

OHCS

2011

OREGON HOUSING & COMMUNITY SERVICES

Elderly/Disabled Loan Program

Bond Program Compliance Manual

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NOTE: All exhibits are numbered, labeled and found at the very end of the Manual.

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 and Exhibits to the Manual, **Note: Exhibits are number 1 through 12**, including instructions on reporting requirements. *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”

*“Loan Document”
Definition*

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 after 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 Form 8703 (Exhibit #8C) on an annual basis. OHCS will prompt the borrower to complete Form 8703 by mailing a reminder letter (Exhibit #8A) with the form attached. The borrower must forward a copy of the filing to OHCS along with the required "OHCS Owner Certification" (Exhibit #8B).



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 (Exhibits #3A & #3B and #4), resident rosters, review of resident files during site visit
- Monitoring Monthly “Marketing Reports” (Exhibit #10)
- Reviewing Monthly “Marketing Reports” (may be required if vacancy rates are over 10%)
- Reviewing Rent Levels
- Reviewing Requests for Funds from “Replacement Reserve” Accounts (Exhibit #12)
- 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;

*Compliance
Responsibilities –
The Borrower*

- 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;
- 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.

*Record-Keeping
Requirements*

ADMINISTRATION AND RECORD KEEPING

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 (Exhibits #3A & #3B and #4)
- 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 #7A & #7B 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. (Exhibit #9)

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” (Exhibit #10) 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 result of "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 #12) 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:

*Compliance
Training - OHCS*

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.



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.***

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



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:

Tour

*OHCS On-site
Review Process*

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

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 years 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 (Exhibit #5), 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.

Explaining Why Income/Assets Must be Verified:

*Explanation of the
Need for
Verification*

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 Recertification Interviews:

*Annual Income
Recertifications*

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. (Exhibit 6)



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 \times .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 prior 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 not 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 not 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.

*Limitations on
Students - Federal
Regulations*

Student Status:

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: #11A) 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 #11B)

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



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.

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

Exhibit 1

Resident Certification Requirements/Instructions OHCS Elderly/Disabled Bond Program

This Exhibit offers an explanation of the basis for the federal and State income restrictions for OHCS projects. In addition, this Exhibit outlines the required and preferred methods for verifying the income and assets (the certification process) of households seeking to reside, or residing, in OHCS funded projects.

The primary regulatory authorities governing the compliance requirements for OHCS projects are:

- IRS Code Section 142(d);
- Oregon Revised Statutes (ORS)
- Oregon Administrative Rules (OAR)

Types of facilities funded under this program include:

- Congregate Care Facilities
- Assisted Living Facilities (ALF)
- Residential Care Facilities (RCF)
- Adult Foster Homes,
- Other Specialized Group Care facilities.
- Independent Apartments

For every facility financed under the Department's program, there is a household income restriction, at admission, for all rental units. The individual requirements for each project differ, depending upon the regulations in effect at the time of the bond issuance (**not at the time the loan was made**).

Why Resident/Applicant Income Must Be Verified:

- IRS federal tax rules, applicable to tax-exempt bond financing, require it.
- OHCS, authorized by statute to administer the program for the IRS, requires it.

How Resident/Applicant Income Must Be Verified:

- Treasury regulations require that the same verification procedures be used that are required for purposes of the HUD Section 8 program. The Section 8 Program has clearly-defined definitions and processes that owners and managers must adhere to in order to assure that applicants and residents have income that meets program requirements.

This Exhibit offers some direct excerpts from Section 8 procedures, and examples of income and asset calculations provided by OHCS. *Hopefully, use of this Exhibit will assist owners and agents to be in compliance.*

Individual Regulatory Income Certification Requirements Applicable to Projects:

"Post September 3, 1982" but "Pre August 15, 1986" projects

| | |
|--------------------------|--------------------------|
| Alterra of Albany | Lancaster Village |
| Alterra Winwood FG | Pacific Pointe |
| Aspen Court | Park Place Living Center |
| Benton Plaza | Rogue Valley Retirement |
| Carmen Oaks | Royal Oak Retirement |
| Dorchester House | Shorewood |
| Eugene Hotel | Solvang |
| Garden Valley Retirement | The Village |
| Gresham Manor | Willson House |
| Junction City Retirement | |

- **Qualified Project Period:** Implemented the 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 resident income/occupancy requirements for 15 years). However, bond indenture requirements are more stringent in this case, and any references made in the loan documents of things that must occur during the Qualified Project Period are for the term of the loan (usually 30 years).
- **Income Limits:** Income limit is at low (80%). Pre-86 projects are allowed the flexibility to use either 80% of the Area Median Income or 80% of the Statewide income. (11/1/02 policy change)
- **Income Waiver:** If an applicant is over age 58 and over the maximum income limit, OHCS has a waiver of income requirements available on a limited basis. To qualify for an income waiver, the applicant must meet the definition of a "Disabled Person" outlined in the ORS, which is included on the "Verification of Income Part B" form. An income waiver must be obtained by the project from the assigned CO prior to move-in. **If the applicant is over 58, over income, and does not meet the "Disabled Person" definition, they are not eligible.**
- **Waiver Limitations:** No more than 20% of the units are to be rented to households that are over the maximum income limit.
- **Age Waiver:** If an applicant is under age 58 and meets the definition of "Disabled Person," a waiver for **age** must be obtained prior to move-in. All other eligibility requirements apply. 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 not required. **If the applicant is under 58, disabled, and *over income* they are not eligible.**
- **Resident Certifications:** Resident certification of income must be obtained at move-in only. Income must be verified.

- **Income Verifications:** The owner must verify at move-in that the gross household income of each resident does not exceed the 80% area median income limit by obtaining each resident's most recent federal income tax return or other satisfactory evidence of income.
- **Imputing*income from assets:** Assets are imputed at 10%. There is no asset limitation, for resident qualification. However, if households have substantial assets, this could affect eligibility, even if the assets are non-income producing. The Section 8 requirements for income and assets outline that, if net assets exceed a combined value of over \$5,000, then the value of the assets must be assigned an interest rate income figure. This is called "imputing". Section 8 requirements The regulations in effect at the time of funding of these projects used a 10% interest rate for imputing. If the income from assets, after taking the value times 10%, exceeds the actual income the assets generate annually, the 10% figure must be included in the total income figure for eligibility. So, the project must compare the actual income from assets against the imputed value to determine which is the higher figure to use.

"Post August 15, 1986" IRS Tax Code changes: (All Other Projects funded by bond series prior to January 1, 2002.)

- **Income Limits:** Allows owners the election to select 20% of units at 50% (very low) income range residents; or 40% of units at 60% income range residents.
- **Income Verifications:** The owner must verify annually that the gross household income of each low or moderate income resident does not exceed the area median income limit by obtaining each resident's most recent federal income tax return or other satisfactory evidence of income. Social Security 512 forms, tax returns, and/or bank statements which show direct deposits and assets, are acceptable verifications of income with no further documentation required. Applicant/Tenant supplied documentation is acceptable.
- **Imputing income from assets:** Assets are imputed at HUD passbook rate. (currently 2% - see explanation previous on imputed assets – **same requirements except these projects are subject to a 2% imputed figure**)
- **Target Population:** Target population re-defined as elderly households **or** disabled persons. If a tenant is disabled, meets the definition of "Disabled" as described in the Administrative Rules, and is under age 58, a waiver is not needed. The resident and site management determine if the applicant meets the definition and needs the services offered at the facility. Third party verification of disability is not required.

Projects funded from bond proceeds Post January 1, 2002 – State Modification to ORS 456, not retroactive

- **Income Limits:**
 - 1/3 of the residents can have income above 120% of median. No waiver required.
 - 2/3 of the residents must have income below 120% of median.
 - All applicants must complete an income questionnaire at the time of move-in that specifies their income level.
 - Only those residents included in the set-aside (20 @ 50% or 40 @ 60%) must have their income verified. Verification must be in accordance with Section 8 regulations. (Generally the Social Security 512 form).

- **Annual Recertifications:** Residents must be asked to complete an income questionnaire annually, but again, only those in the set aside must have the income verified.

