



# WHEDA

**WISCONSIN HOUSING AND ECONOMIC  
DEVELOPMENT AUTHORITY**

Compliance Manual 7/10 Program

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# 1. Introduction

## 1.1 Background

This manual is designed to assist borrowers, management agents and onsite staff in meeting compliance obligations under the Land Use Restriction Agreement (LURA). In addition to complying with the LURA there are additional reporting requirements under the loan documents.

## 1.2 Compliance Period

All Developments will have entered into a LURA with WHEDA. These developments must comply with eligibility requirements as defined. The LURA is a recorded restrictive covenant.

# 2. Owner and Agent Responsibilities

## 2.1 Owner

The owner is responsible for ensuring that the property is managed in accordance with all applicable laws, rules, regulations and policies.

### A. Proper Administration and Record Keeping

The owner is responsible for proper administration of the project, including the requirement that tenant income and rent records be kept and retained for the appropriate time period. The owner must make certain that the on-site management team knows, understands, and complies with all rules, regulations, and policies governing the project.

### B. Ongoing Administration and Notification

The Owner is responsible to keep WHEDA informed of any event that might affect the project's compliance throughout all phases of development, rent-up, and operation.

### C. Reporting and Certification

The owner is responsible for submitting required documentation and reports to WHEDA on a timely basis.

### D. Ownership and Management Changes

The owner and agent are concurrently responsible for notifying WHEDA of any changes in the ownership or management of the project.

For management changes, a new ACH agreement and Delegated Administrator Agreement is required.

## **2.2 Management Agent and On-Site Personnel**

### **A. General**

Management agents and on-site personnel are responsible to the owner for implementing program requirements. Anyone authorized to lease apartment units to tenants must be thoroughly familiar with all federal and state laws, rules, and regulations governing certification, fair housing, and leasing procedures. Management agents must provide information requested by WHEDA and submit all required reports and documentation in a timely manner.

### **B. Noncompliance**

If the management agent and/or the owner determines that the project is not in compliance with program requirements the management agent and/or the owner must formulate a plan to bring the project back into compliance.

WHEDA may enforce compliance with all requirements through all or any of the following:

- Legal enforcement of the owner's obligations under contract documents and Land Use Restriction Agreement(s) (LURA);
- Consideration of noncompliance in future applications for lending or tax credits by the owner, developer, or related party.

## **3. Regulations**

### **3.1 Project Regulations**

#### **A. Minimum Set-Aside Election**

The minimum set-aside establishes the income limit and rent limit applicable to low-income units in the project. At least 20% of available rental units must be rented to households with incomes not exceeding 80% of county median income (CMI) adjusted for household size.

#### **B. Special Set-Asides**

An owner or developer may have received consideration for setting aside units for lower-income (less than 80% of CMI) households and restricting rents accordingly.

## 3.2 Building Regulations

### Fees

**Optional Services:** A service is optional when the service is not a condition of occupancy and there is a reasonable alternative. Charges for non-optional services paid month-to-month or a single payment would always be included within gross rent.

*Assuming they are optional*, charges such as pet fees, garages, and storage fees may be charged in addition to the rent; i.e., they are not included in the rent computation.

**Fees – Condition of Occupancy:** The cost of services that are required as a condition of occupancy must be included in gross rent even if federal or state law required that the services be offered to tenants by building owners.

1. Refundable fees associated with renting a unit are not included in the rent computation. For example, security deposits and fees paid if a lease is prematurely terminated are one-time payments that are not considered in the rent calculation.
2. Required costs or fees, which are not refundable, are included in the rent computation. Examples include fee(s) for month-to-month tenancy and pet fee.

Fees for preparing a unit for occupancy must not be charged; owners are responsible for physically maintaining the units in a manner suitable for occupancy. Application fees may be charged to cover the actual cost of checking a prospective tenant's income, credit history, and landlord references. The fee is limited to recovery of the actual out-of-pocket costs. No amount may be charged in excess of the average expected out-of-pocket costs of checking tenant qualifications at the project. It is also acceptable for the applicant to pay the fee directly to the third party actually providing the applicant's rental history.

