

## OHCS Program Rent Procedures Currently In Place

### **Low Income Housing Tax Credit Program (LIHTC)**

#### **State Elected Deeper Income & Rent Targeting Requirements as indicated in OHCS Compliance Manual (Page 9)**

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

Deeper targeting requirements are common in 9% competitive tax credit deals as well as 4% bond deals. This is normally a State election (Owner elects to designate units with more restrictive requirements than the federal requirement) and is separate and most often more restrictive than the federally elected set-aside of 20@50 or 40@60 that is indicated on the 8609 form. The deeper targeting is usually determined by the owner at application or loan underwriting and will be monitored by OHCS on an ongoing basis.

Owners/Agents are required to track all set aside requirements and monitor units to make sure that they are being utilized in the best manner possible. The goal of deeper set-aside units is to provide lower rents to lower income Oregonians. When a lower set-aside unit household has income that increases to the point where they meet a higher set-aside and can afford a higher rent, efforts should be taken to float the lower set-aside (or rent the next available unit) to those who meet the lower set-aside income limit and will benefit from the rent reduction.

Tenant Selection policies should indicate the Owner/Agents procedure on how lower set-asides will be designated. Leases should indicate that set-asides may be swapped as applicable when a household's income increases. Even though violations of the more restricted State elected set-aside may not appear to be federal violations, it is common practice among States to report violations as non-compliance with the Reservation and Extended Use agreement.

Example: A property has a federal set-aside of 40@60 however the Owner agreed to provide 100% of the units to tenants who were at or below 60%. Per the REUA ten of the units at the property are designated to be rented to tenants who are at or below 40% of the income limit at rents of 40%. A family who resides in and qualified for one of the deeper set-aside 40% units has an increase in annual income (bringing the household to 60% AMI at recertification). This family is now able to pay a higher 60% rent and the lower 40% rent should either be 1) floated out to a family who meets the lower set-aside of 40% or 2) offered to the next person on the wait list who meets the lower set-aside limits.

### **LIHTC Rent Requirements Federal Guidance**

<https://www.irs.gov/pub/irs-utl/lihc-form8823guide.pdf> (Chapter 11)

Under IRC §42(g)(2)(A), a unit qualifies as an LIHC unit when the gross rent does not exceed 30 percent of the imputed income limitation applicable to such unit under IRC §42(g)(2)(C). The income limit for a low-income housing unit is based on the minimum set-aside election made by

the owner under IRC §42(g)(1), but is never less than the income limit applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low income housing project. IRC §42(g)(2)(B) defines gross rent and excludes the following amounts, which are listed here and discussed separately within this chapter:

1. Payments under section 8 or a comparable rental assistance program;
2. Fees paid to the owner by any governmental program of assistance for supportive services; and
3. Rental payments to the owner to the extent the owner makes equivalent payments to the Rural Housing Service under the section 515 program.

IRC §42(g)(2)(B) also requires that the gross rent include any utility allowance “determined by the Secretary after taking into account such determinations under section 8 of the United State Housing Act of 1937.” For Section 8, tenant rent is the portion of the Total Tenant Payment the tenant pays each month to the owner for rent. Tenant rent is calculated by subtracting the utility allowance from the Total Tenant Payment. Because HUD determines a tenant’s rent on a monthly basis, state agencies must determine whether the owner is in compliance with the gross rent limits each month of the owner’s current tax year.

**OHCS LIHTC Rent Adjustment Wording as indicated in REUA (LIHTC Reservation and Extended Use Agreement) Existing Properties:**

Traditional REUA documentation is property specific and includes a table indicating the agreed upon rent and income limits. Wording below the table will normally indicate the property federal election and application representation. For example the wording may indicate “The maximum restricted program rent is based upon the federal election (20/50 or 40/60) published for the given bedroom size and county in which the project is located. The project sponsor has represented to OHCS in their application the rent and income levels are to be at or less than this maximum. Any revisions to the original application pro forma must be approved in writing by OHCS.