- **Increases in income:** If a resident in a "set aside" unit has an increase in income to over 140% of area median, the project must make the next unit of same size or smaller to an income qualified applicant.

Exhibit 2

Elderly Certification of Understanding

Below is a list of some of the requirements which owners/agents will be obligated to meet after a loan is closed. This is not an all-inclusive list of loan requirements. Read very carefully and thoroughly. Sign and return these forms with the other application documents. Attached are sample loan documents (Note, Trust Deed, Loan Agreement and Regulatory Agreement) outlining all requirements of this loan. These documents have been reviewed and approved by OHCS's Attorney General and Bond Council and are not subject to negotiation. Owners/agents are responsible for the following.

- If the project is for elderly households, the applicant must be 58 years of age or older.
- If the project is for disabled persons or households, the applicant must meet the definition of Disabled Person as provided in OAR 813-60-010.
- Residential Care Facilities (RCFs) and Assisted Living Facilities (ALFs) must be licensed by Senior and Disabled Services Division.
- Dependant upon the IRS Set-aside the Borrower selects, at least 20% of the units shall be occupied or held vacant and available for occupancy by households at 50% of median area income(20/50); or, 40% of the units shall be occupied or held vacant and available for occupancy by households at 60% of the median area income(40/60). (Section 142(d) of the Internal Revenue Code).
- Within 30 days after the date 10% of the units are first occupied, the owner/agent shall prepare and submit to OHCS a certificate identifying that date.
- Within 30 days after the date 50% of the units are first occupied, the owner/agent shall prepare and submit to OHCS a certificate identifying that date.
- Verify annually that the gross household income of each low or moderate income resident does not exceed 50% of the area median income limit, by obtaining each resident's most recent federal income tax return or other satisfactory evidence of income.
- Submit annually an updated Resident Eligibility Certification for each resident to OHCS. (See Sample Documents Section)
- At the sole discretion of OHCS, a certification of continuing program compliance may be required.
- Submit annually a certification of continuing compliance with the requirements of the Regulatory Agreement, and Section 142(d) of the Code.

- Assure each lease provides for termination and consent by a tenant for eviction due to misrepresentation with respect to income and income verification.
- Submit FORM 8703 to the IRS by March 31 after the close of each calendar year (See Sample Documents).
- Comply with applicable Fair Housing laws, which includes acceptance of tenants with Section 8 certificates for federal housing assistance.
- Allow OHCS 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 OHCS an annual audited financial statement of project operations (Review level statements are not acceptable).
- Submit to OHCS a proposed schedule of rental rates for the project not later than sixty (60) days prior to the date of a proposed rent increase. A new rental rate schedule must be submitted to OHCS and approved prior to any change in rental rates. Upon written approval by OHCS, the proposed schedule of rental rates shall be effective after all required notifications.

Exhibit 3A

OREGON HOUSING AND COMMUNITY SERVICES

VERIFICATION OF INCOME PART A

Property Name: _____

Address: _____

Move-In Certification: _____ Annual Recertification: _____

Apartment Number: _____ Move-In Date: _____

| Name | Relationship to Head of Household | Age | Social Security Number |
|------|-----------------------------------|-----|------------------------|
| | | | |
| | | | |
| | | | |

Please refer to the attached instructions when completing the following:

Gross Family Income

The anticipated annual gross income of all of the above persons during the next 12 month period, excluding income derived from assets (stocks, bonds, bank accounts CDs, rental property, etc.) is \$_____.

Net Family Assets & Income

Total value of assets for the household \$_____.

See instructions for inclusions and exclusions.

Actual annual income from these assets \$_____.

I(we) acknowledge that all of the above information is true and is relevant to the status under federal income tax law of the interest on bonds issued to finance construction of the apartment building for which application is being made. I(we) consent to the disclosure of such information to the issuer of such bonds, the holders of such bonds, any trustee acting on their behalf and any authorized agent of the Treasury Department or Internal Revenue Service.

Signed: _____ Date: _____

Signed: _____ Date: _____

Exhibit 3B

Part A Form Instructions - Elderly

OREGON HOUSING AND COMMUNITY SERVICES Instructions for Completing Verification of Income Part A

Project name, address, move-in date, type of certification, unit number, bedroom size, and monthly rent should be completed by the owner/management agent.

Family member information (members, income, asset information) should be completed by the owner/management agent with information provided by the family. The information provided should be sufficient to determine whether an individual or a family constitutes a low-income resident for federal income-tax purposes.

Include the following.

1. All wages and salaries, over-time pay, commissions, fees, bonuses, etc.
2. Net income for operation of a business or profession, or from the rental of real property.
3. Interest and dividends.
4. Full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts.
5. Payment in lieu of earnings such as unemployment and disability compensation, worker's compensation and severance pay.
6. The maximum amount of public assistance available to the persons.
7. Periodic and determinable allowances, such as alimony and regular contributions and gifts received from persons not residing in the dwelling.

Exclude the following.

1. Casual, sporadic or irregular gifts.
2. Amounts which are specifically for or in reimbursement of medical expenses.
3. Lump sum additions to family assets such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlements for personal or property losses.
4. Payments to volunteers under the Domestic Volunteer Service Act of 1973.
5. Payments received under the Alaska Native Claims Settlement Act.
6. Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes.
7. Payments on allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program.
8. Income derived from the disposition of funds of the Grand River Band of Ottawa Indians.
9. Payments received from the Job Partnership Training Act.
10. The first \$2,000 of per capita shares received from judgement funds awarded by the Indian Claims Commission or the Court of Claims or from funds held in trust for an Indian tribe by the Secretary of the Interior.

Exhibit 4

Part B Form - Elderly Program

OREGON HOUSING AND COMMUNITY SERVICES

ANNUAL HOUSEHOLD INCOME

One-person Household:

___ over \$_____
___ between \$____ & \$_____
___ below \$_____

Two-person Household:

___ over \$_____
___ between \$____ & \$_____
___ below \$_____

Check one:

___ The household qualifies as a family of low or moderate income.

___ The household does not qualify as a family of low or moderate income.

Note: For federal tax purposes, only household incomes less than \$_____, for a one-person household, and \$_____, for a two-person household, qualify as low or moderate income. For state purposes, only households with less than \$_____ qualify as low or moderate income. These numbers may change as HUD alters its area median income figure.

WAIVER REQUEST: MANAGER TO COMPLETE ONLY IF THE APPLICANT IS OVER THE STATE-WIDE MEDIAN INCOME

If the resident is 58 years or younger, or 58 years or older and income exceeds the maximum income limit, the resident must qualify as a Disabled Person whose physical or mental impairment substantially limits one or more major life activity, which includes but is not limited to self-care, ambulating, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property.

DATE: _____

SIGNED: _____

Manager or Management Agent

WAIVER APPROVAL:

DATE: _____

SIGNED: _____

Asset and Property Manager

CONFIDENTIAL

Exhibit 5

Income Asset Verification Statement

INCOME/ASSET VERIFICATION STATEMENT

FACILITY NAME: _____
 RESIDENT'S NAME: _____
 UNIT # _____

INCOME/ASSET DOCUMENTATION:

I/We (resident) have furnished to the project owner/manager in support of our income verification the following documents:

| <u>Verification of all annual income</u> (as defined by instructions) | <u>Effective Date of Document</u> | <u>INCOME</u> |
|--|-----------------------------------|---------------|
| Tax Return Form | _____ | \$ _____ |
| Social Security benefit | _____ | \$ _____ |
| Pension benefit | _____ | \$ _____ |
| Retirement fund benefit | _____ | \$ _____ |
| Disability pay or benefits | _____ | \$ _____ |
| SSI benefit | _____ | \$ _____ |
| Welfare payments | _____ | \$ _____ |
| Recurring monetary contributions or gifts (to include regular family support) | _____ | \$ _____ |

| <u>Income from Assets</u> | <u>Acct. Value</u> | | |
|---|--------------------|-------|----------|
| Savings Account | \$ _____ | _____ | \$ _____ |
| Checking Account | \$ _____ | _____ | \$ _____ |
| CD's, money market funds | \$ _____ | _____ | \$ _____ |
| Stocks, bonds, treasury bills | \$ _____ | _____ | \$ _____ |
| IRA account | \$ _____ | _____ | \$ _____ |
| Equity in real property | \$ _____ | _____ | \$ _____ |
| Revocable Trust | \$ _____ | _____ | \$ _____ |
| Surrender value of whole life or Universal insurance policy | \$ _____ | _____ | \$ _____ |

*Cash on hand listed on the tenant questionnaire must be included as an asset, but does not require verification.