## 3.3 Unit Regulations for Determining Eligibility

### A. Maximum Income Limits

In order for a household to qualify for a low-income unit, their income must first be certified so as not to exceed the county median income limit for that project.

Qualifying tenants in projects may not have total household incomes that exceed 80% of the appropriate county median income (CMI) adjusted for household size. The United States Department of Housing and Urban Development (HUD) publishes median income information for each Wisconsin County on a periodic basis. Limits remain in effect until HUD officially publishes new limits. Owners cannot anticipate increases in income limits and corresponding rents.

Upon receipt of the updated HUD median income information, WHEDA makes available new annual income limits and corresponding rent limits for projects in

Wisconsin counties by publishing the information on WHEDA's Internet site ([www.wheda.com](http://www.wheda.com)). However, it is the owner's responsibility to obtain the limits when they are updated by HUD.

When determining if a household's income is at or below the maximum qualifying limit, the income from each household member who will be living in the unit must be included. Imputed income from certain assets must also be included. (See Section 5 of this manual for a more detailed explanation.)

## B. Maximum Rent Limits

Similar to restrictions on tenant income, restrictions also exist on the amount of rent that can be charged for a low-income unit.

- i. **Gross Rent:** Gross rent, including utilities, paid by tenants in qualifying units may not exceed 30% of maximum qualifying income based on an assumed 1.5 persons per bedroom.  
**All rent calculations must be rounded up to an even dollar amount.**
- ii. **Overcharged Rent:** A unit is out of compliance if the rent exceeds the limit on a tax year basis or on a monthly basis. A unit is also considered out of compliance if an owner charges impermissible fees. Once a unit is determined to be out of compliance with the rent limits, the unit ceases to be a low-income unit.
- iii. **Utility Allowance:** Gross rent must include an allowance for any utilities paid by the tenant. (See Section 4.3 B. Utility Allowance Documentation in this manual for further information.)
- iv. **Third party payment:** Gross rent does not include any third party payment under Section 8 of the United States Housing Act of 1937 or any comparable rental assistance program with respect to such unit or occupants thereof. In other words, only the rent and utilities (if applicable) paid by the tenant are counted toward the maximum rent of a qualified unit.

## C. Gross Rent Floor

The date of amortization of permanent financing will establish the effective date of initial maximum rents that serve as a floor against subsequent reductions in rent that can result from a decrease in county median income.

## D. Household Size

Knowing the actual number of persons in the household is necessary for determining the maximum allowable income of a household.

The following must be noted in determining household size:

- i. In the case of a pregnant woman, the unborn child is included in the size of the household and for purposes of determining the maximum allowable income. A household in the process of adopting a child is treated the same as a pregnancy.



- ii. A live-in care attendant is included for the purpose of determining the appropriate size unit for the household, but is not included for the purpose of determining the maximum allowable income.
- iii. Foster children are included for the purpose of determining the appropriate size unit for the household, but are not included for the purpose of determining the maximum allowable income.

### **3.4 Rules Governing Units after Occupancy of Qualified Low-Income Tenants**

#### **A. Annual Recertification of Income**

Owners are required to recertify each low-income household at least annually. Annual recertification requirements will consist of a self-certification of income and documenting household composition. Failure to recertify a household within 365 days of the last certification date is considered noncompliance. A late recertification will be corrected by performing a recertification of the household.

#### **B. Available Unit Rule**

When the income of a qualified household increases above 140% of the current maximum income amount (over-income unit) and this puts the project below its required set-asides, the Available Unit Rule (AUR) goes into effect.

When the AUR is in effect, the next available unit of comparable or smaller size must be rented to a qualified low-income household. All units must be rented to qualified households until the percentage of low-income units in the project equals the required set-aside requirements.

If the AUR is adhered to, the over-income units are still considered qualified units and are included in the calculation of the set-aside units as long as the units remain rent restricted.

