



Rental Management Guidebook

For HOME and HTF Projects

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Contents

Chapter 1: Introduction	1
Chapter 2: Management Plan	3
Management Agreement.....	3
Tenant Participation Plan.....	4
Chapter 3: Marketing and Leasing	5
Tenant Selection Plan	5
Waiting List	6
Fair Housing and Affirmative Marketing.....	9
Reasonable Accommodations.....	10
Leasing of Accessible Units	11
Violence Against Women Act.....	11
Lease Requirements.....	12
Chapter 4: Income and Rent Restrictions	14
Income Limits.....	14
Definition of Household Income	14
Income from Assets	15
Verification of Income.....	16
Rent Restrictions	18
Utility Allowances	19
Maintaining Unit Mix	19
HOME Projects with Floating Units.....	20
HOME Projects with Fixed Units	21
HTF Units.....	21
Chapter 5: Property Maintenance and Capital Improvements	22
State/Local Code and UPCS.....	22
Maintenance expectations, e.g. work order tracking, preventative schedule, etc.	22
Capital Needs Planning and Replacement Reserve	23
Chapter 6: Financial Standards and Oversight.....	25
Accounting Standards and Required Accounts.....	25
Operating Receipts and Expense Account	25

Security Deposit Account.....	25
Replacement Reserve	25
Operating Reserve	26
Preservation Reserve	26
Budget Review and Approval.....	26
Surplus Cash Distributions	27
Financial Reporting Requirements.....	27
Audit.....	27
Monthly Financial Reporting.....	27
Chapter 7: Monitoring, Recordkeeping, and Reporting	28
Monitoring by the Fund	28
Monitoring Approach and Schedule	28
Desk Monitoring.....	28
Onsite Monitoring.....	29
Monitoring Fees to the Fund	30
Recordkeeping requirements	30
Reports Due to Fund	30
Chapter 8: Low Income Housing Tax Credits	32

Chapter 1: Introduction

The State of West Virginia, acting through the West Virginia Housing Development Fund (the Fund), receives funding from the HOME Investment Partnerships Program (HOME) and the national Housing Trust Fund (HTF), both of which are managed by the U.S. Department of Housing and Urban Development (HUD).

The Fund provides HOME and HTF funding to owners and developers of affordable rental housing on favorable terms. In return, property owners are required to meet various ongoing compliance requirements for an “Affordability Period” of up to 30 years. At its core, ongoing compliance requires an owner to adhere to income and rent restrictions on assisted units, maintain the physical integrity of the property, and follow various federal requirements pertaining to the marketing, leasing, and management of the project. The Fund is responsible for overseeing its portfolio of funded projects, ensuring they remain in compliance with applicable regulations and reviewing their ongoing financial viability.

Owners of HOME and HTF funded projects sign a series of legal documents with the Fund – including a written agreement that sets the terms of the overall relationship between an owner and the Fund; a note and deed of trust outlining the financial terms of the transaction and securing the HOME/HTF investment; and a declaration of restrictive covenants that runs with the land, applying to any successors in interest, and providing additional legal means for the Fund to enforce ongoing compliance.

Compliance with the most current version of this guide is required of all HOME/HTF-assisted projects throughout the Affordability Period. It is intended to provide practical guidance on both the core regulatory requirements of HOME/HTF funding and the Fund’s administrative and business expectations. While the guide supplements and expands on the provisions of a project’s legal documents, it does not replace them. It is not all inclusive and may not cover every potential requirement or issue pertaining to an owner’s compliance, administrative, or financial obligations. Consequently, owners (and their designated management agents) are advised to carefully review the project-specific legal documents.

While HOME and HTF are distinct and separate programs, they have substantial areas of overlap. For administrative efficiency of both Fund staff and our partners, the Fund generally only makes distinctions between each program where the federal requirements themselves vary or where there are specific policy reasons for doing so. Consequently, most requirements of this guide apply equally to HOME and HTF. Where the requirements differ, special attention is paid to explaining how the individual programs vary.

Additionally, some requirements may vary slightly based on when a project received funding (evidenced by the date of the written agreement). HUD made substantial updates to the HOME program in 2013. Some of these changes only affect projects that received funding commitments on or after the effective date (August 23, 2013 for most provisions) while others were applicable to the entire portfolio of existing HOME-assisted projects. Thus, the guide also notes when requirements vary based on when projects were funded.

Understanding of and compliance with all applicable requirements is the ultimate responsibility of funded owners. The Fund does not assume any liability for any lack of knowledge or diligence on the part of

owners, who are also responsible for the actions of any contracted management company or other such agent.

Any questions about apparent conflicts between project-specific documents and this guide should be directed to appropriate Fund staff.

Failure to comply with the requirements of this guide may result in negative capacity assessments for underlying project owners (and/or their contracted management companies) pertaining to future project applications.

Chapter 2: Management Plan

Successful and compliant operations start with planning. Prior to leasing any units, the Fund requires an owner, with the participation of any contracted management company, develop a management plan. The management plan specifies the owner and manager's plan for operating the property. It should address all aspects of the property operations including marketing and leasing, compliance with HOME/HTF income and rent limits, property maintenance, and financial management.

At a minimum the plan must:

1. Explain how the owner/manager will perform standard operations such as accepting applications, income and asset verifications, waiting list management, and compliance with the Affirmative Fair Housing Marketing Plan 'AFHMP'.
2. Outline staffing; including job descriptions for on-site and office personnel.
3. Develop procedures for money management, rent collection, reporting and record keeping, and the procedures for monitoring the reserve account and insurance policies.

Management Agreement

A management agreement is required if the owner contracts with an outside agency or individual to conduct its property operations. It must describe the contractual relationship between the owner and the manager and require the manager to conduct its operations in compliance with the Fund's requirements and HOME/HTF rules and regulations.

The management agreement commits the manager to operating the property per the management plan and other requirements. The agreement provides the legal authorization for the property manager to act as the owner's agent in carrying out authorized activities such as tenant selection and screening, rent collection, eviction of tenants and other management responsibilities as the owner and manager may agree upon.

The management agreement typically includes an indemnification of the manager for good faith actions taken to carry out the owner's policies and an acknowledgement that the manager is not financially obligated to fund the project expenses.

The agreement should state the manager's compensation and the procedures for terminating the agreement if either the owner or the manager fails to comply with the terms of the agreement.

The owner's selection of contracted manager must be subject to the Fund's review and approval. Additionally, the management agreement must provide the Fund with the right to require the termination of the agreement and replacement of the contracted manager.

The Fund must review the management plan and management agreement before the property owner begins to solicit for tenants.

Tenant Participation Plan

For projects funded from the HOME program's "CHDO set-aside," federal regulations require that the project owner develop and follow a tenant participation plan, allowing income eligible tenants to participate in management decisions. For example, an owner could establish a tenant council that would be given the opportunity to provide input on house rules, suggest community programming, voice tenant concerns, etc.

CHDO projects must also adhere to a grievance procedure, providing tenants of HOME-assisted units with a means of appealing management decisions/actions.

Both the tenant participation plan and grievance procedure must be approved by the Fund.

While these requirements only apply to HOME-funded projects from the CHDO set-aside, the Fund encourages all owners to provide meaningful opportunities for tenants to participate in management decisions and to provide a grievance procedure or other means of informal dispute resolution.

Chapter 3: Marketing and Leasing

Tenant Selection Plan

All HOME/HTF projects must have a written Tenant Selection Plan (see 92.253 and 93.303). The Tenant Selection Plan must be approved by the Fund prior to advertising the availability of units. Owners should review the Tenant Selection Plan at least annually to ensure that it reflects current operating practices, program priorities, and HUD requirements. Changes to the Tenant Selection Plan during the Affordability Period must also be provided to the fund for review and approval.

The primary purposes of the Tenant Selection Plan are to outline requirements an applicant must meet and to provide for waiting list procedures. It provides a basis for ensuring that all applicants are treated equally and fairly and assists owners in attracting responsible tenants. Upon request, the Tenant Selection Plan must also be made available to any potential applicant seeking to occupy a HOME/HTF-assisted property.