I/WE agree to keep the above furnished documents for a period of at least one year after signature date, and if asked to do so will make them available to Oregon Housing & Community Services during their annual visit.

Resident Signature

Date

Resident Signature

Date

I acknowledge that I have indeed seen the above income/asset forms used to determine resident eligibility. Based upon these forms, to the best of my knowledge the income/asset amounts stated on the VERIFICATION OF INCOME PART A AND B are correct.

Manager's Signature

Date

Exhibit 6

Resident Refusal Form Letter - Elderly

THIS FORM IS NOT TO BE USED AT MOVE-IN. VERIFICATION OF INCOME MUST BE OBTAINED PRIOR TO MOVE-IN OR THE APPLICANT MUST BE REFUSED OCCUPANCY

ANNUAL REFUSAL

Project: _____ Unit # _____

Date: _____

Tenant Name: _____

Oregon Housing and Community Services
725 Summer Street Suite B
Salem, Oregon 97301-1266

To Whom It May Concern:

The Administrator or designee at (Project Name) _____ has explained to me the Oregon Housing and Community Services Departments requirements for each resident to provided documentation and verification of income and assets every year; however, I refuse to supply this information on behalf of myself or _____ to assist in the compliance certification process.

(Tenant Name)

Tenant Signature

Date

Responsible Party Signature "Power of Attorney"

Date

Administrator

I have attempted to obtain income information/verification for the above named resident. The resident or "Power of Attorney" has refused to comply. I understand this resident will now be considered in the 20% over-income waivers allowed for the project.

Administrator

Date

Exhibit 7A

Excerpts from HUD HANDBOOK 4350.3

Exhibit 5-1: Income Inclusions and Exclusions

24 CFR 5.609(b) and (c)

Examples included in parentheses have been added to the regulatory language for clarification.

INCOME INCLUSIONS

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
- (3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (2) above. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
- (4) The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount, except as provided in paragraph (13) under Income Exclusions (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action);
- (5) Payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation, and severance pay, except as provided in paragraph (3) under Income Exclusions;
- (6) Welfare Assistance.
 - (a) Welfare assistance received by the family.
 - (b) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

- (c) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
 - (d) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage;
- (7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling; and
 - (8) All regular pay, special pay, and allowances of a member of the Armed Forces, except as provided in paragraph (7) under Income Exclusions.

INCOME EXCLUSIONS

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses, except as provided in paragraph (5) under Income Inclusions;
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in 24 CFR 5.403;
- (6) The full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm);
- (8)
 - (a) Amounts received under training programs funded by HUD (e.g., training received under Section 3);
 - (b) Amounts received by a person with a disability that are disregarded for a limited time for purposes of supplemental security income eligibility and benefits because they are set-aside for use under a Plan to Attain Self-Sufficiency (PASS);
 - (c) Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
 - (d) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the project. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident-initiative coordination. No resident may receive more than one such stipend during the same period of time; or

- (e) Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as a resident management staff person. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program.
- (9) Temporary, nonrecurring, or sporadic income (including gifts);
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. (Examples include payments by the German and Japanese governments for atrocities committed during the Nazi era);
- (11) Earnings in excess of \$480 for each full-time student 18 years or older (excluding the head of household and spouse);
- (12) Adoption assistance payments in excess of \$480 per adopted child;
- (13) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts;
- (14) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;
- (15) Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
- (16) Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. The following is a list of income sources that qualify for that exclusion:
 - (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 [b]);
 - (b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058) (employment through AmeriCorps, Volunteers in Service to America [VISTA], Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);
 - (c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626[c]);
 - (d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
 - (e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624[f]);

- (f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552[b]); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 [29 U.S.C. 2931], e.g., employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs, career intern programs, Americorps);
- (g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L- 94-540, 90 Stat. 2503-04);
- (h) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);
- (i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
- (j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056[f]), e.g., Green Thumb, Senior Aides, Older American Community Service Employment Program;
- (k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
- (l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);
- (m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);
- (n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991, including advanced earned income credit payments (26 U.S.C. 32[j]);
- (o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);
- (p) Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637[d]);
- (q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);
- (r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and
- (s) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

Exhibit 7B

Excerpts from HUD HANDBOOK 4350.3

Exhibit 5-2: Assets

NOTE: There is no asset limitation for participation in HUD assisted-housing programs. However, the definition of annual income includes net income from family assets.

Net Family Assets include the following:

Cash held in savings and checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average balance for the last six months. Assets held in foreign countries are considered assets.

Revocable trusts. Include the cash value of any revocable trust available to the family. See discussion of trusts in paragraph 5-7 G.1.

Equity in rental property or other capital investments. Include the current fair market value less (a) any unpaid balance on any loans secured by the property and (b) reasonable costs that would be incurred in selling the asset (e.g., penalties, broker fees, etc.).

NOTE: If the person's main business is real estate, then count any income as business income under paragraph 5-6 G of the chapter. Do not count it both as an asset and business income.

Stocks, bonds, Treasury bills, certificates of deposit, mutual funds, and money market accounts. Interest or dividends earned are counted as income from assets even when the earnings are reinvested. The value of stocks and other assets vary from one day to another. The value of the asset may go up or down the day before or after rent is calculated and multiple times during the year thereafter. The owner may assess the value of these assets at any time after the authorization for the release of information has been received. The tenant may request an interim recertification at any time thereafter that a decrease in stock value may result in a decrease in rent.

Individual retirement, 401K, and Keogh accounts. These are included when the holder has access to the funds, even though a penalty may be assessed. If the individual is making occasional withdrawals from the account, determine the amount of the asset by using the average BALANCE FOR THE PREVIOUS SIX MONTHS. (DO NOT COUNT WITHDRAWALS AS INCOME.)

Example – Withdrawals from a Keogh Account

Ly Pham has a Keogh account valued at \$30,000. When she turns 70 years old, she begins drawing \$2,000 a year. Continue to count the account as an asset. Use the guidance in paragraph 5-7 to determine the cash value and imputed income from the asset. Do not count the \$2,000 she withdraws as income.

Retirement and pension funds.

While the person is employed. Include only amounts the family can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs. Follow paragraph 5-7 G.4 of the chapter on determining the value of assets.

At retirement, termination of employment, or withdrawal. Periodic receipts from pension and retirement funds are counted as income. Lump-sum receipts from pension and retirement funds are counted as assets. Count the amount as an asset or as income, as provided below.

If benefits will be received in a lump sum, include the lump-sum receipt in net family assets.

If benefits will be received through periodic payments, include the benefits in annual income. Do not count any remaining amounts in the account as an asset.

If the individual initially receives a lump-sum benefit followed by periodic payments, count the lump-sum benefit as an asset as provided in the example below and treat the periodic payment as income. In subsequent years, count only the periodic payment as income. Do not count the remaining amount as an asset.

NOTE: This paragraph and the example below assume that the lump-sum receipt is a one-time receipt and that it does not represent delayed periodic payments. However, in situations in which a lump-sum payment does represent delayed periodic payments, then the amount would be considered as income and not an asset.

Example – Retirement Benefits as Lump-Sum and Periodic Payments

Upon retirement, Eleanor Reilly received a lump-sum payment of \$15,000. She will also receive periodic pension payments of \$350 a month.

The lump-sum amount of \$15,000 is generally treated as an asset. In this instance, however, Eleanor spent \$5,000 of the lump sum on a trip following her retirement. The remaining \$10,000 she placed in her mutual fund with other savings. The entire mutual fund will be counted as an asset.

The owner has verified that Eleanor is now not able to withdraw the balance from her pension. Therefore, the owner will count the \$350 monthly pension payment as annual income and will not list the pension account as an asset.