- a. A household whose income rises above 140% of the current income limit may still be considered a low-income household as long as the rent remains restricted and the next available unit(s) is rented to qualified low-income households.
- b. All units of comparable or smaller size that are available or that subsequently become available in the project must be rented to qualified residents in order to continue treating the over 140%-income unit as a low income unit.
- c. A unit is not available for purposes of the AUR when the unit is not available for rent due to a contractual arrangement or reservation that is binding under local law.

- d. It is the intent of the Available Unit Rule to replace all over 140% income households with new qualified households as available units are rented.

## **4. Compliance Monitoring Procedures**

### **4.1 General**

Monitoring is designed to determine if the owner is in compliance with federal and state regulations and with WHEDA policies. Monitoring each project is an ongoing activity that extends throughout the life of the loan documents and LURA.

### **4.2 The Compliance Manual**

WHEDA will provide this compliance manual on WHEDA's Internet site ([www.wheda.com](http://www.wheda.com)). The manual may be printed or viewed on-line. The manual describes WHEDA's compliance monitoring procedures that the owner and management agent must follow. Updates to the manual will be made as changes to the law and/or WHEDA's procedures occur.

The required reporting and certification forms that must be used and submitted to WHEDA, as well as sample tenant eligibility forms are also available on WHEDA's Internet site.

### **4.3 Initial Information**

#### **A. Occupancy Report**

The Online Form 900Q, Quarterly Occupancy report is submitted over the internet to WHEDA on a quarterly basis. The purpose is to report occupancy status at the last day of each quarter. The report requests the following information: calendar year, quarter, project number and name, number of onsite manager's unit, number of vacant units at quarter end date, number of units vacant more than 30 days, number of units on notice to vacate for next quarter, number of households on the waiting list, number of units preleased for next quarter, total rent collected for quarter, and gross rent potential for the quarter. This report is located at: <http://www2.wheda.com/apps/>.

#### **B. Utility Allowance Documentation**

When utilities are paid directly by the tenant, a utility allowance must be used to determine maximum eligible unit rents. If all utilities are paid by the owner, no utility allowance is required.

All utility allowance information must be updated at least annually, or when rates change, and kept as part of the development's records. These records will be reviewed by WHEDA in conjunction with the file reviews.

Rural Development (RD) projects must use RD utility allowances and HUD projects must use HUD utility allowances.

If any tenant/unit in the building receives a HUD Housing Assistance Voucher, use the applicable PHA utility allowance established for the Section 8 Program for those tenants/units. All PHA documentation must be received by the owner/agent and be effective within 90 days of the PHA effective date. If there has been no change in the PHA's utility allowance, this must be documented by the PHA.

If a building is not regulated by either HUD or RD, owners/agents have the choice of using the PHA utility allowance or the HUD Utility Schedule Model which can be found at <http://www.huduser.org/portal/resources/utlmodel.html> (or successor URL).

**Cable television, telephone and internet cost are** specifically excluded from utility allowance calculations.

**Low-income housing units are considered out of compliance when gross rent exceeds the maximum gross rent limit.**

#### 4.4 Compliance Forms

Forms used for determining tenant eligibility may be in any format the owner and/or management agent decides to use as long as they incorporate all required information outlined in Section 5 of this manual.

Sample forms, including the following, are provided on WHEDA's Internet site for optional use by owners and management agents:

- Tenant Income Certification (AHTC Form 300)
- Tenant Income Questionnaire (AHTC Form 305)
- Clarification Record (AHTC Form 310)
- Employment Verification (AHTC Forms 400)
- Social Security Verification (AHTC Form 410)
- Self Employed Income Statement (AHTC Form 500)
- Child Support Verification (AHTC Form 510)
- Public Housing Authority Income Certification (AHTC Form 520)
- Under \$5,000/Zero Asset Certification (AHTC Form 600)
- Divestiture of Asset Verification (AHTC Form 605)
- Asset Verification (AHTC Form 700)
- Home/Real Estate Affidavit (AHTC Form 705)
- Verification of Unemployment Benefits (AHTC Form 900)
- Certification of Zero Income (AHTC Form 905)

## 4.5 File Reviews and On-Site Physical Inspections

WHEDA conducts on-site property inspections and performs file reviews for each project. Additionally, at the time of inspection WHEDA must review any building code violation notices received since WHEDA's last inspection.

