

## Chapter 4

### **Rent Restrictions and Lease Requirements**

#### **1. Rent Restrictions**

To ensure that Housing Tax Credit units are affordable to low-income residents, OHFA calculates income limits based upon the Area Median Gross Income that HUD publishes each year, to establish the maximum rents that owners can charge for these units. The agency updates the rent limits each year based on changes in area income figures.

- **It is the Owners responsibility to ensure the accuracy of the rent and income limits that are used to establish eligibility for each of its Tax Credit units.**

*Special Note:* Owners of developments that received Tax Credits in 1987 through 1989 were given the option of selecting the method of determining rent based on unit size or based on household size.

#### **2. Maximum Allowable Rents for TC Units**

To determine the maximum allowable rent for a TC unit, owners must:

1. Use the corresponding set of rent limits for the development (60 percent of area median income or 50 percent of area median income).
2. Refer to the appropriate LIHTC rent limit. (Chart provided by OHFA can be found in Appendix A, and is subject to change.)
3. Choose rent limits that apply to the county where the development is located.
4. If the resident pays any of his or her own utilities, subtract the appropriate utility allowance.

This amount represents the maximum allowable rent the owner can charge the resident of a Tax Credit unit.

### **3. Rental Application Fees**

Effective 10-1-07, application fees will be limited to a maximum of \$20.00 per adult household member. This is in addition to the existing rule that no application fees may be charged in excess of the average expected out-of-pocket costs of checking tenant qualifications. Application fees may only be charged to cover the actual costs of checking a prospective tenant's income, credit history, landlord references, and criminal background. Employee time expended in checking tenant qualifications cannot be included.

### **4. Optional Services Available to Residents**

Owners/managers may charge fees for optional services provided to residents (meals, transportation, pets, etc.), as long as they are optional. These fees are not included in the rent amount restricted by Tax Credit rent limits, but must be reasonable and customary for the local area.

A washer/dryer hookup fee, built in storage room fee, and month to month fee are considered non-optional and will be considered rent. Fees that are non-refundable and a condition of occupancy are included in rent.

### **5. Charges for Development Facilities**

Owners/managers may not charge fees for use of development facilities, such as garages or swimming pools, which were included in the eligible basis for the development.

Owners/managers may charge fees for the use of optional development facilities as long as the facilities were not included in the eligible basis for the development. The fees for optional facilities will not be included in the restricted rent amount. If the facilities are not optional, any fees charged for use of these facilities will be considered part of the rent that is restricted by the maximum allowable rent for that unit.

### **6. Rents for Units Receiving Assistance**

Tax Credit rent limitations apply only to the tenant-paid portion of the rent. They do not cover the portion of unit rents paid by Section 8 rental assistance or any other comparable rental assistance. The Housing Choice Voucher Program limits the family's portion of the rent to no

more than 40% of their monthly adjusted income during the initial term of the lease. \*The actual rent for the unit may be higher than the Tax Credit limit, but may not exceed the rent limit of the program providing tenant assistance.

\*Owners of RD sites must pay the overage back to RD to be in compliance. The portion of rent paid by Section 8 tenants can exceed the LIHC rent ceiling as long as the owner receives a Section 8 assistance payment on behalf of the resident. Check with the subsidy provider to assure this is allowed. If no subsidy is provided, the tenant may not pay more than the LIHC rent ceiling.

## **7. Changes Affecting Allowable Rents for TC Units**

The Tax Credit rent limits and utility allowances that apply to TC units will change periodically. When this happens, the maximum allowable rents for TC units also change. This section describes the circumstances when these changes occur and how to properly adjust unit rents.

### **A. Annual Revisions to LIHTC Rent Limits**

Each year, OHFA will revise the Housing Tax Credit rent limits applicable to developments in Oklahoma based on changes in area median incomes. The revisions will be made after HUD publishes its updated income figures. HUD generally issues these figures during the first half of the year. The existing limits may be used until the later of :

- \* Effective date of new limits
- \* 45 days after HUD publication effective date

### **HUD Hold Harmless “HERA Special” Limits**

In 2007 and 2008, HUD modified the methodology used to calculate AMGI to include additional data sources. In some areas, the change in methodology resulted in a significant decrease in the area’s median gross income. As a result, HUD used a “hold harmless” policy to keep the AMGI at the existing level (the HUD hold harmless policy).

Beginning with 2009, the HUD income / rent limits incorporate the HUD hold harmless policy or the Housing and Economic Recovery Act of 2008 (HERA) Special limits. A site may use the HERA Special limits as long as at least one building in the project

(in which buildings are being treated as a multiple building project. Form 8609, 8b is checked “yes”) was placed in service in 2007 or 2008.

### **National Nonmetropolitan Median Gross Income**

Effective July 30, 2008, rural projects (as defined in IRC 42(d)(5)(B)(iv)(IV)) are able to use the greater of the area median gross income (AMGI) or the National Nonmetropolitan Median Gross Income (NNMGI). To determine if an area is qualified as rural, use the USDA’s determination of rural, go to the website at <http://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAct> **This does not apply to 4% Tax Exempt Bond financed properties.** If a site is subject to the HERA Special limits and the NNMGI limits, the greater of the two limits may be used.