Cash value of life insurance policies available to the individual before death (e.g., the surrender value of a whole life policy or a universal life policy). It would not include a value for term insurance, which has no cash value to the individual before death.

Personal property held as an investment. Include gems, jewelry, coin collections, or antique cars held as an investment. Personal jewelry is NOT considered an asset.

Lump-sum receipts or one-time receipts. (See paragraph 5-6 O for additional information on what is counted as a lump-sum receipt and how to treat lump-sum receipts.) These include inheritances, capital gains, one-time lottery winnings, victim's restitution, settlements on insurance claims (including health and accident insurance, worker's compensation, and personal or property losses), and any other amounts that are not intended as periodic payments.

A mortgage or deed of trust held by an applicant.

Payments on this type of asset are often received as one combined payment of principal and interest with the interest portion counted as income from the asset.

This combined figure needs to be separated into the principal and interest portions of the payment. (This can be done by referring to an amortization schedule that relates to the specific term and interest rate of the mortgage.)

To count the actual income for this asset, use the interest portion due, based on the amortization schedule, for the 12-month period following the certification.

To count the imputed income for this asset, determine the asset value at the end of the 12-month period following the certification. Since this amount will continually be reduced by the principal portion paid during the previous year, the owner will have to determine this amount at each annual recertification. See the following example:

Example – Deed of Trust and Imputed Income

Computation of imputed income:

An elderly tenant sells her home and holds the mortgage for the buyer. The cash value of the mortgage is \$60,000. The combined payment of principal and interest expected to be received for the upcoming year is \$5,000. The amortization schedule breaks that payment into \$2,000 in principal and \$3,000 in interest. In completing the asset income calculation, the cash value of the asset is \$60,000, and the projected annual income from that asset is \$3,000. Each subsequent year, the cash value of the asset should be reduced by the principal portion paid. In this example, it would be reduced to \$58,000 in the following year (\$60,000 – \$2,000 principal payment = \$58,000). In calculating the imputed income for the following year, the owner would multiply the \$58,000 by the 2% passbook savings rate.

Regulatory References

(These references are current as of the date of publication. Readers should refer to the latest edition of the Code of Federal Regulations.) 24 CFR part 5.603 defines net family assets as follows: net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and the equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded. . . . In determining net family assets, owners shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or recertification, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Net family assets DO NOT include the following:

IMPORTANT: The owner does not compute income from any assets in this paragraph.

Personal property (clothing, furniture, cars, wedding ring, other jewelry that is not held as an investment, vehicles specially equipped for persons with disabilities).

Interests in Indian trust land.

Term life insurance policies (i.e., where there is no cash value).

Equity in the cooperative unit in which the family lives.

Assets that are part of an active business. "Business" does NOT include rental of properties that are held as investments unless such properties are the applicant's or tenant's main occupation.

Example – Assets that are Part of an Active Business

Laura and Lester Hines own a copier and courier service. None of the equipment that they use in their business is counted as an asset (e.g., the copiers, the FAX machines, the bicycles).

Alice Washington rents out the home that she and her husband lived in for 42 years. This home is not an active business asset. Therefore, it is considered an asset and the owner must determine the annual income that Alice receives from it.

Assets that are NOT effectively owned by the applicant. Assets are not effectively owned when they are held in an individual's name, but (a) the assets and any income they earn accrue to the benefit of someone else who is not a member of the family, and (b) that other person is responsible for income taxes incurred on income generated by the assets.

NOTE: Nonrevocable trusts (i.e., irrevocable trusts) are not covered by this paragraph. See information on nonrevocable trusts in paragraph 5-7 G.1. Example – Assets not Effectively Owned by the Applicant

Net family assets do not include assets held pursuant to a power of attorney because one party is not competent to manage the assets, or assets held in a joint account solely to facilitate access to assets in the event of an emergency.

Example: Alexander Cumbow and his daughter, Emily Bornscheuer, have a bank account with both names on the account. Emily's name is on that account for the convenience of her father in case an emergency arises that would result in Emily handling payments for her father. Emily has not contributed to this asset, does not receive interest income from it, nor does she pay taxes on the interest earned. Therefore, Emily does not own this account. If Emily applies for assisted housing, the owner should not count this account as her asset. This asset belongs to Alexander and would be counted entirely as the father's asset should he apply for assisted housing.

Assets that are not accessible to the applicant and provide no income to the applicant.

Nonrevocable trusts are not covered under this paragraph. See information on nonrevocable trusts in paragraph 5-7 G.1.

Example

A battered spouse owns a house with her husband. Because of the domestic situation, she receives no income from the asset and cannot convert the asset to cash.

Exhibit 8A

CCPC Reminder Letter

DATE

Project Name
Project Owner
Street Address
City, State Zip Code

Property Name:

RE: Annual Certification of Program Compliance: Elderly

Per the Regulatory Agreement for the above-referenced project please provide the following documents by: April 15, 2011:

- ◆ Signed Certification of continuing program compliance meeting the requirements of the Regulatory Agreement and Section 142(d) of the Code (sample format attached); and
- ◆ Photocopy of the IRS Form 8703 required by Section 142(d)(7) submitted to the Secretary of Treasury of the United States. Failure to comply with this certification requirement could subject the Borrower and any operator of the Project to penalty, as provided in Section 6652(j) of the Code.

Per the Department's Bond Counsel, it is not necessary to send a copy of the income tax return for current residents. However, this information should be maintained in each tenant file for review by the Department for a minimum period of three years.

Contact me at 503-986-0982, or by e-mail at tina.esther@hcs.state.or.us if you have any questions.

Sincerely,

Tina Esther
Tina Esther, Compliance Specialist
Asset Performance Section

Exhibit 8B
OHCS Owner Certification

S A M P L E

(Date)

(Compliance Officer)
Oregon Housing & Community Services
Program Analysis & Enforcement Section
725 Summer St NE, Suite B
Salem OR 97301-1266

RE: **(Project Name) - Certification of Continuing Program Compliance**

Dear (Name):

This letter certifies the continuing program compliance with the Regulatory Agreement and Section 142(d) of the Internal Revenue Code of 1986, as amended, for the above-referenced project. Listed below is the percentage of residential units of the project which were occupied by low or moderate income persons since the last certification of continuing program compliance.

| | <u>1st Quarter</u> | <u>2nd Quarter</u> | <u>3rd Quarter</u> | <u>4th Quarter</u> |
|-------------------------|--------------------|--------------------|--------------------|--------------------|
| Low Income Persons | % | % | % | % |
| Moderate Income Persons | % | % | % | % |

Also enclosed are copies of the IRS Form 8703 and a current tenant roster.

Sincerely,

(Name)
(Title)

Part III Issuer and Description of Bonds (See Instructions)

14 Name of issuer _____

15 Issuer's EIN _____

16 Name of bond issue _____

17 Date of bond issue / / _____

18 CUSIP number _____

19 Issue price _____

20 Final maturity date / / _____

Part IV Certification (See Instructions)

Sign Here Under penalties of perjury, I certify that the above project (check one) **continues to meet** **does not meet** the requirements of subsection 142(d) of the Internal Revenue Code and that I have examined this form, and to the best of my knowledge and belief, the information is true, correct, and complete.

Signature of Project Operator _____ Date _____ Type or print name and title _____

| | | | | | |
|-------------------------------|----------------------------|----------------------|------|---|------|
| Paid Preparer Use Only | Print/Type preparer's name | Preparer's signature | Date | Check <input type="checkbox"/> if self-employed | PTIN |
| | Firm's name ▶ | Firm's EIN ▶ | | | |
| | Firm's address ▶ | Phone no. | | | |

What's New

Section 3010 of the Housing Assistance Tax Act of 2008, Division C of Public Law 110-289, (The Housing Act) enacted July 30, 2008, modified section 142(d)(3)(A). Questions 4, 11, 12, and 13 were added as a result of that change.

Section III was added to gather information about the Issuer and the tax-exempt financing that financed the project under section 142(d). This information should correspond with the information included on Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues, filed by the Issuer with respect to the bond issue.

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of form. Form 8703 is used by an operator of a residential rental project to provide annual information the IRS will use to determine whether a project continues to be a qualified residential rental project under section 142(d). If so, and certain other requirements are met, bonds issued in connection with the project are considered "exempt facility bonds" and the interest paid on them is not taxable to the recipient.