WHEDA has the right to review a project's tenant files in-house (at WHEDA), on-site at the project, and/or to perform physical inspections of projects as deemed necessary throughout the compliance period.

### A. Inspection Schedule

WHEDA will conduct on-site inspections of all buildings in the project which will include a physical inspection of both vacant and occupied units. A sampling of files will be for certifications, supporting documentation and rent records. For **new projects** we will conduct the on-site physical inspection and unit reviews within one year of amortization of the permanent loan and future reviews will be conducted on a 1-5 year schedule in accordance with a risk based approach to servicing. WHEDA reserves the right to conduct physical reviews at any time based on information received about the property through a phone call, letter, email, etc.

### B. Notification of Review

During the year a project is scheduled for review:

- i. WHEDA will schedule the inspection date with the owner or management agent.
  - a. The owner and/or agent will be sent a letter confirming the date and time of the inspection.
  - b. Residents will need to be provided with ample notice that WHEDA will be conducting unit inspections and that their unit may be selected for review.
- ii. When performing an in-house (at WHEDA) tenant file review, WHEDA will:
  - a. Notify the owner in writing which unit files have been selected for review.
  - b. Request that the owner mail copies of the selected files and documentation to WHEDA and give the date by which the files must be submitted.

### C. Preparation for the On-Site Physical Inspection

On the day of the inspection, management or site staff will need to be available to accompany WHEDA during the physical inspection portion of the review.

- i. Appropriate keys must be available to access individual apartments, boiler rooms, janitorial rooms, storage areas, etc.

- ii. Copies of any and all building code violation letters/notices received since WHEDA's last inspection, as well as records regarding those repairs, must be on-site and available at the time of the review.

#### **D. Physical Inspection Results**

At the end of the review, WHEDA will leave a copy of the 72 Hour Notice of Critical Violations with the management agent if applicable. The management agent will be responsible to forward a copy to the owner. For any item cited as a Critical Violation, you will be asked to repair the item within 72 hours and provide WHEDA with written documentation that it has been corrected.

WHEDA will send a copy of the Physical Inspection Report to the owner and/or management agent. For any item cited as a violation, you will have 30 days to respond to the potential non-compliance item(s) found.

#### **E. Tenant File Review Results**

An exit interview will be performed and items of concern will be addressed with the site representative. Results from the tenant file review will be sent to the owner and/or management agent. For any item cited as a violation, you will have 30 days to respond to the potential non-compliance item(s) found.

### **4.6 Noncompliance**

If an owner discovers that a tenant has deliberately misrepresented their income level, household size, or any other item used to determine eligibility, the owner must consult state or local landlord-tenant laws to determine whether the tenant can be asked to vacate the unit or the rent is raised to the market rate. The owner is not expected to complete the annual recertification if a tenant is asked to leave or an eviction proceeding is in process.

WHEDA will not consider there to have been noncompliance if tenant fraud is discovered and addressed by the owner prior to notification of a WHEDA review, and the owner satisfies to WHEDA that: (1) the tenant provided false information; (2) the owner did everything a prudent person would do to avoid fraudulent tenants (due diligence) and has implemented any needed changes to avoid future problems; (3) the tenant has vacated the unit (if possible); and (4) there is no pattern of accepting fraudulent tenants.

The owner will have no more than **30 days** from the date of written notification by WHEDA in which to submit any missing report(s), information, or documentation.

## **5. Qualifying Tenants**

Potential tenants for rent-restricted units must be advised early in the application process that there are maximum income limits that apply to these units. Management must explain to potential tenants that the anticipated gross income of the

family/household expecting to occupy the unit must be included and verified prior to occupancy and annually self-certified for continued eligibility.

It is imperative that all sensitive tenant information (bank accounts, social security number, etc.) be treated in a secure and confidential manner. It may be necessary to explain to the applicant that all information provided is considered confidential and will be handled accordingly.

