from the asset to calculate. The balance on the card is considered an asset and needs to be verified in the same manner as you would verify a savings account. There is no interest. Applicants or tenants who receive their benefits on a card would need to provide an account balance no more than 120

days old at the time of certification. They can obtain the balance by using an ATM machine and obtaining a balance receipt, or by providing a receipt from a transaction showing what the balance is that is left on the card.

Q: Do I have to calculate minimum wage increases and COLA's when determining income?

A: Yes, all income expected to be received in the 12 months following certification must be accounted for. This would also include raises, bonuses, tips, expected over time and other compensation.

Q: Do I have to include Veterans Assistance Aid and Attendance Benefits in household income?

A: According to HUD's RHIP Listserv Posting #284, any money received by the family that is specifically for, or in reimbursement of, the cost of medical expenses for any family member is excluded from annual income. Because of this, the owner must verify any amount provided for A&A which is used for medical expenses and exclude the verified amount. Any portion of the benefit not being used for medical expenses must be included as income.

Q: Do I have to verify the eligibility and income of a 17 year old household member who will turn 18 before the next certification?

A: Yes, the 17 year old should complete a tenant questionnaire and all sources of income should be verified and included as applicable. Only count the anticipated income of the 17 year old for the months after they will turn 18. If the parent would rather complete and sign the form for the minor, they are able to do so.

Student Income:

Q: Do I count all of the income from a fulltime student over 18 when calculating the households' annual income?

A: If the student is employed but is not the head, co-head or spouse, and is a dependent of the Household, you count only the first \$480 of their wages for the entire 12-month period. Also, count all unearned income (Social Security benefits, TANF, unemployment, etc.) for any students. Verification of fulltime student status is required. For students who are the head, co-head or spouse, count all earned and unearned income.

Q: Is student financial assistance considered income for purposes of qualifying a household for a tax credit unit? If so, what parts do I count?

A: No, unless the tax credit unit or resident is receiving some form of Section 8 rental assistance (Project-Based Section 8 or Housing Choice Voucher). If the student receives some form of Section 8 rental assistance, you must count as income any amount of assistance that is in excess of the amounts which cover tuition and any other required fees and charges. If the student is over the age of 23 and has children or the student is living with his/her parents who are receiving Section 8, all financial assistance is excluded from annual income determinations.

For additional information about how to count a student's financial assistance, see Chapter 5 of HUD's Occupancy Handbook 4350.3. Also see HUD's PIH Notice 2015-21, published in December 2015, which provides good examples of how to define "required fees and charges."

Student Status:

Q: How do I determine if someone is a part-time or fulltime student?

A: The educational institution will determine PT or Ft status.

Q: If someone attends two schools part-time are they considered a full-time student?

A: Yes.

Q: An eligible resident moved in and at recertification we found that she returned back to school fulltime. Is she still considered qualified?

A: No, when a unit becomes occupied entirely by full-time students at any time (defined as individuals enrolled fulltime at an educational organization for at least five calendar months during the year), the unit becomes disqualified unless one of the following exceptions apply:

The unit must be occupied by at least one individual who is:

1. Enrolled in a job training program receiving assistance under the Workforce Investment Act (formerly JTPA) or other similar program funded by a state or local government agency.
2. Receiving benefits under Title IV of the Social Security Act (e.g. TANF).
3. A single parent and the single parent is not a dependent of another individual, nor are their children dependents of another individual except another parent of such children.
4. Married and eligible to file a joint return.
5. A student that was previously under the care of a state foster care program.

Q: Do married students need to actually file a joint tax return to qualify as an exception?

A: No. It is only necessary to verify that married students are eligible or entitled to file jointly.

Q: Can legally married same-sex couples qualify for the “married, filing jointly” student exception?

A: Yes.

Q: How do I verify student status of an international student who attends school fulltime but receives zero credits? Schools generally confirm student status by the number of credit hours taken, so it is possible that the college may verify their status as part time. Should I consider these students full time or part time?