Who must file. The operator of a residential rental project for which an election was made under section 142(d) must file Form 8703 annually. A separate Form 8703 must be filed for each project.

When to file. File Form 8703 by March 31 after the close of the calendar year for which the certification is made. Form 8703 must be

filed annually during the qualified project period. See the instructions for line 2 for the definition of "qualified project period."

Where to file. File Form 8703 with the: Internal Revenue Service Center Ogden, UT 84201

Penalty. Section 6652(j) provides for a penalty of \$100 for each failure to comply with the section 142(d)(7) certification requirements unless it can be shown that failure to file is due to reasonable cause and not to willful neglect.

Questions on Filing Form 8703. For specific questions on how to file Form 8703, send an email to the IRS at:

TaxExemptBondQuestions@irs.gov and put "Form 8703 Question" in the subject line. In the email, include a description of your question, a return email address, the name of a contact person, and a telephone number.

Specific Instructions

Part I—General Information

Enter the name, address (including ZIP code), and taxpayer identification number of both the operator and the owner of the project. Enter the address of the project. Do not use P.O. boxes.

Amended return. An issuer may file an amended return to change or add to the information reported on a previously filed return for the same date of issue. If you are filing to correct errors or change a previously filed return, check the "Amended Return" box in the heading of the form.

The amended return must provide all the information reported on the original return, in addition to the new or corrected information. Attach an explanation of the reason for the amended return.

Report number. This line is for IRS use only. Do not make an entry.

Line 1. To be a qualified residential rental project, one of the following tests must have been elected for the project:

(a) 20-50 test. 20% or more of the residential units must be occupied by individuals whose income is 50% or less of the area median gross income.

(b) 40-60 test. 40% or more of the residential units must be occupied by individuals whose income is 60% or less of the area median gross income.

(c) 25-60 test (NYC only). 25% or more of the residential units must be occupied by individuals whose income is 60% or less of the area median gross income.

(d) 20-60 test (Gulf Opportunity (GO) Zone, Midwestern disaster areas, and Hurricane Ike disaster areas only). 20% or more of the residential units must be occupied by individuals whose income is 60% or less of the area median gross income.

(e) 40-70 test (GO Zone, Midwestern disaster areas, and Hurricane Ike disaster areas only). 40% or more of the residential units must be occupied by individuals whose income is 70% or less of the area median gross income.

See Rev. Rul. 94-57, 1994-2 C.B. 5, for guidance on computing the income limits applicable to these tests. See Pub. 4492, Information for Taxpayers Affected by Hurricanes Katrina, Rita, and Wilma, for details about the GO Zone. See Pub. 4492-B, Information for Affected Taxpayers in the Midwestern Disaster Areas, for details about the Midwestern Disaster areas.

Line 2. The **qualified project period** is the period beginning on the first day that 10% of the residential units are occupied and ending on the latest of (a) the date that is 15 years after the date that 50% of the residential units are occupied, (b) the first day that no tax-exempt private activity bond issued for the project is outstanding, or (c) the date that any assistance provided for the project under section 8 of the United States Housing Act of 1937 terminates.

Lines 3a and 3b. If a low-income housing credit allocation was issued for more than one building in the project, attach a schedule listing the building identification number (BIN) for each building.

Line 4. The determination of whether the income of a resident of a unit in a project exceeds the applicable income limit shall be made at least annually on the basis of the current income of the resident, except for with respect to any project for any year if during such year no residential unit in the project is occupied by a new resident whose income exceeds the applicable income limit. See section 142(d)(3)(A). Check "Yes" if there are no new residents in the project whose income exceeds the applicable income limits. Therefore, if "Yes" is checked, complete Part II, skipping lines 6 through 10.

Part II—Annual Determinations

Line 5. Enter the total number of residential rental units in the project.

Line 6. Enter the number of residential rental units occupied by individuals whose income is (a) 50% or less of area median gross income (if box 1a was checked), (b) 60% or less of area median gross income (if box 1b, 1c, or 1d was checked), or (c) 70% or less of area median gross income (if box 1e was checked).

Do not include any units included on line 7.

Line 7. Enter the number of residential rental units occupied by continuing residents whose income exceeds the applicable income limit but whose income is treated as not exceeding the applicable income limit. Do not include any units included on line 6. See section 142(d)(3)(B).

Line 9. If line 9 is less than the percentage for the test elected in item 1, Part I (i.e., 20%, 40%, or 25%), the project is considered in post-issuance noncompliance. In this case, check the box in Part IV to certify that the project "does not meet" the requirements of section 142(d).

In general, unless the noncompliance is corrected within a reasonable period, the noncompliance will cause the exempt facility bonds for the project to not be qualified bonds under section 141. When the bonds are no longer qualified, the interest paid or to be paid on the bonds is taxable, and the issuers or brokers of the bonds must report the taxable interest to bond holders as required by section 6049. See Regulations sections 1.103-8(b)(1)-(9) and sections 141, 142, and 103 for additional information.

Lines 10a and 10b. Complete these lines only if an election was made to treat the project as a deep-rent skewed project under section 142(d)(4). The 15-40 test that applies to the deep-rent skewed project election is not an additional test for satisfying the requirements of section 142(d)(1). The 15-40 deep-rent skewed project test relates to the determination of a low-income tenant's income. Generally, a continuing resident's income may increase but not exceed 140% of the applicable income limit (i.e., 50% or less or 60% or less of the area median gross income under the line 1a or 1b test). When the deep-rent skewed election is made and the requirements of section 142(d)(4)(B) are met, the income of a continuing resident may increase up to 170% of the applicable income limit. If this election is made, at least 15% of all low-income units in the project must be occupied by tenants whose income is 40% or less of the area median gross income.

On line 10a, enter the number of low-income units occupied by individuals whose income is 40% or less of area median gross income. Also include the number of units occupied by continuing residents whose income is treated as not exceeding the applicable income limit. If the percentage on line 10b is less than 15%, the project is not a deep-rent skewed project, and a continuing resident's income may not increase above 140% of the applicable income limit for purposes of section 142(d).

Line 11. Enter the number of low-income units vacated during the calendar year.

Line 12. Enter the number of vacated low-income units that were occupied by new residents who were low-income residents at the time of occupancy. The instructions for lines 6 and 7 describe low-income residents.

Line 13. Enter the number of vacant low-income units that were held available for low-income residents as of the end of the calendar year.

Note. Lines 11 through 13 ask questions about low-income units that were vacated during the calendar year. Regulations sections 1.103-8(b)(5)(i) and (ii) provide, that low-income units must be rented or available for rent on a continuous basis by low-income tenants during the longer of: (a) the remaining term of the bond, or (b) the qualified project period. If lines 12 and 13 do not add up to line 11, then make a determination whether the project is in compliance with the requirements of section 142(d). If it is determined that the project is not in compliance, check the box in Part IV to certify that the project "does not meet" the requirements of section 142(d).

Part III—Issuer and Description of Bonds

Line 14. The issuer's name is the name of the entity issuing the bonds, not the name of the entity receiving the benefits of the financing. The name of the issuer should be identical to the name listed on Form 8038, Part I, line 1, filed with respect to the bond issue.

Line 15. Enter the issuer's employer identification number (EIN). The issuer's EIN should be identical to the EIN listed on Form 8038, Part I, line 2, filed with respect to the bond issue.

Line 16. Enter the name of the bond issue. If there is no name of the issue, please provide other identification of the issue. The name of the bond issue should be identical to the name listed on Form 8038, Part I, line 8, filed with respect to the bond issue.

Line 17. Enter the date of the bond issue. Enter the date in an MM/DD/YYYY format. The date of the bond issue is generally the date on which the issuer physically exchanges the bonds for the underwriter's (or other purchaser's) funds. The issue date should be identical to the issue date listed on Form 8038, Part I, line 7, filed with respect to the bond issue.

Line 18. Enter the CUSIP (Committee on Uniform Securities Identification Procedures) number of the bond with the latest maturity. If the issue does not have a CUSIP number, write "None." The CUSIP number should be identical to the CUSIP number listed on Form 8038, Part I, line 9, filed with respect to the bond issue.