In addition, wording in the REUA will indicate the following “Subject to the rent restrictions of IRC Section 42, Owner may request an increase in rents (within the limits allowed by IRC Section 42) set forth above annually in writing, together with supporting documentation, which shall be deemed approved if not denied or modified by OHCS within 90 days of its receipt at the Owner’s request. OHCS also may approve other requests by Owner for rent increases subject to the limits in IRC Section 42”.

**OHCS LIHTC Rent Adjustment as indicated in REUA (LIHTC Reservation and Extended Use Agreement) for Newly Developed Properties:**

REUA documentation is property specific and includes a table indicating the agreed upon rent and income limits. Wording below the table will normally indicate the property federal election and application representation. Below the table standard wording will indicate additional information such as:

“The maximum restricted-rents for the Qualified Units, as published by HUD, correspond to the elected income limits and Maximum Rent Standards payable by Qualified Tenants reflected in the table, but actual rents for the Project payable by Qualified Tenants may be lower depending on the terms of other applicable rent subsidies or OHCS rent-approval requirements. Under no circumstances will tenants be required to pay more rent than that allowed by applicable rent-subsidy programs or Program Requirements, the most conservative restrictions having precedence”.

“The table shows maximum income and rent standards rounded up to the nearest percentile. The Recipient, for Owner, has represented to OHCS in its Application that the rent payable by Qualified Tenants and income levels of Qualified Tenants will not exceed the maximums identified in the foregoing table and will otherwise comply with Program Requirements”.

“Rent Increases. Owner may request an increase in rents annually in writing together with supporting documentation, both satisfactory to OHCS, which request will be deemed approved if not in excess of IRC limits or other OHCS subsidy limits, and not denied or modified by OHCS within ninety (90) days of its receipt by OHCS. Subject to IRC and other OHCS subsidy limits, OHCS may approve, deny or modify such rent increase requests at its sole discretion. OHCS, at its sole discretion, also may approve, deny or modify other requests by Owner for rent increases subject to IRC and other OHCS subsidy limits”.

## **HOME**

### **Federal Rule 92.252 (f)(2) change in 2013**

<https://www.hudexchange.info/home/home-final-rule/section-by-section-summary/subpart-f/>

Rent Review and Approval during the Affordability Period: The 2013 HOME Rule amended §92.252(f)(2) to require that a PJ must review and approve the rents for each HOME-assisted rental project each year to ensure that they comply with the HOME limits and do not result in undue increases from the previous year. Previously PJs were required to approve initial rents, then provide the published maximum HOME rents to project owners, and examine reports submitted by owners that report the rents and occupancy data of all HOME-assisted units on an annual basis.

### **HOME Rent Adjustments as indicated in OHCS Compliance Manual**

[http://www.oregon.gov/ohcs/APMD/PCS/pdf/OHCS\\_HOME\\_Compliance\\_Manual\\_2015.pdf](http://www.oregon.gov/ohcs/APMD/PCS/pdf/OHCS_HOME_Compliance_Manual_2015.pdf)

OHCS must approve the property's rent structure at lease-up and must pre-approve all rent increases throughout the affordability period. Rent increase requests must be submitted to OHCS-Asset Management & Compliance Section and must follow the guidelines as outlined. Further, only one request to adjust/increase rents per year will be considered. The written request must be submitted no later than 60 days prior to the intended implementation date and must include the following:

- Explanation of the need to increase rents at the property
- Comparison of the current rents with the proposed rents
- A copy of the current utility allowance documentation
- A copy of the current operating budget for the property

OHCS no longer provides approval of rents to the maximum allowed regardless of the actual amount of rents being charged at the property. The requested rent increase must be for actual rents being charged at the property per unit type from the effective date of the new rents forward until the next change is needed (not more than once per year). OHCS considers multiple criteria when reviewing a request to increase rents for a property. The requested rent adjustment/increase will be reviewed for the following:

- Reasonableness for market; market comparable study
- Reasonableness for the tenant population
- Compared to the current maximum HOME rent limits for the property

- Property's vacancy rate history
- Lease; should allow for rent adjustment/increase with notice

If the information reviewed does not support the need for an increase, the request may not be approved. Contact the Asset Management Compliance Officer for the property with any questions.