A: International Students are almost always considered fulltime Students. This is because their Student Visa specifically requires these students to attend school fulltime to remain in the United States.

Q: How do I verify student status for a person who claims to be exempt under the foster care exception?

A: The person who indicates that they were a foster child should be able to provide a written statement on letterhead or some sort of documentation from the state or agency that placed them in the foster care system. There is no time limit applicable.

Q: Can a single pregnant fulltime student use her unborn child to qualify for the student exemption?

A: No, the IRS has made it clear that an unborn child can be counted toward household size when determining the income limit; however they have not indicated that an unborn child can qualify a student household. An unborn child would not count as an exception to the Student Rule until the child was born.

Eligibility:

Q: Does the LIHTC program or IRS require tenants to be US Citizens?

A: No, the IRS has not indicated that there is a citizenship requirement for the LIHTC program.

Q: Does Oregon require LIHTC households to be US citizens?

A: No, Oregon does not have a citizenship requirement for the LIHTC program.

Q: Can the Company I work for or Owner of the property require citizenship for LIHTC tenants?

A: Yes, however it is strongly recommended that all policies regarding this are evaluated by an attorney who is knowledgeable about fair housing regulations.

Screening Practices:

Q: When screening applicants, what is the maximum income to rent ratio I can require?

A: ORS 456.722 indicates that OHCS “shall, when awarding public funds for low-income rental housing, give a substantial preference to low-income housing providers that do not require applicants for such housing to have net income greater than two times the rent”.

Most Owners elect to receive this preference when they apply for funding, and it is important that tenant selection practices abide by the requirement.

Q: How do I determine income to rent ratio for an applicant receiving a rent subsidy?

A: It is mandatory that you only consider the tenant paid portion of the rent when considering income to rent ratio.

Q: Can I screen applicants for criminal backgrounds?

A: Yes, you can screen applicants for criminal backgrounds. However, it is important to have a clear and consistent policy regarding selection criteria. On April 4, 2016, the HUD Office of General Counsel issued a memo titled “*Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*”. This memo should be taken into consideration when developing a criminal background screening policy.

Q: Can I screen a live in aide?

A: You can conduct a criminal background screening; however you may not conduct a credit screening.

Q: When we received a credit screening back on an applicant the report indicated that the applicant owns a home. The applicant said that he does not own the home and his brother just used his credit to purchase the home. Do we need to do anything?

A: Yes, if the home is in the applicants name then technically he owns the home and you must treat it as such.

Maintaining State Elected Set-Asides:

Q: The property I manage has 30%, 40%, 50%, and 60% units. One of the tenants I moved in at 30% AMI is now at 80% AMI and is still paying a 30% rent. Do I need to do anything?

A: Yes, it is very important that the lowest rents are always offered to those who have the lowest incomes. This should be monitored on a continuous basis and rent set-asides should be adjusted and floated as needed.

Q: It is obvious that a household at 80% AMI can afford the 60% rent but sometimes it is not so obvious, what if at recertification the tenant was at 38% AMI?

A: A tenant should never be rent burdened. In this case it would be best to keep the tenant at the 30% rent until they reach at least the next set-aside level.

Q: When floating a lower set-aside, how do I choose the low income household to float the lower set-aside to?

A: You can either choose from an in-house waiting list or from the property wait list. It is a good idea to establish an in-house wait list for those who meet the lower set-aside requirements but are not receiving them. These tenants are normally struggling to pay rent and would benefit from a rent reduction. Either way, it is mandatory that you establish a clear and consistent policy on how you will track and implement floating set-asides.

Q: The tenant I placed in a 30% unit received a housing choice voucher. Do I have to do anything?

A: It is always best if the lower set-asides are occupied by tenants who do not receive rental assistance because tenants who pay full rent out of pocket will benefit from a lower rent more than someone who pays rent based on their income. In this case you could switch the tenant who has a housing choice voucher to a 60% set-aside and offer the 30% rent to someone who is rent burdened.

Q: Does the tenant have to move to another unit when I switch the set-aside?