### **B. Changes in Utility Allowances**

All utility allowances need to be updated periodically. Any changes in applicable utility allowances will impact the maximum allowable rents for TC units. **Even if a resident is on a lease, the owner must implement the current UA’s. If the UA goes up, the rent must go down if the tenant is charged the maximum allowed rent.**

- Each year, local PHAs revise their standard utility allowances. Owners who rely on PHA figures must adopt these new allowances no later than 90 days after the effective date (see pages 6 thru 8 of this chapter for more information on utility allowances).
- For buildings receiving other federal assistance, the administering agency will provide annual utility allowance updates.
- When utility company estimates are used, updates of the estimates must be obtained at the time the LIHTC rent limits are revised.
- **When the applicable utility allowance for a tax credit unit increases, the owner must reduce the rent for the unit, if needed, to make it consistent with the**

**maximum allowable rent under the new utility allowance within 90 days after the date of the change.**

To summarize, any increase in UA's must be used to reduce the net rent paid by ALL low income tenants within 90 days of the change. **If at any time a low-income tenant is over the maximum rent limit (net rent + current UA > max rent), the owner will be out of compliance.**

- Owners should instruct the on-site personnel as to which method is used to determine the allowance for their property. Copies of the applicable utility allowance for all years of operation must be kept on site.

**C. Adjusting Unit Rents**

If a decrease in Housing Tax Credit rent limits result in lower maximum allowable rents for TC units, owners are required to bring the rents for TC units into compliance with the new rent limits at the time they become effective.

When Housing Tax Credit rent limits increase, owners can raise the rents for TC units, up to the amount of the new limit, after taking into account the necessary allowance for tenant-paid utilities. However, any adjustments in a unit's rent must be consistent with the dwelling lease for the unit. Unless specifically stated in the dwelling lease, owners may not raise unit rents until a new lease term begins.

**D. Rent Floors**

When annual adjustments are made in Tax Credit rent limits, it is possible that rents can go down. However, Housing Tax Credit regulations have established a floor to protect owners from decreasing rents. Tax Credit regulations protect owners who received allocations in 1990

or later years by establishing a rent floor that keeps the applicable Tax Credit rent limits for the development from dropping below the rent limits that were in effect on the date the initial Tax Credit allocation was made to the building/development.

In determining the maximum allowable rent for a TC unit, the current utility allowance is always subtracted from the rent limit — regardless of whether the rent floor or the current rent limit is used.

#### **E. Rents for TC Units with Over-Income Tenants**

As discussed in Chapter 5, owners/managers must conduct annual re-examinations of tenants in TC units to assess their continued eligibility. Changes in household composition or increases in income can affect a tenant's eligibility. Tenants whose income at re-examination exceeds 140 percent of the applicable income limit are considered over-income and the unit is an over-income TC unit. The rent for an over-income unit remains restricted until the unit is no longer counted as a TC unit.

##### **1. Mixed Income Developments**

In a building with fewer than 100 percent TC units, if a tenant's income exceeds 140 percent of the applicable limit at recertification, the unit remains a TC unit until the next available unit in that **building**, which is of comparable or smaller size, is designated to replace this unit. Once an over-income TC unit is replaced, the rent for that unit is no longer restricted under Tax Credit requirements. Rent increases, if any, should comply with lease provisions and local tenant-landlord laws.

##### **2. 100 Percent Low-Income Developments**

In buildings that consist of 100 percent TC units, unit rents may never exceed the maximum allowable rent for TC units, even if tenant incomes increase.

**F. Developments Receiving Other Forms of Assistance**

Like the Housing Tax Credit Program, most federal affordable housing programs restrict the rents that property owners may charge eligible tenants. When developments receive more than one type of assistance, owners must follow the most stringent program guidelines.

**8. Utility Allowances**

Effective 9-1-07, tenants responsible for utilities must be paying the utilities directly to the utility providers. An averaged third party billing system is not allowed.

Tax Credit rent limits include an allowance for the cost of utilities (e.g., heat, lights, air conditioning, water, sewer, oil or gas). In developments where the owner pays all utilities, no adjustment in the tax credit rent limits is needed to determine the maximum rent that can be charged for a tax credit unit. In developments where tenants pay some or all of their own utilities, the rent established for a tax credit unit plus an allowance for tenant-paid utilities must not exceed the applicable tax credit rent limit for that unit. In other words:

$$\text{Unit Rent} + \text{Utility Allowance} \leq \text{Tax Credit Rent Limit}$$

When using the PHA utility allowance, the proper usage type must be determined, multi-family or single-family.

**Multi-family** is used when there are other households living above a unit or there is a space designated for a separate household. This would be for 2 story buildings and above (i.e. low-rise and high-rise).

**Single-family** is used no matter how many levels a unit has, as long as it is intended for one household (i.e. house, duplex, row house, town house).

The method of determining utility allowances depends on the type of development receiving credits (IRS Regulation 1.42-10).