Line 19. Enter the issue price of the bond issue. The issue price of bonds is generally determined under Regulations section 1.148-1(b). Thus, when issued for cash, the issue price is the first price at which a substantial amount of the bonds are sold to the public. To determine the issue price of an obligation issued for property, see sections 1273 and 1274 and the related regulations. The issue price should be identical to the issue price listed on Form 8038, Part III, line 21(b), filed with respect to the bond issue.

Line 20. The final maturity date is the last date the issuer must redeem the entire issue. Enter the date in an MM/DD/YYYY format. The final maturity date should be identical to the final maturity date listed on Form 8038, Part III, line 21(a), filed with respect to the bond issue.

Certification

Section 142(d)(7) requires the operator of the project to submit this annual certification as to whether the project continues to meet the requirements of section 142(d). This form must be signed by the operator of the project.

Paid Preparer

If an authorized officer of the operator filled in this return, the paid preparer's space should remain blank. Anyone who prepares the return but does not charge the organization should not sign the return. Certain others who prepare the return should not sign the return. For example, a regular full-time employee of the operator, such as a clerk, secretary, etc., should not sign.

Generally, anyone who is paid to prepare a return must sign it and fill in the other blanks in the Paid Preparer Use Only area of the return. The paid preparer must: Sign the return in the space provided for the preparer's signature, enter the preparer information, and give a copy of the return to the operator.

Privacy Act and Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. Code section 142(d)(7) requires that an annual certification be filed with the IRS to determine whether the legal requirements of that section are being met. Routine uses of the information provided on this form include giving it to the Department of Justice for civil and criminal litigation and to other federal agencies, as provided by law. We may disclose the information to cities, states, the District of Columbia, and U.S. commonwealths or possessions to administer their tax laws. We may also disclose the information to foreign governments pursuant to tax treaties or to federal and state agencies to enforce federal nontax criminal laws and to combat terrorism. If you do not provide this form or all of the information requested on it, you may be subject to penalties.

To ensure proper identification of the owner and operator of the project, Code section 6109 and its regulations require an identifying number (social security number (SSN) or employer identification number (EIN)) on the annual certification.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, return information is confidential, as required by Code section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Recordkeeping** 7 hr., 39 min.; **Learning about the law or the form** 1 hr. 51 min.; and **Preparing and sending the form to the IRS** 3 hr., 16 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this address. Instead, see *Where to file*, earlier.



**Oregon Housing & Community Services
Asset & Property Management Section
Project Vacancy Report**



1. For Month: _____ Date Completed: _____ Project Name: _____
Prepared By: _____ Phone Number: _____ Fax Number: _____
2. Funding Type (please check): RISK SHARE ELDERLY
3. How many **rentable** units are in the Project? _____
NOTE: "rentable units" means the total number of units in a project, less non-rentable units (i.e. managers unit, maintenance unit, ect.).
A unit unavailable for occupancy due to repairs is considered a RENTABLE unit.
4. How many **rentable** units are **vacant**? _____
5. Is there a Waiting list for prospective tenants? Yes No. Number currently on waiting list _____

FOR ELDERLY PROJECTS ONLY:

| MOVE-IN | Unit # | MOVE-OUT | Unit # | TRANSFER | From Unit # | To Unit # | Pending Move-ins |
|---------|--------|----------|--------|----------|-------------|-----------|------------------|
| | | | | | | | |
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**** Please complete this form and send it in each month with your current Resident Roster in numeric order.**
 Contact Persons: Tina Esther Phone number: 503-986-0982 Fax Number: 503-986-0959 tina.esther@hcs.state.or.us

Exhibit 10

Monthly Marketing Report

OREGON HOUSING AND COMMUNITY SERVICES
 Monthly Marketing Report/Vacancy Questionnaire

Project: _____

Month: _____ Year: _____

Prepared by (please print): _____

Signature: _____

OCCUPANCY

Total Units: _____ Units Occupied: _____ % Occupancy: _____

Employee Occupied Units: _____

MOVE-IN/MOVE-OUT ANALYSIS

Number of Move-ins: _____ Number of Move-outs: _____

Loss/Gain of (circle one): _____

PROVIDE HOUSEHOLD NAMES AND CHECK MOVE-IN/MOVE-OUT REASONS BELOW:

| MOVE-IN (NAME & UNIT #) | MOVE-OUT (NAME & UNIT #) | | | | | | | | | | | | | | | | |
|----------------------------|-----------------------------|------------------|---------------------|-----------|---------------|----------|---------|--|--|--|--|--|--|--|--|--|--|
| | From Home Ear2 (Miles) | Closer to Family | Safety and Security | *Services | Companionship | Location | **Other | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |

*List "Services" _____

**List "Other" Reasons: _____

Does the facility have a waiting list? Y/N (circle)

If "Yes", List reasons applicants are delaying move-in: _____

DEPOSITS (pending move-in)

Number Taken This Month: _____ Number Canceled: _____ Total

Deposits: _____

Name of Depositor

Expected Move-in Date

1. _____

2. _____

3. _____

(Add additional if more than 3)

RESPONSE TO ADVERTISING/MARKETING

NUMBER OF RESPONSES RECEIVED BASED ON THE FOLLOWING MARKETING AREAS:

| | Walk-in | Phone-In | Mail-In | Total |
|-----------------|---------|----------|---------|-------|
| Newspaper | | | | |
| Senior Center | | | | |
| Word of Mouth | | | | |
| Direct Mail | | | | |
| Radio | | | | |
| Television | | | | |
| Yellow Pages | | | | |
| Other Directory | | | | |
| Magazine | | | | |
| Unknown | | | | |
| Other* | | | | |

*List Other" _____

Comments: _____

What do you consider your service area? _____

Do you do outreach to areas beyond your service area? Y/N (Circle one)

If "Yes", list additional market areas/resources used: _____

MARKETING ACTIVITY

New Inquiries:

Phone In: _____ Mail-In: _____ Walk-In: _____ Total: _____

Number of Tours Conducted: _____ Number of Prospects Toured: _____

If available, list reasons given by touring prospects as drawbacks to their moving into the facility:

Staff Contacts/Follow up:

Phone Calls: _____ Visits to Prospects: _____ Letters/Literature Mailed: _____

SIGNIFICANT MARKETING EVENTS

Open House: _____ Number Attended: _____ Parties: _____ Number Attended: _____

Luncheons: _____ Numbers Attended: _____ Other: _____

GENERAL COMMENTS/QUESTIONS

1. To what factors do you attribute your inability to fill your current vacancies? Please be candid and specific.

2. How long (days) does it usually take to fill a unit once it's ready to rent? _____

3. Do you feel that the vacancies at your facility are so high because you are limiting new move-ins to market rate residents in order to meet all the expense of the complex? (N/A for CongregateHousing)

4. Is the high vacancy rate negatively impacting your ability to meet your basic financial requirements? _____

5. Other: _____

Exhibit 11A

Rent Adjustment Procedure

ELDERLY RENT ADJUSTMENT PROCEDURE

The Regulatory Agreement or the Loan Agreement requires owners of elderly program projects to obtain the prior written approval of the Department before implementing any increase in rents. The Compliance Officer (CO) should review the document for the specific project to determine the exact wording of the requirement.

Generally, any loans funded out of proceeds from bonds issued prior to the tax code change in 1986 will have the provision regarding rental rates located in the Regulatory Agreement which typically states:

- "(a) The Borrower agrees to establish rental rates for all dwelling units in the Development as are from time to time directed by the Division in writing or which are approved by the Division in writing upon application by the Borrower.
- (b) The Borrower shall submit a proposed schedule of rental rates and a proposed operating budget on forms approved by the Division for the Development to the Division at least once per year and not less than sixty (60) days prior to the beginning of each fiscal year of the Borrower"....."The proposed schedule of rental rates shall be sufficient to meet Operating Expenses (as hereinafter defined) set forth in the proposed operating budget. Upon approval by the Division, the proposed schedule of rental rates and proposed operating budget shall be effective for the next ensuing fiscal year of the borrower. The Division shall review the proposed schedule of rental rates and budget for approval in a timely manner and shall not unreasonably withhold its approval.
- (c) The Borrower understands and agrees that this Regulatory Agreement constitutes and assurance by the Borrower that the Development shall be operated by the Borrower so as to maintain"....."It is further mutually understood that it is the intention of the Division to approve rental increases on condition that the Development will continue to serve the people for which it was intended, and that the rents remain competitive with rents in similar Developments in the area."