At minimum, the Tenant Selection Plan must explain:

1. Project specific requirements such as income limits applied to HOME/HTF-designated units;
2. Whether units are exclusively set-aside for or a preference is provided for any particular segment of the population (e.g. elderly, disabled, homeless, veterans, domestic violence victims, etc.). Any such exclusions/preferences must be approved by the Fund in its written agreement.
3. Requirements for providing Social Security Numbers 'SSN' and policies for allowing extra time to provide proof of SSNs and procedures used when an individual has no SSN.
4. Citizenship/residency requirements including policies regarding verification of citizenship.
5. Procedures for taking applications and pre-applications (if applicable) and policies that will affect the order that applicants are selected from the waiting list, including the definition of any preferences adopted for the property and selection or rating criteria to be used.
6. Applicant screening criteria, including standards beyond the income limits imposed by HOME/HTF, such as:
 - a. Credit reports/history;
 - b. Rental history;
 - c. Minimum income (or maximum rent burden) standards;
 - d. Criminal history, including but not limited to placement on a sex offender registry.

The plan must detail what the source(s) of information that may be used in considering an application and what the thresholds/items in the background information that may result in the denial of an application.

Note, owners may not reject or otherwise exclude any applicant on the basis that the applicant holds a Housing Choice Voucher (aka Section 8), is receiving HOME tenant based rental assistance, or is otherwise the recipient of another similar form of state or federal tenant based rental assistance (such as a HUD VASH Voucher).

7. Procedures for rejecting ineligible applicants including a description of the circumstances under which the owner/manager may reject an applicant and extenuating circumstances that may allow for a waiver from standard requirements.

Rejections – Written notice must be provided to any rejected applicant. Rejection notices must explain the reason(s) for rejection and source of information used to make the determination. Rejected applicants must be informed of their right to respond to the owner/manager in writing or request a meeting within 14 days to dispute the basis for rejection. Also, the notice must advise that persons with disabilities have the right to request a reasonable accommodation to enable them to participate in the appeal process.

8. Any occupancy standards used by the owner/manager to determine appropriate unit size, and procedures to place families on the waiting lists for more than one unit size.
9. Unit transfer policies including policies for selecting between applicants on the waiting list and current tenants who need a unit transfer because of family size or composition, a medical reason certified by a doctor, or a transfer based on the need for an accessible unit.
10. How applicants may request reasonable accommodations under Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Amendments of 1988 and the owner's process for granting such accommodations.
11. Policy for managing the waiting list, including the methods of advertising used to announce opening and closing the waiting list if applicable.

In developing the Tenant Selection Plan, owners must also be mindful of various requirements including Fair Housing (including affirmative marketing), Section 504, and the Violence Against Women Act (VAWA) which are covered later in this chapter.

Waiting List

In general, HOME/HTF require that the Tenant Selection Plan provides for the selection of tenants from a written waiting list in the chronological order of their application. However, in some cases the selection order may be affected by other factors including whether:

1. The Fund has approved any preferences for specific populations such as homeless individuals, special needs applicants, etc.;
2. The available unit is physically accessible or designed for tenants with sensory impairment;
3. The size of the available unit is appropriate for the next applicant's household size under the project's occupancy standards; and

4. The next applicant's income meets the "unit mix" requirements of the project's income restrictions (e.g. if the next applicant is over the income limit for the available unit, but not the project as a whole, he/she may be passed over in favor of the next applicant whose income is appropriate for the unit).

To ensure that applicants are appropriately and fairly selected for the next available (i.e. vacant) unit and to provide an auditable record of applicant additions, selections, withdrawals, and rejections, the Fund has adopted the following requirements:

- Each household who completes an application/pre-application must be added to the waiting list.
- The information recorded at the time of application will include at minimum:
 - Date and time the application/pre-application was submitted
 - Name of head of household
 - Contact information (telephone number)
 - Identification of the need for an accessible unit
 - Preference status, if any
 - Unit size
 - Annual income level (50% or 60% of area median)
 - Space for notes regarding the results of owner/manager contact. Notes should include the date and a brief explanation of all actions taken regarding the application (i.e. left message, scheduled interview, began processing, etc.).
- A blank space will be left in the final right-hand column of the waiting list for recording actions taken with regard to the applicant.
 - Applicant **names should never be removed from the waiting list**. Instead, the "outcome" field will be used to record the final action taken with respect to a given household and the date of that action. This could include a move-in, rejection, withdrawal by the applicant, closing of the record due to the applicant's failure to respond to a request to renew their interest, etc.
- The results of each outcome should be color coded using different colored highlighters for applicants who have moved into a unit, applicants who were rejected, and applicants who withdrew or are no longer interested, etc.

While a manually maintained waiting list is often preferable and easier to maintain, electronic waiting lists are acceptable provided:

- The lists have a mechanism for maintaining the date and time of each applicant's placement on the list and a way to document changes made to the list.
- The electronically maintained waiting must be printed as often as necessary to show each applicant's placement on and selection from the list.
- The report must be printed at least monthly and the time and date of the printout must appear on the report.

The owner/manager must document removal of any names from the active waiting list with the time and date the record was closed in the notes section of the list.

The owner/manager should update the waiting list on a regular basis to ensure that it is current and any applicants who should no longer be on the active list have had their records closed. The waiting list should be updated at least semi-annually.

During updates, if the composition of the family changes the owner/manager must update the waiting list and decide if the household needs the same sized unit or a unit of a different size. The tenant selection plan should state if the household retains their original placement on the waiting list. Also, if the applicant's contact information changes, such as a different address or phone number, the owner/manager must note the new information along with the date it was received on the application submitted by the family and ensures that the waiting list is accurately updated.

An owner may adopt the following reasons for removing a name from the active waiting list:

- An applicant no longer meets eligibility requirements for the HOME Program
- The applicant fails to respond to a written notice
- The applicant is offered and rejects two units in the property
- Mail sent to the applicant's address is returned as undeliverable
- The family composition has changed, and no appropriate-sized unit exists in the development
- The applicant has found other housing and is no longer interested in the property

It is a good practice to update the waiting list regularly to ensure that only families who need and want housing assistance remain on the list. HUD rules do not dictate the procedures for updating the list; however, the process typically begins with a standardized mailing to all waiting list applicants. The mailing should state what form of contact with the property is necessary to verify their continued interest. The updated request should include a deadline for the applicant to contact the owner/manager and clearly explain what will happen if the deadline date is not met.

If no response is received by the deadline the applicant may be removed from the active waiting list by having their record closed. The owner/manager must document the removal noting the reason on the waiting list itself and maintaining a copy of the letter in the files. If the letter is returned as undeliverable, the returned letter should also be kept in the file. The waiting list must never be re-written and the waiting list must be kept on-site for review FOREVER!

The goal is to provide an auditable record of applicant additions, selections, withdrawals and rejections. During monitoring (see Chapter 7), the Fund's Asset Management Specialist must be able to:

- Find an applicant on the waiting list
- Readily confirm that an applicant was housed at the appropriate time based on unit size and income targeting
- Trace various actions taken with respect to an application for residency
- Waiting lists will be reviewed as a part of the scheduled monitoring review. Manually maintained waiting lists must be maintained as a part of the permanent record. The list must not be 'rewritten'.

Fair Housing and Affirmative Marketing

The federal Fair Housing Act prohibits discrimination in the rental of real estate on the basis of race, color, religion, sex, national origin, disability, or familial status. West Virginia's state Fair Housing Act also provide protections on the basis of ancestry and blindness. Owners must conduct their business, including the development and application of the Tenant Selection Plan, in compliance with all applicable fair housing laws. This is true whether a project is HOME/HTF-assisted or not. However, HOME/HTF projects are subject to a range of additional requirements that are not generally applicable to any property owner.

HUD's **Equal Access Rule**, codified at 24 CFR 5.105(a)(2), requires that HUD-assisted housing (including HOME/HTF) be made available without regard to an applicant or occupant's actual or perceived sexual orientation, gender identity, or marital status. Owners are also prohibited from making inquiries as to any individual's sexual orientation or gender identity.

Additionally, HOME/HTF-assisted developments with five or more assisted units are required by federal regulation to follow affirmative marketing procedures. The Fund has chosen to apply this requirement to all HOME/HTF-assisted development regardless of how many units have been designated as HOME/HTF-assisted.