Determination of annual income of individuals and area median gross income adjusted for household size must be made in a manner consistent with HUD Section 8 income definitions and guidelines. HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs is a good reference guide. The HUD Handbook 4350.3 and HUD notices are available on HUD's Internet site (<http://www.hud.gov>).

## 5.1 The Tenant Application

A fully completed application is critical to an accurate determination of tenant eligibility. The information furnished on the application must be used as a tool to determine all sources of income, including total assets and assets disposed of for less than fair market value during the previous two years and actual and/or imputed income from assets. In the event the management agent's application does not include a section for use in collecting asset and asset income information, AHTC Form 305, "Tenant Income Questionnaire" may be used.

At the time of application, it is the management agent's responsibility to obtain sufficient information on all prospective tenants to completely process the application. To facilitate this process, WHEDA recommends that roommates complete separate applications. **The application must include:**

- The name, birth date, age, social security number and gender (sex) of each person that will occupy the unit. The applicant's legal name must be given just as it will appear on the lease and tenant income certification.
- All sources and amounts of current and anticipated annual income expected to be derived during the twelve-month certification period. This includes assets now owned and the income from those assets as well as any assets disposed of for less than fair market value during the previous two years.
- The signature of the applicant and the date the application was completed.

## 5.2 Tenant Income Verification

All regular sources of income, including income from assets, must be verified. Verifications must be received by the management agent **prior to** the execution of the Tenant Income Certification and actual move-in. Owners must use verification methods that are acceptable. The owner is responsible for determining if the verification documentation is adequate and credible. The most recent HUD 4350.3

should be referenced for acceptable verification methods. The preferred method of verification is third party however if third-party verification is not available, owners must document the tenant file to explain. Tenant income verifications must be date stamped as they are received.

### **5.3 Initial Tenant Income Certification Guidelines**

Once all the income and asset information has been obtained and computed, management personnel must prepare a Tenant Income Certification (AHTC Form 300) for each household. The form is a legal document which, when fully executed, qualifies applicants to live in the set-aside units in the project. The Tenant Income Certification (TIC) must be executed along with the lease prior to move-in. The following guidelines apply:

- No one may live in a low-income set-aside unit in the project unless he or she is certified and under the lease.
- Upon receipt of all verifications, owners or managers must review all documentation and calculations, as necessary. If all requirements for eligibility are met, the applicant is qualified.
- Management must instruct the prospective tenant(s) to sign the TIC exactly as their name appears on the form.
- It is preferred that the TIC be executed on the date of move-in.

### **5.4 Annual and Interim Income Recertification Requirements**

On an annual basis, a self-income certification must be completed for each low-income tenant.

Upon receipt of all verifications, owners or managers must determine if the household is below 140% of the current qualifying income limit (see Section 3.4 B. on the Available Unit Rule).

#### **A. Recertification of Income**

WHEDA monitors recertification of income 365 days from the later

of:

- i. The move-in date; or
- ii. The one-year anniversary of the previous certification.

#### **B. Adding a New Member to an Existing Household**

In the event a new member is added to a qualifying household, the following steps must be taken:

- i. The prospective tenant must complete an application for residency and verifications of income and assets must be completed;
- ii. The prospective tenant's income must be added to the current household's income. The combined household income must be compared to the maximum allowable income limit in effect at the time, based on actual (projected) household size; and
- iii. If the combined household's income is greater than 140% of the current maximum allowable income, a determination must be made as to whether the building or project will be in violation set-aside requirements.

**Note:** If at any time the household composition changes and none of the original household members live in the unit, then the household is considered a **new** household. The new household must meet all initial qualifying income limitations and requirements to be eligible for a set-aside unit unless the newly created household was income qualified, or the remaining tenants were independently income qualified at the time they moved into the unit.

### **C. Subtracting a Member from the Existing Household**

Decrease in family size does not trigger the immediate income certification of a new household. Subsequent annual income recertification will be based on the income of the remaining members of the household. If the remaining household's income is more than 140% of the income limit at the time of the annual recertification, then the Available Unit Rule is applicable.