Generally, any loans funded out of proceeds from bonds issued after the tax code change in 1986 will have the provision regarding rental rates located in the Loan Agreement which typically states:

"Borrower shall submit to the Agency a proposed schedule of rental rates for the Project on forms approved by the Agency not less that sixty (60) days prior to the date of a proposed rent increase. A new rental rate schedule must be submitted prior to any change in rental rates. Upon approval by the Agency, the proposed schedule of rental rates shall be effective after all required notifications."

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 non-compliance and indicating that remedies may be taken to obtain compliance in accordance with the applicable loan document. A copy of this letter shall be placed in the project's loan document file.

Copies of all correspondence are to be placed in the project's working file under "rent adjustments".

Copies of any denials shall be given to the Manager of Housing Programs Management.

Exhibit #11B

Rent Increase Approval Letter - Elderly

Date

Agent Contact
Management Company
Street Address
City, State, Zip Code

Re: Rent Increase for (Project Name)

Dear (Agent Contact):

Please accept this letter as our approval to increase the rents at (Project Name) to the following requested levels:

Studio Unit: \$
One Bedroom: \$
Two Bedroom: \$

The effective date is approved for (date), in order to allow the required 30-day written notice of the increase to be given to the residents. To remain in compliance with the Internal Revenue Service regulations, at least 20 percent of the units are to be rented by or made available to persons of the very low-income range. Also, remember any individuals applying for residency that are over the income limit must receive a waiver from this office prior to moving into any bond-financed facility.

We are continually reviewing vacancy in our elderly portfolio and remain concerned about the high vacancy numbers at many of the facilities throughout the state. If, after implementing this rent increase you notice a decrease in occupancy within the next few months, please re-visit your rent structure and make adjustments as necessary to bring occupancy up to acceptable levels in your communities. We will also be reviewing marketing efforts and vacancy trends on a monthly basis and will be communicating with management of the elderly projects that are experiencing long-term vacancy to obtain updates on new marketing endeavors.

Contact me at (503) (phone#), or by e-mail at co.name@hcs.state.or.us if you have any questions.

Sincerely,

(CO NAME)

Compliance Officer

cc: Working File



Oregon Housing and Community Services

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Oregon Housing and Community Services

Reserve for Replacement

SECTION 1: OVERVIEW

1. Authority through Loan Documents and HUD

Department Loan Documents, and HUD 4350.3, HUD 4350.1 (if applicable)

2. Authority through OHCS Finance Committee

Finance Committee Motion dated April 28, 2006 which adopted as policy “that Borrowers have five years to establish a two year balance in the replacement reserve account, determined by the initial deposit amount x 24 months; that the annual replacement reserve amount will inflate each year at 3%; and, that no maximum amount shall be determined. The policy is to be implemented immediately, with existing projects in the portfolio receiving notification of the 3% inflation to the reserve account to begin January 2007.” (See attached Motion).

3. Applicable OHCS Programs

All multi-family housing projects financed through bond issuance by Oregon Housing & Community Services (the “Department”), with the exception of the Conduit Program (Pass-Through Revenue Bond Program).

4. Purpose of Reserve for Replacement

A Reserve for Replacement is established to assure sufficient funds are available to pay for Operating Expenses, Loan and other obligations, including the maintenance of required reserve and escrow accounts before break-even occupancy and to fund extraordinary maintenance or repair and the replacement of Capital Items.

SECTION 2 DEFINITIONS

1. Capital Items

Capital Items “shall mean any personal or real property and improvements, including, but not limited to real estate, fixtures, machinery, appliances, stock or furniture with a value or replacement cost exceeding \$1,000,” unless otherwise defined in the Loan Documents.

If Capital Items are not defined in the Loan Documents, use the following definition:

Capital Items shall mean any personal or real property and improvements, including, but not limited to real estate, fixtures, machinery, appliances, stock or furniture with a value or replacement cost exceeding \$500.

2. Extraordinary Repair or Maintenance

Extraordinary repair or maintenance is the maintenance or repair that will result in extending the life of the item for five years or more.

3. Loan Documents

Loan Documents shall mean the Project's loan documents, including, but not limited to, the Promissory Note, Trust Deed, Regulatory Agreement, Loan Agreement, Management Agreement, Commitment Letter, Side Letter (if any), and State Housing Council Write-Up.

4. Management Agreement

Management Agreement shall mean a management agreement between the Borrower and a management agent, as approved by the Department, or between Borrower and the Department, if Borrower is acting as the management agent for the Project. The agreement will identify the terms, conditions and covenants that must be adhered to in a reasonable prudent business manner.

5. Reserve for Replacement "Account"

Reserve for Replacement Account (Account) is an account established upon the first mortgage payment, and is under the control of the Department, with the Department or in a depository designated by the Department. The Borrower must maintain a specified level of reserves in the Account by making deposits as designated in the Loan Documents. Requests for disbursements from the Account can only be made with the written approval of the Department.

6. Reserve for Replacement "Job"

A reserve for replacement "Job" includes replacement of item(s) that individually would not qualify for reimbursement from the Account, but are completed within 14 days for the same unit, which shall cause the item(s) to qualify for reimbursement.

Example: Unit 1 had the stove, dishwasher, and a toilet replaced. Individually these items do not qualify for reimbursement, but as a "Job" they provide adequate replacement cost to be eligible.

7. Reserve for Replacement "Project"

A reserve for replacement "Project" includes replacement of item(s) that individually would not qualify for reimbursement from the Account, but are covered under one

contract or invoice within a 90-day period, which shall cause the item(s) to qualify for reimbursement.

Example: Units 1, 3, 5, 6, and 9 received replacement dishwashers. Individually the dishwashers did not qualify for reimbursement, but as a “Project” they provide adequate replacement cost to be eligible.

SECTION 3: MINIMUM BALANCE REQUIREMENT

1. Section 8

Minimum balance of 24 times the monthly Reserve for Replacement deposit

2. Risk Sharing

Minimum balance of 24 times the monthly Reserve for Replacement deposit

3. Elderly/Disabled

Minimum balance of 12 times the monthly Reserve for Replacement deposit

Elderly/Disabled with Minimum Balance in Loan Agreement

There are eleven (11) projects that have minimum balance language in their Loan Agreement. The language may be similar to: “HCS may disapprove a request if the balance in the account is less than an amount equal to 12 monthly payments to the account, plus any insurance deductible required.”

Unless there are circumstances requiring a larger minimum for a project, apply the minimum balance requirement as set forth above. The projects affected include:

- Bridgewood Rivers
- Deerfield Village
- Emerald Valley ALF
- Eugene Hotel
- Forest Grove Beehive
- Fountain Plaza
- Juniper House
- Lancaster Village
- Meadow Creek Village (ALF)
- Rackleff House
- Villas of McMinnville

SECTION 4: ACCEPTABLE USE FOR ACCOUNT FUNDS

The acceptable use of the Account (unless otherwise defined in the Loan Documents) is (see Exhibit A):

- Future replacement of Capital Items;

- Replacement of parts if:
 - (a) The part increases the original estimated life of the fixture or appliance by at least five years; or
 - (b) The part qualifies for replacement as described in the Loan Documents; or
 - (c) It is more cost effective to repair the fixture or appliance than it is to replace it and it meets the requirements of the Loan Documents; and
- Extraordinary repairs or maintenance
- Replacement qualifies as a reserve for replacement “job” or “project” (see Definitions above).

SECTION 5: EXTRAORDINARY REPAIRS AND MAINTENANCE

Extraordinary maintenance or repair is maintenance or repair that will result in extending the life of the item for five years or more.