An **Affirmative Fair Housing Marketing Plan** (AFHMP) is designed to identify those minority and underserved populations (i.e. protected classes) who are otherwise "least likely to apply" to a given project and outline steps and actions an owner will take to specifically market a project to those populations. The goal of affirmative fair housing marketing is to attract eligible persons in the market area to the available housing without regard to race, color, religion, national origin, sex, familial status, disability, ancestry, blindness, sexual orientation, gender identity, or marital status.

The Fund must approve a project's AFHMP prior to marketing units for new projects and approve any changes or updates to the AFHMP during the Affordability Period. Owners are required to review/renew their AFHMP at least every 5 years.

The Fund requires Owners to use either standard HUD AFHMP formats. It accepts [HUD-935.2a](#) (for projects of five or more units) or [HUD-935.2b](#) (for smaller projects and those involving single-family homes).

An owner's affirmative marketing procedures must include:

1. Methods for informing the public about fair housing laws such as using the Equal Housing Opportunity logo, slogan or statement in press releases and solicitations for tenants and written communication to fair housing and other groups.
2. Requirements and practices to carry out the affirmative marketing procedures and requirements such as displaying the fair housing poster and Equal Housing Opportunity logo and slogan, or statement.

3. Procedures to inform and solicit applicants from persons in the housing market area who are least likely to apply to reside in the development without special outreach, such as community organizations, churches, employment centers, fair housing groups and housing counseling providers.
4. Records to be maintained that describe the actions taken to affirmatively market the units and assess the results of these actions.

Additional detail on the preparation of an AFHMP can be found in the Funds AFHMP guide.

An owner must report to the Fund if it receives a complaint alleging a fair housing violation.

Reasonable Accommodations

In addition to owner's affirmative obligations to operate their properties in a nondiscriminatory manner and the specific requirements to make properties physically accessible to persons with disabilities, owner/managers must also consider requests for reasonable accommodations from applicants and tenants with disabilities. A **reasonable accommodation** is a change, exception or adjustment to a program, service, building, dwelling unit, or workplace that will allow a qualified person with a disability to participate fully in a program, take advantage of a service, live in a dwelling or perform a job.

Under the Fair Housing Act, it is illegal for an owner/manager to ask if an applicant or anyone associated with the applicant or resident has a disability, or to ask about the nature or severity of the person's disability. However, property owner/managers must have a method to inform applicants that they are entitled to reasonable accommodations when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling. It is recommended that a statement regarding the right of individuals with disabilities to request reasonable accommodations be posted and included in written materials given to applicants and tenants.

- A request for reasonable accommodation must be made by or on behalf of the person with the disability. While it is not required, it is recommended that the request be in writing, whenever possible. Denial of a reasonable accommodation request cannot be based on an individual's failure or refusal to make the request in writing.
- The owner/manager must grant the reasonable accommodation so long as the accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations.
- The owner/manager may suggest an alternative accommodation that will effectively address the disability-related needs of the applicant without imposing an undue financial or administrative burden and without fundamentally altering the operations.
- Additional fees or security deposits cannot be charged as a condition of receiving a reasonable accommodation.
- Providers have an obligation to provide prompt responses to reasonable accommodations requests.

An owner/manager that does not allow residents to have animals must modify the property policies and allow a tenant with a disability to have an assistance animal if the animal is needed as a reasonable

accommodation. Assistance animals or support or therapy animals are not pets; they perform many disability related functions such as guiding the seeing impaired, alerting persons who are hard of hearing to sounds, fetching items, alerting persons to impending seizures or providing emotional support. The animal is not required to have formal training; however, it should perform the disability-related assistance or provide the disability-related benefit needed by the person with the disability.

The owner/manager may not charge a security or pet deposit for service/assistance animals; however, the owner/manager may charge the tenant for any damages the animal causes to the unit or common areas of the property, if the owner/manager regularly charges tenants for damages they cause to the premises. Additionally, the owner/manager may impose rules that apply to all animals in the property. It is not acceptable for a service or assistance animal to generate unreasonable noise, bite residents or guests, or damage the apartment or grounds.

Leasing of Accessible Units

For projects that include units designed to be physically accessible or accessible to tenants with sensory impairments, the Owner must provide a preference to any existing or potential tenant who, by virtue of a disability, requires or would benefit from the provision of an accessible unit when available. When an accessible unit becomes available, Owner shall offer it first to an existing tenant in need of such a unit and second to the next applicant on the Project's waiting list who otherwise needs such a unit.

Only if no existing tenants or waiting list applicants require an accessible unit may such a unit be offered to an applicant not otherwise requiring an accessible unit. In such cases, owners are encouraged to include provisions in the lease requiring such a tenant to transfer to an available, comparable, non-accessible unit in order to make the accessible unit available to a tenant or applicant in need of one.

Violence Against Women Act

Signed into law on March 7, 2013 the Violence Against Women Act (VAWA) was reauthorized and updated. VAWA previously provided protections to victims of domestic violence and applied to a range of HUD programs. As revised, VAWA was expanded to cover most HUD programs – including both HOME and HTF – and to expand the classes of individuals covered, for example explicitly include survivors of sexual assault. In late 2016, HUD issued a series of regulations to integrate these provisions into both program-specific requirements and general HUD-wide provisions.

While certain portions of the “new” regulations do not explicitly apply to HOME projects that received funding commitments prior to December 16, 2016, the core statutory protections took effect by operation of law upon enactment and are applicable to HOME projects that received funding commitments on or after March 7, 2013 (even if not explicitly included in the project-specific legal documents).

Despite not technically applying to HOME projects prior to March 7, 2013, the Fund strongly encourages all existing HOME-funded projects to operate in compliance with the VAWA provisions.

These generally include:

- VAWA protections apply to any individual (regardless of sex, gender, or sexual orientation) who is a victim of domestic violence, dating violence, sexual assault, or stalking;
- No individual can be denied tenancy, evicted, or otherwise have their occupancy rights terminated on the sole basis of being a victim, this includes on the basis of any criminal activity

directly related to their victimization. For example, despite lease provisions that allow eviction on the basis of a household member's criminal activity, a lawful resident cannot generally be evicted if he or she was the victim of a domestic violence incident perpetrated by another member or guest of the household;

- Owners must make use of a Fund-provided [VAWA Notice \(HUD-5380\)](#), [Certification \(HUD-5382\)](#) and [Lease Addendum \(HUD-91067\)](#). Together these notify applicants and tenants of VAWA's protections, allow owners to document an individual's claim of VAWA protections and its basis, and ensure leases comport with VAWA's requirements. (This provision technically only applies to projects funded after December 16, 2016 but is strongly encouraged for earlier projects as well.);
- Owners must allow for the bifurcation of the lease to ensure that a victim can maintain occupancy even if another member of the household is being evicted or otherwise having their occupancy rights terminated;
- Owners must comply with the Fund's [VAWA Emergency Transfer Plan](#). Owners will be required to waive any standard early termination fees for any tenant making an emergency transfer; and
- Owners must maintain the confidentiality of all VAWA-related information, including any documentation of an individual's victimization or claim of VAWA protections.

Lease Requirements

There must be a written lease between the property owner and the individual tenants of HOME/HTF assisted units, an original copy of which must be maintained in the tenant file. The lease must be for a period of at least one year unless the owner and tenant have mutually agreed to a shorter term. The lease should include the monthly rent amount, security deposit and other provisions applicable to residency in the unit.

The lease must provide for appropriate written notice to the tenant of any rent increases or any termination or refusal to renew the lease. An owner must have good cause (i.e. serious or repeated violations of the terms of the lease, including violations of state or local law) prior to terminating or refusing to renew a lease. Good cause does not include an increase in a tenant's income or a tenant's refusal or failure to purchase a unit offered for sale to existing tenants.

In no case may a lease contain any of the following **prohibited lease terms**:

1. *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
2. *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;
3. *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
4. *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

5. *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
6. *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;
7. *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease;
8. *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses; and
9. *Mandatory supportive services.* Agreement by the tenant to accept supportive services that are offered. (Note, there is a limited exception to this prohibition. In HOME-assisted transitional housing projects, a tenant may be required to follow a transitional housing supportive services plan. However, such a plan cannot require participation in disability-related services. HTF does not permit transitional housing.)