A: No, normally the set-aside floats from unit to unit. The tenant does not move.

Q: Do I have to recertify the household when I float the set-aside to them?

A: If the tenant has not been certified in the last 120 days it is best to certify their income so that you have a true and accurate picture of their income level and their need for a lower set-aside.

Q: Does my lease need special wording to float set-asides?

A: Yes, it is important that the lease or an addendum explains the set-aside policy and indicates that rent may be raised if income goes up.

General Over Income:

Q: The property I manage is 100%@60. A tenant is now at 85% of AMI. Can I raise their rent over the 60% rent limit?

A: No, you must not raise rent above the max 60% rent.

Q: The property I manage is 100%@60. We have several tenants who are now over 140% of AMI. They have lived here for years and there is no indication that they want to move. Can we make them move to another property so that we can house some of the low income applicants on our wait list?

A: No, if a tenant initially qualified for the low income set-aside when they moved in, technically they have a right to live at the property no matter what their income is.

Wait-lists, AFHMPS's, Advertising, Resident Services and Preferences:

Q: Do tax credit properties have to use waiting lists?

A: Yes, OHCS requires all properties to maintain wait lists.

Q: I was told in an inspection report that I had to purge my wait list. Is this really necessary?

A: Yes, purging a wait list on a regular basis is very important and can have a direct bearing on unit vacancy to occupancy timing. The goal is to maintain an active waitlist that can be used at any point in time to fill vacancies.

Q: How do I close the wait list if I have too many people waiting?

A: If you want to close a wait list you first must be able to demonstrate that the list was recently purged. After that there are several things that must be taken into consideration. Call OHCS for pre-approval and compliance guidance on how to properly close a wait list.

Q: Do tax credit properties have to complete an AFHMP?

A: Yes, all OHCS properties should complete an AFHMP and maintain a file documenting proof of advertising.

Q: Do I send my tax credit AFHMP to HUD for signature and approval?

A: No, not unless the property has other funding that requires a HUD signature. For tax credit only properties, the AFHMP should be provided to OHCS for the property file.

Q: When should I update the AFHMP?

A: The AFHMP should be updated as needed with a maximum time frame of once every five years.

Q: Do I have to provide resident services at my tax credit property?

A: Most properties have a resident service requirement that was outlined and promised when the property was funded and developed. If the Owner indicated in the funding application that services were provided, then services must be offered. In addition it is important to note that many funding sources paired with tax credits have a direct service requirement.

Q: What if I want/need to modify my service plan?

A: All changes to service plans must be pre-approved by OHCS. A written request should be submitted indicating the reason why the change is taking place and specifically outlining the details of the new proposed plan. All proposals must be comparable to what was originally promised, and must meet the need of the current tenant population.

Q: How often should I review my service plan?

A: It is recommended that plans are reviewed on a continual basis, however at least once every five years the Owner should review the plan in detail to determine if the current plan is meeting the need of the tenant population and if modifications may be needed. It is recommended that all services and activities offered are tracked and documented for future reference.

Q: What if we want to establish or change the properties population preference?

A: When deciding to modify or establish a preference, it is very important that the Owner/Agent consider numerous areas that can impact tax credit compliance. Contact OHCS before establishing a new preference or modifying a preference to receive approval and compliance guidance.

Q: Can the Owner sign an MOU with an organization to provide referrals or services?

A: In most cases yes, however this is also an area that can impact compliance. Before signing an MOU it is important that the Owner/Agent contacts OHCS for approval and compliance guidance. A copy of the MOU must be sent to OHCS for a compliance review.

Q: In my inspection report I was told that I had to use more than one method of advertising, what does that mean?

A: A variety of methods should be used to advertise a tax credit property to the general public. Methods can include a combination of newspaper or media ads, social media, flyers, websites, other print ads etc. The goal is to reach as many low income applicants as possible. Some low income people do not have access to the internet or to newspapers, so it is important to try and utilize a variety of methods to get the best result.

Turn Time and Vacancy Time:

Q: What is unit turn time?