Improvements to enhance livability or to increase the project’s value or to improve the marketability of the development, such as the following:

- Purchase of a van to make transportation more readily available to the residents;
- Addition of a solarium or activity room to an existing facility;
- Purchase or addition to playground equipment;
- Improvement of the security system;
- Construction of a greenhouse for the residents;
- Remodeling of units to increase their livability and marketability; and
- Improvement of the access to the development or its visibility to make the development more marketable (e.g. new signs, etc.).

Examples of repairs or maintenance items necessary for the routine upkeep of property or equipment that are not considered extraordinary are described in Exhibit A.

SECTION 6: EMERGENCY REPAIR

If the repair is an emergency, the Department may grant verbal approval (i.e. over the telephone or via e-mail). An emergency replacement or repair item must relate to the following:

- (a) Requires immediate action to remedy;
- (b) Threatens the safety or well being of the tenant(s) or the property; and
- (c) The cause could not have been foreseen by a reasonable and prudent business person in the same or similar situation, such as a tree blowing over in a strong wind crushing a roof; a pipe bursts and causes flooding; the failure of a heating system, etc.

Payment of an emergency repair will be made upon receipt of supporting documentation. In addition, the Department may also request additional documentation indicating what portion, if any, of the repair will be covered by insurance.

SECTION 7: REQUEST TO RELEASE FUNDS GENERAL INFORMATION

1. Compliance with Loan Documents

Insure that request is in compliance with all documents including the Loan Agreement, Regulatory Agreement, and the Management Agreement. The Management Agreement defines the expense authority given the management agent. If request exceeds this authority, written approval from the designated owner must accompany the request.

2. Bids and Estimates Over \$10,000

The Department requires three bids/estimates if the expense will exceed \$10,000.00, unless otherwise approved the Section Manager. The Department may request alternative estimates from third parties if the cost appears inconsistent with comparable costs. The Department will review the bids prior to issuing written approval/denial of the request.

3. Account Balance Below the Minimum

If the request to release will decrease the Account balance below the required minimum balance, the Section Manager must approve it.

4. 30 Days to Complete Request

All requests for release of Account funds shall be reviewed and completed by the Department within 30 days of receipt of a complete request. The only exception will be requests that require in-depth analysis due to the technical nature of the request or the volume of the request. Incomplete requests may be returned to Owner and/or Agent for completion.

SECTION 8: PROCESS TO REQUEST RELEASE OF FUNDS

The following list includes the requirements to release funds:

- (a) Owner and/or Agent must submit request in writing;
- (b) Request must include invoices dated within the last 12 months;
- (c) Description of the Capital Item, extraordinary repair or maintenance, or improvement item;
- (d) The cost of the Capital Item, extraordinary repair or maintenance, or improvement item;
- (e) Specific unit numbers, when applicable; and
- (f) Justification that the item is either an extraordinary repair or a maintenance replacement of a Capital Item (or is an improvement item).

SECTION 9: INCREASES TO THE ACCOUNT

Account deposits may be increased as allowed in the Loan Documents. The Department Finance Committee approved a motion to increase the Account at an annual inflation rate of 3% effective January 2007 (see Section 1, above). Implementation has been delayed due to vacancies and the freeze of median incomes. The account will be reviewed annually and if determined appropriate by the Department, the increase will be implemented.

Owners should review the adequacy of the account on an ongoing basis. The Owner and/or Agent should periodically perform an analysis of the Account.

SECTION 10: SUSPENSION OF MONTHLY DEPOSITS

Requests to suspend deposits to the Account may be made by the Owner when the balance has reached the amount stated in the Loan Documents. Once the balance drops below that amount, the Borrower shall resume monthly deposits until the balance again equals the amount stated in the Loan Documents.

SECTION 11: INVESTMENT OF ACCOUNT FUNDS

Account funds must be fully insured by the FDIC or invested in direct obligations of the federal government satisfactory to the Department. When the balance in the Account exceeds the minimum level required by the Loan Documents or \$100,000, whichever is less, the Borrower may direct the Servicer to invest a portion of the funds, subject to Servicer's approval. Further information concerning the investment of funds, the Department's Servicer should be contacted.

EXHIBIT A – RESERVE FOR REPLACEMENT ITEMS
Section A-1: ELIGIBLE REPLACEMENT ITEMS

When submitting for reimbursement the total cost of the following items may include labor and **must meet or exceed a minimum of \$500.00, or the amount specified in the Loan Documents.** These submissions may have items batched together as long as the submission is for a **single “Job” or “Project” (see Definitions), not a collection of randomly completed repairs/replacements.**

****These items are exempted from (do not need to meet or exceed) the minimum total cost.**

| Eligible Replacement Items | Estimated Life Range (Years) |
|--|-------------------------------------|
| Appliances | |
| Air Conditioners in Units (must be professionally installed)** | 10 –15 |
| Dishwashers (must have been installed originally) | 10 –15 |
| Exhaust Fans | 8 –10 |
| Laundry Washers and Dryers | 10 –15 |
| Ranges** | 8 –15 |
| Refrigerators** | 10 –12 |
| Water Heaters in Units** | 7 –15 |
| Interior Decorating | |
| Cabinets and Countertops (entire kitchen and bath) | 15 –20 |
| Carpet | 5 – 10 |
| Drapes, Shades, Blinds, Rods | 5 – 20 |
| Doors | 15 – 20 |
| Electrical Fixtures | 20 – 25 |
| Floor Tile and Vinyl | 10 – 15 |
| Exterior | |
| Asphalt – Resurfacing | 10 – 15 |
| Asphalt – Sealcoating | 5 – 10 |
| Concrete Walks and Curbs | 15 – 25 |
| Doors | 15 – 20 |
| Downspouts, Gutters, Roofing, Shingles, Tile, etc | 15 – 25 |
| Painting | 5 – 10 |
| Siding | 15 – 20 |
| Sprinkler System | 20 – 25 |
| Storm Windows and Patio Sliders | 15 – 20 |
| Windows | 15 – 25 |

| Eligible Replacement Items | Estimated Life Range (Years) |
|--|-------------------------------------|
| Plumbing | |
| Bathtubs | 20 – 25 |
| Bathroom Sinks | 20 – 25 |
| Fixtures | 30 – 40 |
| Kitchen Sinks | 25 – 30 |
| Plumbing Systems | 40 – 50 |
| Toilets, Valves, etc. | 20 – 25 |
| Air Conditioning Equipment | |
| Chillers | 5 – 10 |
| Compressors | 5 – 10 |
| Fans, Motors, etc. (central air systems only) | 10 – 15 |
| Heating System | |
| Baseboard Heaters (entire unit) | 15 – 25 |
| Boilers | 20 – 30 |
| Central Heating System | 5 – 15 |
| FWA Gas Furnaces | 15 – 20 |
| Pumps, Valves, etc. | 15 – 20 |
| Miscellaneous | |
| Computer System – Initial Set-Up (excludes upgrades) | 5 – 10 |
| Copiers, Fax Machines, etc. | 5 – 20 |
| Elevator | 20 – 30 |
| Energy Conservation Items | 5 – 30 |
| Safety/Security Systems | 15 – 20 |
| Smoke Detectors | 15 – 25 |
| Swimming Pools | 15 – 25 |

Section A-2: INELIGIBLE RESERVE FOR REPLACEMENT ITEMS

The following items are **INELIGIBLE** for reserve for replacement reimbursement, unless the Loan Documents specifically allow for reimbursement (i.e., “painting and decorating”):

| |
|---|
| <u>Ineligible Replacement Items</u> |
| Equipment and Fixtures |
| Golf Carts |
| Tools |
| Vacuum Cleaners |
| Weight Room Equipment |
| Plumbing |
| Plumbing Materials (including hoses, cesspool/septic system maintenance, etc.) |
| Toilet Seats (unless replacing entire toilet) |
| Interior Decorating |
| Interior Painting (including supplies such as paint rollers, masks, putty knives, etc.) |
| Molding Replacement (unless necessary because of floor or carpet replacement) |
| Electrical |
| Replacement of Breakers, Switches, Outlets, etc. |
| Miscellaneous |
| Asphalt Patching |
| Landscaping Supplies and Shrubbery |
| Re-keying Locks |
| Roof Maintenance (i.e., moss removal, installation of zinc strips, etc.) |