To implement appropriate tenant protections and exclude any prohibited terms, the Fund requires the use of a [HOME Lease Addendum](#) (separate from the VAWA Lease Addendum) for all HOME-assisted projects and an HTF Lease Addendum for all HTF-assisted projects.

While “House Rules” are permissible in rental projects developed with HOME funds, the rules must be fair, reasonable and evenly applied among all the tenants. House Rules that are not part of the lease agreement must be executed by the tenant, a copy provided to the tenant, and a copy retained in the tenant file.

Chapter 4: Income and Rent Restrictions

Income Limits

To qualify to live in HOME/HTF-assisted unit, a household must meet certain income requirements which vary by location (i.e. county) and household size.

Income limits for HOME and HTF are published annually by HUD. In both cases, HUD publishes program-specific income limits, and neither program uses the “Section 8” income limits that are utilized for many other HUD programs (including Section 8, Housing Choice Vouchers, and Section 811 and 202) and by the Low-Income Housing Tax Credit program. The Section 8 limits are typically published first each year followed later by the HOME and HTF income limits. Until new income limits are published for the specific program, the limits remain in effect.

Income limit charts will be distributed by the Fund as they are updated. Owners can also obtain the most current income limits from the HUD Exchange website using one of the following links:

- [HOME Income Limits](#)
- [HTF Income Limits](#)

In some cases, a project may have received additional points in a competition of HOME or HTF in exchange for agreeing to lower income limits than the federal regulations otherwise require. If that is the case, the lower limits will continue to apply to that project. The project-specific legal documents should outline more restrictive provisions. Barring such provisions, in general:

- A tenant moving into a **Low-HOME unit** must have an income at or below 50% of the Area Median Income (AMI) based on household size as published by HUD.
- For **High-HOME** units, the initial tenant (e.g. following completion of construction) must have an income at or below 60% of AMI. Subsequent tenants, at move-in, must have incomes at or below 80% AMI.
- For **HTF units**, tenants must have incomes at or below the HTF-income limit based on household size. HUD calculates the qualifying income to be the lesser of 30% AMI or the federal poverty limit, whichever is higher.

Definition of Household Income

While the specific limits vary by program, both HOME and HTF use the same definitions of “household” and “household income.”

In general, a **household** is composed of everyone who is expected to live in or occupy a given unit, without regard to whether the individuals are members of the same “family” (i.e. related by blood or marriage). This includes both adults and minors. Family members who are not members of the household, such as adult children on active military duty or institutionalized family members, are not counted in determining household size or income.

Additional special circumstances and situations apply:

- Foster children, foster adults, live-in aides, and the children of live-in aides are not considered members of the household, so they are not included in the household size for income eligibility purposes nor is their income, if any, included in the household's gross income.
- A child subject to a shared custody agreement who resides in the household less than 50% of the time is not counted as a household member.
- Adult students living away from home may be included or excluded at the option of the head of household. If they are excluded, their income is not counted. This exception does not apply to a student who is the head of household or his/her spouse.
- Family members who are permanently absent from the household (e.g. a family member in a nursing home or other similar facility) may, at the option of the head of household, be excluded. In such case, the permanently absent member is not counted in household size, and any income attributable to that member is not included.

For both HOME and HTF, the Fund has adopted the **income definition** found at 24 CFR 5.609. Also called the "Section 8" definition of income or the "Part 5" definition. Income under this definition is determined on a forward-looking basis, projecting anticipated income over the next 12 months rather than relying on past earnings.

The Part 5 definition is expansive, including traditional sources of income such as wages/salaries, pensions, social security, and unemployment. It counts most sources of unearned income such as child support, alimony, disability, recurring gifts from family members, etc.

Income from Assets

The Part 5 definition also includes **income earned from assets** (for example interest on a savings account), potentially including imputed income from assets that are not otherwise producing actual income. All assets held by a household must be disclosed and verified using source documentation, supplemented by third-party verification as appropriate. In many cases, assets produce actual income, such as certificates of deposit, interest-bearing accounts, stocks paying dividends, bonds, etc.,

In cases where a household's assets have a value of *less than* \$5,000, the actual income that can be expected over the next 12 months must be included as a source of household income.

In cases where a household's assets have a value of \$5,000 *or more*, **imputed income** must be calculated. Imputed income is determined by multiplying the cash value of the household's assets by HUD's current passbook savings rate. Then the *greater* of the imputed income or the actual income (if any) from the assets will be included in the income determination.

When evaluating assets, owners and managers should take into account the following:

- Checking/savings accounts and cash on hand must be counted as assets. The average daily balance over the last six months is used as the cash value of the checking accounts. For savings accounts or Social Security direct debit cards, the Fund uses the current month balance in determining assets. Many families choose to keep their cash in their homes instead of in banks. Owner/managers should always ask an applicant about the cash they have on hand.

- If assets have any projected income, the actual interest rate stated on the third-party verification or evidenced by the source documentation must be used. The projected income is based on an annual yield. The income is counted even if the household does not elect to receive it, as in an applicant who chooses to reinvest the interest or dividends from an asset.
- For assets that are not already in cash form (e.g. jewelry, collectibles, etc.), the cash value of the of the asset must be determined. Cash value is the market value of an asset minus any reasonable costs that would be incurred with selling it or converting it to cash such as brokerage and legal fees and/or penalties on an investment when it is withdrawn before the maturity date.

Verification of Income

Income eligibility must be verified prior to accepting a potential tenant's application. Federal regulations for both HOME and HTF require that income be verified using *at least two months* of source documentation (e.g. paystubs). The Fund further requires that the income verification make use of third-party documentation.

As noted in the Income Definition section, income must be projected 12 months into the future. It must take into account anticipated changes, such as increases due to upcoming cost of living increases, raises, etc. The Fund requires Owners to use [HOME Form 300](#) (published by the Fund, not HUD) for all income verifications, including both new and existing or in-place tenants.

To avoid common mistakes in calculating income, owners should keep several points in mind:

- Income includes the *gross* wages, salaries, social security, welfare payments, and unemployment compensation before any deductions for taxes, insurance premiums, garnishments, etc.
 - When reviewing source documents and third-party verification, it is important to understand how often individuals are paid – weekly, monthly, twice a month, bi-weekly, etc. An employee who is paid twice a month would only receive 24 paychecks a year while one paid bi-weekly would receive 26.
 - Gross income also includes any bonuses, overtime pay, commissions, and/or tips even though these may not be paid on the same frequency as regular wages. To the extent an individual receives these forms of compensation, the income projection must include that which can be reasonably anticipated during the next 12 months. When considering these forms of income, due diligence is necessary if the applicant's type of employment normally would include overtime, bonuses or tips (such as food servers or highway workers) even if the verification states that the extra income is not "guaranteed."
- Child support must be counted as income unless the applicant can clearly demonstrate that payments are not being received and that reasonable efforts have been made to collect the amounts due, including filing with the agencies responsible for enforcing child support payments.

- While earned income from dependent minors (17 and under) is not included in household income, *unearned income* attributable to minors such as Aid to Families with Dependent Children (AFDC), social security benefits (including disability or survivor's benefits) paid on behalf of a minor, etc. is included in the total household income.
- If adult students, 18 years of age and older, are counted as members of the household when determining household size, the first \$480 of the student's income must be included. This is only for adult students who are otherwise dependent members of the household. If the student is the head of household or their spouse *all* of the student's income must be counted.
- All income of a member who is temporarily absent from the household (e.g. a parent working out of town for several months) is counted regardless of the amount the absent member contributes to the household.
- Recurring gifts and regular contributions to the household from persons not living in the unit are counted as income. This may include rent and utility payments paid on behalf of the family, and other cash and non-cash contributions. An exception to this rule is groceries or meals on wheels.
- Some forms of student financial assistance (grants & scholarships) exceeding tuition are counted as income.

Zero Income Households: Any individual or household applying for residency in a HOME/HTF assisted unit certifies that the information they provide is true and correct, and it is understood that falsifying documents associated with the application is a punishable offense, however, a household can generally not exist without any income.