### **D. Effect of Move-in Prior to Permanent Loan Closing/Conversion Date**

In the event that a tenant moves into a building prior to the permanent loan closing and the verification of the tenant's income was performed more than 120 days prior, the tenant must be recertified. If there was a construction loan the 120 day period begins when the property converts to the permanent loan.

### **E. Timely Notice**

If the owner gives timely notice then initiates an eviction proceeding and the household vacates the unit, no recertification is necessary. However, should the eviction proceedings be terminated, or result in the household remaining, a recertification will be due 120 days from the determination.

## **5.5 Miscellaneous Rules Governing Low-Income Eligibility of Units**

### **A. Live-in Care Attendant**

If a tenant in a unit requires a live-in care attendant, the attendant is not included as a household member for purposes of determining the eligible income and rent limits. (The attendant is considered for purposes of determining the appropriate unit size.)



The need for a live-in care attendant must be certified. The live-in care attendant must abide by the lease agreement, but has no survivorship rights to the apartment. If the tenant who requires assistance moves (or no longer requires assistance), the attendant must vacate as well.

### **B. Pregnant Woman or Household in the Process of Adoption**

A pregnant woman or a household in the process of adopting a child must include the additional person(s) for the purpose of determining the maximum allowable income. Applicant/tenant self-certifies to pregnancy. Owner may not verify further than self-certification.

### **C. Section 8 Rental Voucher or Certificate**

Owners are prohibited from refusing to lease to a prospective tenant based solely on the fact that the applicant holds a Section 8 rental voucher or certificate. Additionally, language prohibiting discrimination based on Section 8 status is included in the Land Use Restriction Agreement entered into by the owner and WHEDA.

### **D. Student Eligibility**

Full and part-time students are eligible.

## **5.6 Leases and Rent Limits**

Rent and utilities on the set-aside units may not exceed the amounts allowed by the LURA. All residents occupying set-aside units must be certified and under the lease.

### **A. At minimum, the lease must include:**

- i. The legal name of parties to the agreement and all other occupants;
- ii. A description of the unit to be rented;
- iv. The date the lease becomes effective;
- v. The term of the lease;
- v. The rental amount plus any other amounts paid by the tenant for parking, pets, air conditioning, etc.;
- vi. The use of the premises;
- vii. The rights and obligations of the parties, including the obligation of the tenant to certify annually to income as defined herein; and
- viii. The correct date of move-in or date tenant takes possession of the unit.

## **B. Initial Lease Term**

There must be an initial lease term of at least 6 months on all set-aside units. (See C. below for exceptions for housing for the homeless and single room occupancy). The six month requirement may include free rental periods of one month or less. Succeeding leases are not subject to a minimum lease period; however a lease must be in effect.

## **C. Single Room Occupancy**

Single room occupancy (SRO) housing must have a minimum lease term of one month. SRO housing is allowed to have tenants share bathrooms, cooking facilities, and dining areas.

Federal rules allow for month-to-month leases for the following types of SRO housing for homeless individuals:

- i. SRO units in projects receiving McKinney Act and Section 8 Moderate Rehabilitation assistance;
- ii. SRO units intended as permanent housing and not receiving McKinney Act assistance;
- iii. SRO units intended as transitional housing that are operated by a governmental or nonprofit entity and providing certain supportive services.

## **D. Evictions**

The owner must not evict, non-renew the lease, or otherwise terminate the tenancy of an existing tenant of any low-income unit for other than good cause.

# **6. Contact and Address Information**

## **6.1 Mailing Addresses and Fax Number**

### **A. Written Correspondence**

All written correspondence (including report submission) must be addressed as follows:

WHEDA  
RISK AND COMPLIANCE  
PO BOX 1728  
MADISON WI 53701-1728

### **B. Fax Number**

WHEDA Risk and Compliance general fax number is: 608-261-5928

This policy will be reviewed periodically and may be modified. Furthermore, WHEDA may waive or adjust any items contained within, on a case-by-case basis, for good cause

shown to address unforeseen circumstances. As stated within the Land Use Restriction Agreement, individuals who meet the income limitations applicable to qualifying households, whether prospective, present or former occupants of the project, shall have the right to enforce such Agreement.