Please NOTE: the property will be considered out of compliance if a change/increase in actual rents being charged has taken place without the required pre-approval from OHCS. Further, retro-active rent increase approvals are no longer provided.

### **Risk Share Program**

#### **Adjustments as indicated in OHCS Compliance Manual**

[http://www.oregon.gov/ohcs/APMD/PCS/pdf/RISK\\_SHARING\\_MANUAL\\_2014.pdf](http://www.oregon.gov/ohcs/APMD/PCS/pdf/RISK_SHARING_MANUAL_2014.pdf)

OHCS must approve the property's rent structure at lease-up and must approve all rent increases throughout the affordability period. Rent increase requests must be submitted to OHCS-Asset Management Section and must follow the guidelines as outlined in the OHCS rent adjustment policy. Further, only one request to adjust/increase rents per year will be considered. The written request must be submitted no later than 60 days prior to the intended implementation date and must include the following:

- Explanation of the need to increase rents at the property
- Comparison of the current rents with the proposed rents
- A copy of the current utility allowance documentation.

OHCS no longer provides blanket approval of rents to the maximum allowed. OHCS considers multiple criteria when reviewing a request to increase rents for a property. The requested rent adjustment/increase will be reviewed for the following:

- Reasonableness for market; market comparable study
- Reasonableness for the tenant population
- Comparison to the current maximum rent limits for the property
- Property's vacancy rate history
- Lease; should allow for rent adjustment/increase with notice

If the information reviewed does not support the need for an increase, the request may not be approved. Contact the Asset Management Compliance Officer for the property with any questions.

## **Oregon Affordable Housing Tax Credits (OAHTC) Program**

LIHTC properties with OAHTC traditionally have had wording regarding rent adjustments in the LIHTC REUA documentation as indicated below:

### **Existing Properties REUA OAHTC Wording:**

LIHTC projects awarded Oregon Affordable Housing Tax Credits (OAHTC) may be eligible to submit a request to the department for an adjustment in project rents after year 20 of the OAHTC credit period. After the department evaluates the projects need for the requested rent increase the rents may be increased to a level to assure financial viability (current standards dictate up to a 1.15 DCR) as long as these rents do not exceed net rent allowable under Internal Revenue Code (“IRC”) Section 42.

### **Newly Developed Properties REUA OAHTC Wording:**

OAHTC Adjustments. If the Project also has been awarded Oregon Affordable Housing Tax Credit (OAHTC) assistance, Owner may submit a request to OHCS for an additional adjustment in Project rents upon expiration of the OAHTC maximum twenty (20)-year compliance period. OHCS, at its sole discretion subject to IRC limits and Oregon law, may approve, deny or modify such request upon its determination.

## **Elderly BOND Program**

### **Rent Adjustment Procedure as indicated in 2011 OHCS Procedure posted on web:**

[http://www.oregon.gov/ohcs/apmd/pcs/pdf/e.15e\\_elderly\\_rent\\_adj\\_procedure.pdf](http://www.oregon.gov/ohcs/apmd/pcs/pdf/e.15e_elderly_rent_adj_procedure.pdf)

Owners must submit requests for a rent adjustment at least 60 days prior to the proposed implementation date, but preferably 90 days. The request must include the following:

1. Current rental rates
2. Proposed rental rates by unit, not just 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 will be noted by the CO, to be obtained prior to processing the request further. The owner/agent will be notified within 5 working days of those items required that are missing. Notification can be made over the phone but must be followed up in writing.

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

1. Income eligibility requirements will be checked for compliance with applicable statutes and IRS tax code regulations.
  - a. The low-/very low-income requirement must be met. Check the Regulatory Agreement for the project to 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)
    - (3) 40% of units reserved for very low-income residents (60% of median)
  - b. 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 our procedure to waive the income limits. If requirements are met, a letter is sent to the owner/agent approving the rent increase. If requirements are not met, a letter is to be 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 should be sent to the owner with a copy to the agent, noting such noncompliance and indicating that remedies may be taken to obtain compliance in accordance with the applicable loan document.