Any household applying for residency in a HOME/HTF assisted unit and claiming to have no income is required to complete [HOME Form 112](#), Certification of Zero Income and [HOME Form 113](#), Zero Income Verification Checklist.

Reverification of Income for In-Place Tenants: In-place tenants of HOME/HTF units must have their income reverified annually. During every 6th year of a project's Affordability Period, all in-place tenants must be reverified using source documentation in the same manner as would be applied to a new tenant.

During other years, owners must still reverify the income of in-place tenants, but in addition to the use of source documents which is always an acceptable method of verification, owners may also choose to verify income by obtaining either

- A written certification from the tenant as to the household's size and income along with a statement that tenant will provide source documentation upon request; or
- A written statement as to the household size and income from the administrator of another governmental program under which the household receives benefits and which examines the annual income of the household on a yearly basis.

See the section on Maintaining the Unit Mix below for how to address in-place tenants whose incomes have increased beyond the qualifying income for the units they occupy.

Rent Restrictions

HUD calculates and publishes rent limits for HOME and HTF units each year but on a variable schedule with some years coming earlier or later than others. As with income limits, the most current HUD chart should be used until a new one is published, and the Fund will also distribute rent limits as they become available. *Note that while general descriptions of the rent limit calculations are provided below, they are for information only. Owners must never calculate the rent limits for themselves but must always use the HUD-published charts.*

There are two types of HOME-assisted units.

Low-HOME units are income restricted at 50% AMI. They are typically subject to the **Low-HOME rent** as published by HUD. In general, the Low-HOME rent is calculated by HUD to be the lesser of 30% of 50% AMI based on an imputed household size of 1.5 people per bedroom or the Fair Market Rent for a given unit size. In no case can the Low-HOME rent exceed the High-HOME rent.

In developments with project-based rental assistance (e.g. Section 8 or USDA rent assistance), Low-HOME units where the tenant's contribution toward rent (and utilities as discussed below) does not exceed 30% of the tenant's adjusted income, an Owner may collect the full rent allowed under the applicable rental assistance program even if it exceeds the published Low-HOME rent. This only applies to Low-HOME units, not High-HOME units. It also only applies when there is project-based rent assistance, not in cases involving tenant-based forms of rent assistance like a Housing Choice Voucher or HOME-funded tenant based rental assistance (TBRA).

High-HOME units are subject to the **High-HOME rent** as published by HUD. In general, the High-HOME rent is calculated by HUD to be the lesser of 30% of 65% of the adjusted AMI based on an imputed household size of 1.5 people per bedroom or the Fair Market Rent for a given unit size.

HTF-assisted units are subject to the **HTF-rent** as calculated and published by HUD. HUD calculates the HTF rent to be 30% of the HTF income limit.

Prohibition on Fees in Addition to Rent: HOME/HTF-assisted property owners may not charge fees to program beneficiaries to cover administrative costs related to the cost of administering the HOME and/or HTF program. Specifically, rental project owners may not charge tenants fees that are not customarily charged to tenants of rental housing (e.g., laundry room access fees). However, Owners may charge fees approved by the Fund for the following:

- Reasonable application fees to prospective tenants;
- Fees or penalties related to the late payment of rent, non-sufficient funds or returned checks, or the like provided such fees are determined by the Fund to be customary for rental housing projects in the area and not excessive;
- Parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and
- Fees for optional services such as supportive services for special needs tenants or general services such as bus transportation or meals, as long as the services are voluntary, and fees are charged only for services provided.

The Fund must review and approve fee schedules annually to ensure that any fees charged in addition to rent are permissible under the applicable HOME and/or HTF requirements and whether proposed fees are reasonable and customary based on market comparisons.

Utility Allowances

In all cases, the HUD-published rent limits for HOME/HTF are **gross rent limits**. They must be adjusted for any tenant paid utilities.

For all HTF and HOME projects funded on or after August 23, 2013, utility allowances must be determined and approved by the Fund annually. The Fund's Asset Management department must approve the methodology selected by an applicant. The same methodology must be used for all HOME and/or HTF units within a single project. An owner can choose between one of the following methods:

- HUD Utility Schedule Model: The HUSM enables users to calculate utility schedules by housing type after entering utility rate information (tariffs). This model is based on climate and survey information from the U. S. Energy Information Administration of the Department of Energy and it incorporates energy efficiency and Energy Star data. This model is allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(4)(D). The HUSM and use instructions can be accessed on HUD User at <https://www.huduser.gov/portal/resources/utilallowance.html>. The HUSM is available as either a spreadsheet model in MS EXCEL or a web-based model on HUD User at <https://www.huduser.gov/portal/datasets/husm/uam.html>.
- Multifamily Housing Utility Analysis: In 2015, HUD published Multifamily Notice H-2015-4 to provide instructions to owners and management agents for completing the required utility analysis. This analysis is also used for the USDA Rural Housing Service program and allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(3). This method is applicable for the following programs: Project-based Section 8, Section 101, Section 202/162, Section 811, Section 236, and Section 221(d)(3).
- Energy Consumption Model (Engineer Model) (26 CFR 1.42-10(b)(4)(E)) –UA based on an energy and water and sewage consumption and analysis model (energy consumption model) prepared by a properly licensed engineer or a qualified professional. IRS regulations require that such professionals be independent from the property owner and they specify the building factors that must be included in the model.

While the preceding methods are acceptable for all projects, **existing HOME-funded projects for which funds were committed prior to August 23, 2013** may also choose to use the area-wide utility allowance developed by the applicable public housing authority (PHA) for use in its Housing Choice Voucher program. *This option is exclusively for pre-2013 HOME projects.*

Maintaining Unit Mix

HOME/HTF units may be designated as either fixed or floating. A **fixed unit** designation means that the specific unit (e.g. Apartment #201) will always be the HOME or HTF unit. **Floating units**, on the other hand, can move around within a project during the Affordability Period so long as the appropriate number of HOME or HTF units are maintained.

In projects where all units are designated as HOME-assisted or HTF-assisted, fixed unit rules will apply. In other cases, owners should consult the project-specific written agreement and legal documents which identify whether units are fixed or floating.

Tenants must meet the applicable HOME or HTF income restrictions for their unit at move-in. However, in the event a tenant occupying a HOME or HTF unit becomes over-income at re-certification, the assisted unit continues to qualify as affordable housing despite “temporary noncompliance” caused by increases in the existing tenant’s income if actions satisfactory to HUD are being taken. These steps, which vary somewhat based on funding source, the type of unit the over-income occupies, and whether the project’s assisted units are fixed or floating, are intended to adjust the unit mix to bring it back into balance as units turn over.

In all cases, however, any increases in rent specified must be made subject to the terms of the lease, implemented only after appropriate written notice to the over-income tenant. In the case of HOME, written notice must be provided at least 30 days prior to a rent increase (or any longer notice period required by state or local law). In the case of HTF, the written notice must meet any state or local law requirements.

Finally, for a HOME unit occupied by an over-income tenant that is also subject to Low Income Housing Tax Credit restrictions, the rent may not be increased above the applicable LIHTC for the unit. This is the only time that HOME “defers” to a less restrictive LIHTC provision.

HOME Projects with Floating Units

- If a Low-HOME tenant’s income increases at re-verification to greater than 50% AMI but less than or equal to 80% AMI, then the Owner will first substitute another unit that is comparable or larger by either:
 - o Designating another unit in the Project occupied by an eligible Low-HOME tenant, or
 - o Renting the next available unit as a Low-HOME unit.

After substituting another Low-HOME unit, the Owner may raise the rent for the over-income tenant to the lesser of:

- o 30% of the over-income tenant’s adjusted income, or
 - o The applicable High-HOME rent for such unit.
- If a Low-HOME tenant’s income increases at re-verification to greater than 80% AMI, then the Owner will first increase the rent for the over-income tenant to the lesser of:
 - o 30% of the tenant’s adjusted income, or
 - o The “market rent” for the unit (i.e., what the unit would be projected to rent for in the local market absent any income or rent restrictions imposed by HOME, Housing Tax Credit Program, or other such programs).

The Owner must also substitute another unit that is comparable or larger by either

- o Designating another unit in the Project occupied by an eligible Low-HOME tenant, or
- o Renting the next available unit as a Low-HOME unit.