A: Turn time is the amount of time that it takes Management to prepare a unit for occupancy from the start point of when a resident vacates to the end point of when the unit is ready and available for occupancy. Units should always be turned as quickly as possible in an effort to house low income Oregonians on a continual basis. The IRS indicates that all units should be made rent ready in a “reasonable” amount of time. Reasonable has been defined as no longer than 30 days. However, please note that normally it should not take more than 10-14 working days to turn a normal unit. Taking longer than 30 days to turn a unit may result in tax credit recapture.

Q: What is unit vacancy time?

A: Vacancy time is calculated by determining the number of days that the unit sat vacant. This includes both the unturned as well as the ready for occupancy time frames. The goal is to turn and have units occupied as soon as possible. Thirty days is an acceptable time frame. Patterns of prolonged timing for vacant units can result in tax credit consequences.

Certification Signature Timing:

Q: When should a tenant sign the Move-In Tenant Income Certification (TIC)?

A: It is preferred to have the tenant(s) sign the TIC on the day of move in. However it is important to note that move-in certifications should never be signed more than 10 days prior to the effective date of the certification. If the tenant signs the certification prior to move-in (even one day), it is extremely important that Management documents that they have inquired about any changes that may have occurred between the date of signature and date of move-in. This can be documented in a written and signed tenant clarification for the file.

Common Area Units Occupied by On-Site Managers, Maintenance Personnel and Security Guards:

Q: As the Manager I reside in the designated Management unit, am I supposed to pay rent?

A: Only if you have been certified as a qualified low income tenant and the rent you pay is no more than the allowable tax credit rent.

Q: Our Site Manager purchased a home and we no longer have a need for her to reside in the Management unit, can we rent it out?

A: Yes, but only to a qualified and certified low income tenant.

Q: Can we make our Common Area Management Unit a Market unit?

A: Absolutely not.

Q: If we rent our Management unit to a low income tenant can we still utilize it for a site Manager in the future if needed?

A: Only with pre-approval from OHCS.

Q: I manage three tax credit properties in one town. Can I live in the designated management unit at one property but manage all three?

A: Possibly not. In the IRS Audit Technique Guide (ATG) this specific type of action appears to be prohibited. The guide (used by IRS auditors) indicates among other things that: A unit occupied by an on-site manager, maintenance personnel, or security guard should be treated as a facility reasonably required for the project and not treated as a residential rental unit if: 1. The services provided are required, given the character and size of the project, 2. The resident manager, maintenance personnel, or security officer is providing services required for the project that could not be properly provided unless the employee resides on the project premises. Revenue Rulings 92-61 and 2004-82, Q&A #1, presume that property managers, maintenance personnel, and security officers could not provide their service properly without occupying a unit on the premises, and 3. The resident manager, maintenance personnel, or security officer is **working full time at the site**. The ATG also provides a direct example of possible non-compliance specifically indicating that possible noncompliance may exist if the unit is occupied by an employee providing services at multiple IRC §42 projects. The ATG specifies “For example, a taxpayer contracts with an independent property management company to operate its IRC §42 project on a day-to-day basis. The management company has contracts with three taxpayers owning IRC §42 projects in close proximity and directs the property manager occupying a unit at the taxpayer’s project to manage all three projects. The property manager generally visits each site daily. The unit is not a “facility

reasonably required for the project because the employee is not working full-time on the premises where the employee is occupying a unit. It may also be argued that it is not necessary to live on the project's premises to perform the services”.

Q: Can a staff member continue to live in the Common Area Unit if they are no longer employed at the property?

A: When a staff person is no longer employed at the property, they must either move out of the Common Area Unit or become income-qualified and tax credit certified paying the applicable tax credit restricted rent. It is recommended that standard language regarding this matter be included in the staff persons lease or employment contract.

Q: Can I change the location of the Common Area Staff Unit?

A: Most likely yes. Pre-approval must be obtained by OHCS. There are also square footage considerations that must be taken when changing unit locations.