

Florida Housing Finance Corporation Guidance for Compliance-Related Issues

Following are questions and corresponding answers (the latter provided by Florida Housing Finance Corporation (FHFC or Florida Housing)) in connection with various compliance-related issues. Owners may use the following Q & A's as guidance in dealing with such issues. Please note that the answers posted on this website reflect Florida Housing's application of current IRS regulations. These answers are subject to change due to changes in Internal Revenue Service (IRS) regulations or policies. Any such changes will be published by Florida Housing at this website. Owners should take caution that changes in these answers may negatively affect a development's operations from that originally projected. Such changes will not relieve the owner of its responsibility for complying with new regulations or policies implemented by the IRS. Owners having questions regarding general or specific application of the following should contact their monitoring agent or FHFC. Where applicable, general questions will be posted to this website for all owners' reference.

Application Fees

1 **Q:** *Can application fees be charged to an applicant without being included in the calculation of gross rent for purposes of section 42(g)?*

A: “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 for checking tenant qualifications at the project.

As an alternative, it is also acceptable for the applicant to pay the fee directly to the third party actually providing the applicant's rental history.”

“Treatment of Application Fees: PLP 9330013”*Low Income Housing Credit Newsletter*,
Internal Revenue Service, November 2004

2 **Q:** *Has Florida Housing established a safe harbor for application fees?*

A: Yes, Florida Housing's safe harbor for application fees is \$85.00 per prospective adult tenant. Developments may charge application fees up to \$85.00 for the recovery of average expected out-of-pocket costs for checking tenant qualifications without being required to provide supporting documentation. Additionally, Florida Housing may approve and allow application fees to be charged in excess of \$85.00 for recovery of average expected out-of-pocket costs for checking tenant qualifications when the development documents that the average expected out-of-pocket costs exceed \$85.00. This guidance does not constitute legal or tax advice and does not offer any assurance as to what position the Internal Revenue Service would take on application fees charged in excess of average expected out-of-pocket costs for checking tenant qualifications.

Reference: [IRS Private Letter Ruling 9330013](#)

“Issue 1: Whether application fees are gross rent under section 42(g)(2) of the Code? Taxpayer charges an application fee at ten of the projects. Application fees are charged to cover the cost of checking a prospective tenant’s income, credit history, and landlord references. The costs vary from project to project, as different credit checking service companies charge different prices. The fee is intended to recoup only actual out-of-pocket costs of checking credit and landlord references. The fees charged are comparable to those charged in the geographic area surrounding the particular project. In all cases, no amount is charged in excess of the average expected out-of-pocket costs of checking tenant qualification at each project. For example, at the Project M, Project F and Project K projects, the application fee charged is the actual cost of the third party credit checks and is paid directly by the applicant to such third party. The collection of application fees is standard industry practice in the apartment management business.

Analysis and Ruling:

.....Rent in the context of section 42 of the Code is a periodic charge for the right to occupy or use someone else’s property. Thus, Taxpayer’s one-time application fee that reimburses their out-of-pocket expenses for checking credit, and landlord references is not rent under section 42 (g)(2).”