- If a High-HOME tenant's income at re-verification increases to greater than 80% AMI, then the Owner will first increase the rent for the over-income tenant to the lesser of:
 - o 30% of the tenant's adjusted income, or
 - o The "market rent" for the unit (i.e., what the unit would be projected to rent for in the local market absent any income or rent restrictions imposed by HOME, Housing Tax Credit Program, or other such programs).

The Owner must also substitute another unit that is comparable or larger by either:

- o Designating another unit in the Project occupied by an eligible High-HOME tenant, or
- o Renting the next available unit as a High-HOME unit.

HOME Projects with Fixed Units

- If a Low-HOME tenant's income increases at re-verification to greater than 50% AMI but less than or equal to 80% AMI, then the Owner must first rent the next available High-HOME unit (even if larger) as a Low-HOME unit rented to a tenant at or below 50% AMI at the Low-HOME rent. Once the Low-HOME unit has been replaced, the owner may, but is not required to, increase the rent of the tenant whose income has increased to the High-HOME rent applicable to their unit.
- If a Low-HOME tenant's income increases at re-verification to greater than 80% AMI, then the Owner will first increase the rent for the over-income tenant to 30% of the tenant's adjusted income (without any cap related to the "market rent"). The owner must also "convert" the next available High-HOME unit (even if larger) as a Low-HOME unit rented to a tenant at or below 50% AMI at the Low-HOME rent.

The unit occupied by the over-income tenant continues as a High-HOME that is temporarily noncompliant. Once the unit is vacated by normal turnover, it must be re-rented to a tenant meeting appropriate income restrictions at move in.

- If a High-HOME tenant's income at re-verification increases to greater than 80% AMI, then the Owner must increase the rent for the over-income tenant to 30% of the tenant's adjusted income (without any cap related to the "market rent"). The unit occupied by the over-income tenant continues as a High-HOME that is temporarily noncompliant. Once the unit is vacated by normal turnover, it must be re-rented to a tenant meeting appropriate income restrictions at move in.

HTF Units

Note, HUD has not yet issued guidance about what specific actions will be required with respect to adjustments in the rent level for tenants who are over-income at recertification. Once such guidance is issued, the Fund will require that all HTF-assisted projects comply, even if originally funded prior to the issuance of detailed HUD guidance.

Chapter 5: Property Maintenance and Capital Improvements

State/Local Code and UPCS

During the Affordability Period housing assisted with HOME/HTF funds must meet all applicable state or local codes pertaining to the maintenance, upkeep, and occupancy of housing. This may include property maintenance codes, habitability codes, various health and/or fire codes, and the like. In short, there is nothing about HOME or HTF that exempts a property from existing state or local codes, regulations, or ordinances that otherwise apply to any rental property.

In the 2013 HOME Final Rule, HUD made significant changes to HOME's property standards. Prior to this point, the floor for ongoing property standards was generally HUD's Housing Quality Standards (HQS), but in the 2013 HOME Final Rule, among other changes, HUD replaced references to HQS with references to HUD's Uniform Physical Condition Standards (UPCS). UPCS is generally seen as a more comprehensive standard of ongoing property conditions than HQS. It is the standard cited by the HTF program and is also used for LIHTC projects. While UPCS does not technically apply by regulation to pre-2013 HOME projects, the Fund has determined that applying UPCS uniformly across its HOME and HTF portfolio provides for administrative efficiency and better ensures assisted housing is safe and decent.

Consequently, it is the Fund's policy to inspect all HOME and HTF properties, including those HOME projects funded prior to the 2013 HOME Final Rule's effective date, based on the UPCS standards and require that any identified deficiencies be corrected by owners. Note, unlike HUD's REAC (Real Estate Assessment Center) inspection process, the Fund does not "score" its UPCS inspections based on degrees of criticality or weighting but simply requires that all deficiencies be addressed.

Maintenance expectations e.g. work order tracking, preventative schedule, etc.

Prior to releasing units for occupancy (or completion of an acquisition/rehab project), the Fund requires property owners to execute a maintenance plan, to be included with the management plan, to ensure that the property retains its economic value and remains in habitable condition throughout the affordability period. A maintenance plan should define routine and emergency repairs, procedures for handling tenant requests, inspections and replacement schedules. At a minimum, the maintenance plan should address:

1. The work order system is to be used to document the unit number, date and nature of the repairs.
 - It is a good policy for the manager, maintenance person and the tenant to sign the order after the work has been completed.
 - A copy of the work order must be retained in the unit file.
2. Procedures for handling tenant requests, including emergency and non-emergency items, the staff person to be contacted for routine maintenance and emergencies and method of contact (home phone, cell phone and/or pager numbers).
3. Routine maintenance scheduling such as HVAC filter changes; smoke alarm and GFI receptacle testing, pest extermination, snow removal and mowing as well as who is responsible for the specific tasks and how often they are to be performed.
4. A replacement schedule that addresses painting and cleaning during vacancies and items that are likely to need attention during the affordability period (including appliances, carpeting, heating/air conditioning, roofing and street and parking lot repair).

5. While the condition of the property may dictate the replacement priorities, a tentative replacement schedule will enable the owner/manager to plan for the eventual expenditures.
6. Regular inspections of the property including the frequency of inspections and what the regular inspections entail including housekeeping, property maintenance, plumbing, smoke alarms and filters.
7. Tenants must be notified in advance of all inspections. The maintenance plan should state the amount of advance notice required, how the tenants will be notified as well as who will conduct the inspections.
8. The plan should specify how items found during the inspections are documented, how the tenants are notified of violations and the procedure for ensuring that they are corrected.

The maintenance plan will be reviewed during monitoring visits, and physical inspections of the individual units will be conducted to ensure they continue to comply with applicable standards.

Capital Needs Planning and Replacement Reserve

A capital improvement is a repair or replacement to significant durable site or building components that is expected to last for at least five (5) years. Minor repairs and replacements of items with shorter useful lives should be covered with operating funds as maintenance items. For example, service calls, minor repairs (e.g. thermostat or inducer motor replacements, etc.) for HVAC systems are maintenance costs while full replacement of a furnace or air conditioning unit would be a capital cost.

To ensure the ongoing physical and financial viability of a project, the Fund requires all projects to maintain a replacement reserve intended to cover the cost of capital replacements and improvements over time.

For new construction projects, the Fund's general policy is that no withdrawals from the replacement reserve may be made during the first five (5) years following initial occupancy of the project. For acquisition/rehabilitation projects, the Fund will generally not allow withdrawals for five (5) years beyond the completion of rehabilitation unless the capital needs assessment (CNA) used for underwriting anticipated the funded repairs within that timeframe.

The replacement reserve is held by the Fund. Each project must make ongoing contributions to its replacement reserve from its operating account per the terms of its project-specific written agreement and legal documents. Usually, the deposit is increased by 3% annually.

Notwithstanding the initial annual deposits to the replacement reserve, the Fund will periodically assess whether the reserve is adequately funded. The replacement reserve will be considered underfunded anytime:

- Its balance is less than \$1,000 per unit (except for during the first five years when scheduled deposits would not yet have reached this level); or
- A CNA required by the Fund shows that its existing balance, taking into account planned deposits, is inadequate to fully fund capital needs anticipated within the project's affordability period or loan term, whichever is longer.

The Fund typically requires a project Owner to obtain a capital needs assessment prepared by an independent third-party architect, engineer, or other qualified firm approved by the Fund, every five (5) years. Alternatively, particularly for small projects such as those owned by CHDOs, the Fund may conduct

a capital needs assessment using its own staff or contractors. Projects with underfunded replacement reserves will be required to make increased deposits from operating revenue (prior to making any surplus cash distributions) or, at the Fund's option, by making lump-sum contributions to fully fund the reserve.

The cost of the required CNA will generally be an operating cost, but with prior written approval from the Fund, the cost of obtaining a CNA can be paid from the Replacement Reserve Account if operating funds are not otherwise available.

Chapter 6: Financial Standards and Oversight

Accounting Standards and Required Accounts

Most projects are held by single-purpose, single-asset entities such as limited partnerships or limited liability companies. In some cases, especially for smaller projects developed by CHDOs or other community based nonprofit organizations, projects may be owned directly by the nonprofit. In those cases, owners are expected to separately account for each HOME or HTF project such that its financial performance can be reviewed individually rather than simply “comingling” its revenues and expenses in the broader operations of the organization.