- RHS Assisted Buildings - The utility allowance used for these units is determined under the method prescribed by the Rural Housing Service (RHS) for the building.
- Buildings with RHS-Assisted Tenants- If any tenant in a building receives RHS rental assistance payments, all housing credit units are governed by the RHS utility allowance. This includes HUD assisted units.
- HUD-Regulated Buildings – If rents and UA’s are subject to HUD review on an annual basis, the HUD required allowances must be used for all rent restricted units in a building. (Buildings that contain units leased to tenants holding Section 8 vouchers but receiving no project-based HUD assistance fall into the “other buildings” category below.)
- Other Buildings – If a building has none of the above, the UA that applies to tax credit units is determined as follows:
  - Tenants receiving HUD (section 8) Rental Assistance:  
If a tenant is receiving HUD rental assistance (i.e. Section 8 vouchers) the applicable Public Housing Authority (PHA) utility allowance **MUST** be used. You can find a copy of the PHA utility allowance chart in Appendix B.  
**NOTE:** PHA utility allowances are subject to change.
  - All Other Tenants in Rent Restricted Units:  
The applicable PHA utility allowance should be used for all other rent restricted units in the development unless a local utility company estimate is obtained.

### **Utility Allowance Options:**

Effective 7-29-2008, additional options have been added to determine more accurate utility allowances (UA) for housing credit buildings that are not subject to the RHS, PHA, or HUD approved UA. If any of

these options, described below, are obtained for any unit in the building, this estimate becomes the applicable utility allowance for all rent restricted units of similar size and construction in the building.

**Utility Company Estimate:** The actual usage estimate from the local utility provider. If an area has utility deregulation, an estimate from only one company serving the area is required.

**HUD Utility Schedule Model:** An owner may calculate a utility estimate using the HUD model found at

[www.huduser.org/datasets/lihtc.html](http://www.huduser.org/datasets/lihtc.html). **This estimate must be approved in advance by OHFA.**

**Energy Consumption Model:** This estimate uses an energy, water, and sewage consumption analysis model. This model must be prepared by a professional engineer or other qualified person that has no identity of interest relationship with the owner. **This estimate must be approved in advance by OHFA.**

### **Notification Requirements:**

If the owner obtains a utility allowance from a Utility Company, the HUD Utility Schedule Model, or the Energy Consumption Model, the owner must (1) submit copies of the utility estimates to the agency having jurisdiction over the building and \*(2) make the utility estimate available to all tenants in the building at the beginning of the 90 day period.

\*Utility allowances must be implemented no later than 90 days from the effective date.

The building owner is not required to review the UA's or implement new UA's, until the building has achieved 90% occupancy for a period of 90 consecutive days or the end of the first credit year, whichever is earlier. The final regulations neither prohibit using different options for different utilities nor prohibit changing the options used for calculating utilities. A building owner must review, at least once during the calendar year, the basis on which utility allowances have been established and must update the applicable UA's.

## 9. Dwelling Lease Requirements

Owners must execute a lease with tenants occupying TC units. LIHTC gives owners flexibility regarding the contents of their leases as long as they:

- Comply with state and local laws; and
- Do not contain prohibited provisions.
- The Lease Contract must have an addendum disclosing that the Owner is participating in a government-regulated affordable housing program and that execution of same is verification of the household annual income, that the Resident agrees to comply with requests for information regarding annual income and eligibility, and that failure to answer or to provide accurate information respecting same is a substantial violation of the Lease Contract and the tenant can be evicted. The Tax Credit Lease Addendum with the appropriate language can be found in Appendix K. The lease language must include a statement by the household that they agree to notify the owner if any member becomes a full time student or convicted of a felony.

OHFA requires the head of household, spouse, any co-head, and all adult members of the household to sign the lease at move-in as well as any lease renewals.

### A. **Term of Lease**

The only way to satisfy this requirement is to use an initial lease term of at least six months. In order to simplify record-keeping, owners may want to put TC unit tenants on annual leases that correspond to their recertification dates. **Remember that a buy out clause is prohibited for the initial 6 full months of the lease. Sub-leasing is prohibited in a tax credit unit.**

## **B. Prohibited Lease Provisions (Landlord Tenant Act)**

Lease provisions not allowed under other federally-related affordable housing programs may not appear in the dwelling lease for any TC unit. Prohibited provisions include:

- Agreement to be sued. Agreement by the tenant to be sued, admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
- Treatment of property. Agreement by the tenant that the owner may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning the disposition of personal property remaining in the unit after the tenant has moved out. The owner may dispose of this personal property in accordance with State Law.
- Excusing the owner from responsibility. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for actions or failure to act, whether intentional or negligent.
- Waiver of notice. Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant.
- Waiver of legal proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense or before a court decision on the rights of the parties.
- Waiver of a jury trial. Agreement by the tenant to waive any right to a jury trial.

- Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant's right to appeal or otherwise challenge in court a decision in connection with the lease.
- Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the tenant to pay attorney fees or other legal costs even if the tenant wins the court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

### **C. State and Local Law**

In addition to keeping up-to-date with LIHTC regulations and requirements, OHFA expects owner/managers to stay abreast of state and local law concerning the management and operation of rental properties.