All owners are expected to follow generally accepted accounting principles (GAAP) and maintain the following accounts for each project:

Operating Receipts and Expense Account

The Operating Receipts and Expense Account (or the operating account) is the primary account for any given project. All rents and other receipts of the project (known as Operating Receipts) must be deposited into the account. The account is then used to pay, in order of priority:

- All of the amortized principal, interest, and mortgage insurance premium, if any, required to be paid under the Note and Deed of Trust to the Fund or any other amortizing financing approved by the Fund as part of the project’s permanent sources;
- All of the real estate tax and insurance premium escrow payments required of the owner under the Fund’s or another loan, which are considered part of the Operating Expenses of the project;
- All amounts required to be deposited in the Replacement Reserve account;
- The fee of the Project’s managing agent, if any, as set forth in the Management Agreement between the owner and said managing agent, excepting any fee to an identity of interest managing agent which shall only be paid after the remaining Operating Expenses below; and
- All remaining Operating Expenses of the Project (which specifically exclude the Loan principal, interest, and annual fee payments), including but not limited to, taxes other than those for which an escrow payment is required under the Fund’s or another loan, maintenance, fuel, management, water and sewage, administration, electricity, legal, audit, and all other current expenses, unless other funds for payment are set aside or deferment of payment has been approved by the Fund.

Security Deposit Account

Security deposits must be held in a segregated interest-bearing depository account and may not be comingled with the operating account.

Replacement Reserve

As covered in Chapter 5, each project must maintain a replacement reserve. The replacement reserve is held by the Fund.

Operating Reserve

Most projects are required, as part of their initial development, to establish an operating reserve that will be held by the Fund. The project-specific written agreement and legal documents outlines the minimum balance for the operating account, which is usually set at underwriting to be six (6) months of underwritten operating expenses (including reserve deposits) and debt service. If used, the operating reserve must be replenished prior to any distributions of surplus cash to the owner.

The purpose of the operating reserve is to protect against unexpected operating deficits following stabilized occupancy of the project (that is the operating reserve cannot be drawn for lease-up and stabilization period deficits). Upon experiencing an operating deficit, owners can seek withdrawals from the operating reserve to pay a project's operating expenses (except that generally any identity of interest management fees cannot be paid from the operating reserve and must be deferred by the management company). Projects seeking disbursements from the operating reserve will be subject to enhanced oversight by the fund, potentially including ongoing monthly reporting of income and expenses and/or may be required to submit a corrective action plan identifying steps the owner will take to stabilize operations.

Preservation Reserve

Some projects, usually funded in 2017 or beyond, are required to establish a preservation reserve account. The preservation reserve is not capitalized but instead is held by the Fund and funded from a percentage (usually 50%) of surplus cash each year. The preservation reserve is a reserve of "last resort" and may only be used:

- Toward expenditures deemed necessary by the Fund to preserve the ongoing economic and physical viability of the project during the project's Affordability Period. Prior to authorizing disbursement from the Preservation Reserve Account, the Fund will require the owner to enter into a memorandum of understanding, workout agreement, or other agreement acceptable to the Fund outlining steps the owner will take to correct or resolve concerns about the project's ongoing viability. In general, no disbursements of the Preservation Reserve Account will be authorized if funds are available in the Replacement Reserve Account or Operating Reserve Account.
- Upon maturity or default of the Fund's loan, the Fund may disburse the Preservation Reserve Account toward any outstanding loan balance or other financial obligation of the Owner to the Fund, including but not limited to any repayment obligation to HUD incurred by Fund. Following full satisfaction of the Fund's loan and any other financial obligations to the Fund, the remaining balance of the Preservation Reserve Account may be distributed as surplus cash.

Budget Review and Approval

Each project must submit annual financial reports, due by December 31st each year, which both report on actual expenditure during the prior year and propose an operating budget for the upcoming year. The Fund must approve the budget each year. The Fund provides a standard format for budget submissions here [Property Budget](#).

With the budget submission, owners must disclose any identify of interest (aka related party) vendors or contractors for the Fund's review and approval.

Surplus Cash Distributions

To ensure ongoing compliance with financial requirements and a project's viability, owners may not distribute surplus cash (i.e. cash flow) from the Operating Account without the Fund's approval. Distributions of surplus cash will require, at minimum, that the Fund has reviewed and approved the most recent operation budget, all financial reports or audits otherwise due, and any outstanding monitoring actions to ensure that the project is in compliance with all regulatory and contractual obligations and that all reserves are fully and properly funded. Additionally, the operating account, following any distribution, must maintain liquidity equal to or in excess of one month's gross revenue potential as identified in the most recently approved annual operating budget.

Financial Reporting Requirements

Audit

Federal regulations require that every HTF funded project obtain and provide an audit by an independent CPA annually during the affordability period. The Fund similarly requires independent audits for most HOME funded projects each year.

With prior permission, the Fund waives the project audit requirement for some small HOME projects (such as a project consisting of two or three single family homes held by a CHDO). In such cases, owners must still submit any organization audit they have received and must also provide the following:

- [Balance Sheet](#),
- [Statement of Cash Flows](#),
- Operating Account Statement
- Security Deposit Account Statement
- Account Statement(s) for Reserve(s) not held by the Fund

Monthly Financial Reporting

Based on its ongoing oversight and monitoring, the Fund may identify a project as troubled. Designation of a project as troubled may be triggered by factors including but not limited to operating deficits, underfunded reserves, excessive vacancy, and identified financial management weaknesses.

Troubled projects will be required to provide more frequent financial (or other) reporting including:

- [Monthly Operating Statements](#),
- Monthly Rent rolls
- Monthly Operating Account Statements

Chapter 7: Monitoring, Recordkeeping, and Reporting

Monitoring by the Fund

HUD requires the Fund to provide ongoing, risk-based monitoring of its HOME and HTF portfolio throughout the Affordability Period. In turn, HUD monitors the Fund to ensure that it is properly overseeing its portfolio and can review any given project's compliance with the terms of both federal regulations and the project-specific legal documents. For projects that fail to comply with applicable HOME/HTF requirements, HUD can require repayment to the federal treasury of the entire HOME or HTF investment in the project, without proration based on the portion of the Affordability Period "completed."

In addition to providing the Fund or its designee with access to the project and its records, owners must also provide access to HUD, HUD's Office of Inspector General, the Government Accountability Office (GAO), any other applicable federal authority, or their designees.

Monitoring Approach and Schedule

The Fund uses a risk-based approach to monitoring, allowing it to focus on areas of special concern or to increase oversight of projects that pose a particular compliance risk. Every project will be reviewed at least annually using a combination of desk and on-site monitoring techniques.

The goal of monitoring extends beyond simply reviewing core compliance with the income and rent restrictions, property standards, and operating requirements (e.g. marketing and leasing expectations) of the HOME/HTF programs and project-specific requirements contained within the legal documents. Monitoring is also intended to be proactive, assisting owners in identifying concerns before they become compliance deficiencies and promoting best practices that improve the longevity and impact of affordable housing in the state.

Desk Monitoring

Desk monitoring involves the review of various owner-submitted reports and other information to determine whether a property continues to comply with applicable requirements and is being managed responsibly.

At a minimum, the following documents must be submitted as part of a desk review:

- Two copies of completed [HOME Form 500](#) HOME Rental Project Compliance Report
- [HOME Form 300](#), Tenant Income Certification, for each tenant in the development (must be completed annually for each tenant and maintained in the tenant file regardless if the monitoring is scheduled to be at the site or a desk review)
- Income Verifications and Tenant Income Certifications for each new tenant occupying the property since the last review or reporting period.
- [HOME Form 600](#), Certificate of Continuing Program Compliance

Information required for the Desk Review will be due at the offices of the Fund, 5710 MacCorkle Ave. SE, Charleston, WV 25304 no later than December 31st of each year. Desk Review information should be uploaded to the projects Procurement workcenter and marked to the attention of the Asset Management Specialist requesting the information.

Onsite Monitoring

In general, every project will be subject to a desk monitoring each year. The results of that review will inform the Fund's determination of which projects receive **on-site monitoring**. While the Fund is currently monitoring virtually every project on site each year, HUD requires an on-site monitoring occur not less than every third year. And in all cases, the Fund reserves the right to conduct additional desk or on-site monitoring more frequently if it determines that additional reviews are warranted.

On-site monitoring builds on the initial desk monitoring review and involves more detailed reviews of a project's records including tenant file reviews, operating/management files, and physical inspections of the site and its units.

Tenant files (see Recordkeeping Section below) will be reviewed to ensure compliance in the following areas:

- Income Eligibility and Verifications
- Annual Tenant Income Certifications
- Rents, including Utility Allowances and Rent Increases
- Lease Agreements and House Rules
- Applicant Screening

In addition to tenant files, the Fund's Asset Management Specialist will also review the following documents and practices to ensure that applicants are treated fairly and in compliance with fair housing laws including:

- Tenant Selection Plan
- Affirmative Fair Housing Marketing Plan
- Tenant Marketing/Solicitation Materials, including Advertising and Brochures
- Waiting List
- Management Plan
- Management Agreement (if applicable)
- Eviction Records
- VAWA-Required Records
- Physical Inspections

During the on-site review the Asset Management Specialist will conduct a **physical inspection** of individual units. The property owner or manager should notify the tenants to anticipate an inspection of their units once the review is scheduled.

During the physical inspection the Asset Management Specialist will walk through the units to determine if the property meets the applicable property standards (see Chapter 5) and to ensure no items that are a threat to the health and safety of the occupants exist within the unit. The Asset Management Specialist will notify the owner/manager of any items of concern, and the owner/manager will have 24 hours to correct violations that are considered health or safety threats.

The Asset Management Specialist may also inspect common areas such as community rooms, offices, and laundry facilities; mechanical rooms; and grounds, sidewalks, street and parking areas, playgrounds, and building exteriors.

In larger projects the Asset Management Specialist may choose not to inspect all individual units, unless a significant number of them are failing the inspection. Generally, a minimum of 25% of the units, and a minimum of one unit in every building, will be inspected during each on-site review.

Monitoring Fees to the Fund

The 2013 HOME Final Rule allows the Fund to charge annual monitoring fees to HOME-assisted projects. This provision only applies to projects for which HOME funds were committed on or after August 23, 2013 and is addressed in the project-specific legal documents. HTF regulations also allow the Fund to charge annual monitoring fees to HTF-assisted projects

In general, the Fund charges fees on the basis of the number of HOME/HTF assisted units in a project. For units already covered by LIHTC monitoring which covers similar but not entirely the same issues, the Fund does not currently charge an additional fee.

The Fund issues invoices to each project, as applicable, for the monitoring fee, which must be paid when due from the operating account. Failure to pay the monitoring fee is a default under the project-specific legal documents and may result in the denial of future applications from the underlying sponsors/owners of the project.

Recordkeeping requirements

A file shall be maintained for each tenant residing in the property. The file shall contain at a minimum:

- A completed Application for Residency
- Income and Asset Verifications
- Results of Applicant Screening
- Executed Lease Agreement
- Lease Addendums, if applicable
- Executed copy of House Rules, if applicable
- Tenant Income Certification for each year the tenant has resided at the property
- Move-in Inspection
- Owner/Manager Inspection Reports
- Correspondence
- Notices of Rent Increases, if applicable

Files must be maintained in an orderly manner. The information must be separated by year beginning with the most current year. Each year should be divided by a sheet of colored paper. HOME Form 300, Tenant Income Certification, should be the first document in each annual section with any supporting documentation, lease addendums, correspondence, etc. behind the applicable TIC.

Reports Due to Fund

Owners should note that the Fund reserves the right to update, change, modify, or otherwise impose new reporting requirements on any project at any time in response to project-specific performance, compliance, or viability concerns.

In addition to required financial reports (see Chapter 6), owners are required to submit the following reports each year:

- Annual Occupancy Report and Rent Roll, identifying occupants of all units and indicating current rents, HOME/HTF designations, date of last income determination, and income level.
- Utility Allowance calculations and documentation which must be approved annually by the Fund (see Chapter 4)
- Rent and Tenant Fee Schedules which must be approved annually by the Fund (see Chapter 4)
- Owner's Narrative Report which may require submission of
 - Any changes/updates to the project's AFHMP
 - Any changes/updates to the project's Tenant Selection Plan
 - Proof of Insurance and Property Tax Payment

Chapter 8: Low Income Housing Tax Credits

Many HOME or HTF funded projects also involve equity generated by the award of Low Income Housing Tax Credits (LIHTC). While there are substantial similarities between tax credits, HOME, and HTF in terms of ongoing compliance, simply complying with LIHTC requirements is not sufficient for HOME or HTF compliance.

In general, whenever a development includes multiple sources of financing and is subject to overlapping compliance requirements, it must comply with all requirements of each program. In other words, neither HOME nor HTF “defer to” tax credit requirements. In practice, this means that the most restrictive provisions will usually apply. The sole exception is that in the case of in-place tenants of HOME-assisted units who have become over-income, if raising the over-income tenant’s rent as specified by HOME would result in a rent higher than allowed under LIHTC, an owner is not required to increase the over-income tenant’s rent beyond the applicable LIHTC rent.

To help avoid other compliance missteps, owners and management companies should keep in mind the following points:

Income limits may vary: HOME and HTF limits may increase or decrease from year to year based on census data. If the qualifying income limit for a HOME/HTF unit declines from one year to the next, the current lower income limit must be applied for new tenants and for purposes of recertifying existing tenants. LIHTC, on the other hand, uses hold harmless rules for income limits such that for a specific project, the qualifying income limits do not decline but always hold their “high water mark” once a project has been placed in service. This can be confusing since the “50% AMI” level, for example, may be different in the HOME income limits chart vs. the LIHTC income limits chart.

Additionally, as noted in Chapter 4, HUD published program-specific income limits for both HOME and HTF which come out on a different schedule than the so-called Section 8 income limits that are used by LIHTC, so even if the limits are otherwise the same, there will be a period of time each year when qualifying limits for LIHTC have been adjusted upward but HOME has not yet published updated limits and must still use the “prior” year’s chart.

When more than one set of income limits apply to a unit, the lowest income limit must be applied.

Rent limits vary: The basic calculation for rent limits between HOME, HTF, and LIHTC is similar. All use the applicable income limit, adjust if for household size assuming 1.5 persons per bedroom, multiply the annual income limit by 30%, and divide by 12. However, HOME’s rent limits are based on different income levels (e.g. the High-HOME rent is calculated against 65% of adjusted income while LIHTC is calculated against 60% of gross AMI) and they are limited by the Fair Market Rent (FMR).

When more than one set of rent limits apply to a unit, the lowest rent limit must be applied.

Impact of rent assistance: Rules vary for when an owner can accept a rent in excess of the program’s “standard” limit because of the availability of rental assistance. For HOME, the published HOME limits apply with one exception. In Low-HOME units with *project-based* rental assistance where the tenant’s contribution to rent (and utilities) is no more than 30% of the tenant’s *adjusted* income, the owner can accept the full rent allowed by the project-based rental assistance program. This option is not available

for Low-HOME units where the resident has a tenant-based voucher, nor is it available in a High-HOME unit.

In HTF-units with *project-based* rental assistance where the tenant's contribution to rent (and utilities) is no more than 30% of the tenant's *adjusted* income, the owner can accept the full rent allowed by the project-based rental assistance program. There is no similar exception for tenant-based rental assistance.

LIHTC allows the owner to collect a higher rent from a rental assistance program, whether project-based or tenant-based, provided the tenant him/herself does not pay more than the applicable LIHTC rent limit toward their rent and utilities.

Income verification: HOME and HTF always require two months of source documentation at initial application in addition to third-party verifications required by the Fund. In future years, when HOME or HTF require full documentation, two months of source documents are also required. LIHTC can rely exclusively on third-party verification.

When considering assets, HOME and HTF require all assets be verified with source documentation and potentially third-party verification regardless of their aggregate value. LIHTC, on the other hand, only requires verifications when assets have an aggregate value of \$5,000 or more, relying on tenant self-certifications below that level.