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Introduction

The HOME Investment Partnerships Program, or HOME Program, is designed to provide affordable housing to lower-income households, expand the capacity of non-profit housing providers, and strengthen the ability of state and local governments to develop and implement affordable housing strategies tailored to local needs and priorities. One of the principal uses of HOME funds is for acquisition, construction, and rehabilitation of rental housing. All rental housing units acquired, built, or rehabilitated with HOME funding must meet affordability and income-targeting requirements specified in the HOME Final Rule (24 CFR Part 92).

Properties that have been developed using HOME funds are subject to specific rules designed to ensure that they remain affordable to low and very low-income households throughout the required effective period. This manual is designed to assist owners and their agents to plan and maintain compliance with HOME regulatory requirements associated with the utilization of HOME funds in multifamily properties.

It is the responsibility of the Asset Management Section of Oregon Housing and Community Services (OHCS) to monitor the continuing compliance of units that have received HOME funds in accordance with HUD regulations contained in 24 CFR Part 92. It is also OHCS’ responsibility to ensure that property owners retain the housing units as affordable to low and very low-income persons throughout the affordability period. This manual covers procedures that apply to all rental properties which have received funds under the HOME Program. Any violation of the requirements of the HOME Program could result in acceleration of the repayment of funds received under the HOME Program.

Successful operation of a HOME-funded property is management intensive; the owner is responsible for ensuring that the property is properly administered. Thorough understanding of HOME requirements and compliance monitoring procedures requires training of owners and managers. This training should occur before a property is occupied and should be provided to the on-site property management staff. At a minimum, such training should cover key compliance terms, determination of rents, tenant eligibility, file documentation, procedures for maintaining the required unit mix, reporting and record retention requirements, and site visits. Continuing education each year or at a minimum every other year is strongly recommended in order to keep up with regulatory and procedural changes to the HOME Program. When available, training opportunities will be posted on OHCS’ website.

OHCS’ obligation to monitor for compliance with the requirements of the HOME Program does not make OHCS liable for an owner’s non-compliance.
Compliance Overview

Compliance Period-Period of Affordability
The HOME restrictive covenants (Grant or Loan Agreements) are recorded as a lien against the property. The regulatory agreements for the HOME Program outline the restricted rent and income limits for households residing in a HOME-assisted unit and specify the required term of affordability that must be maintained. The Recipient must record the restrictive covenants within 30 days after receipt. OHCS will not allow HOME recipients to “buy out” of the affordability requirements.

The minimum HOME program term of affordability is 5 years and is based on the amount of HOME funds allocated per unit. HOME recipients opting for a longer affordability period in the Consolidated Funding Cycle application will have a deed restriction which will reflect the extended period. The extended affordability period will remain as agreed and will not be shortened at a later date. Properties that receive HOME funding through OHCS have longer affordability periods. Be sure to check the regulatory agreements for each HOME funded property for required term. The affordability period begins once the property has
completed all requirements and the IDIS close-out date has been established. The IDIS close-out date starts the beginning of the affordability period for the property.

If the property has additional funding sources, the compliance period for those additional funding sources may extend beyond the HOME Program minimum requirements. For properties funded with OHCS HOME funds, it is common for the affordability period to be much longer than the minimum and can range from 30 to 60 years.

**OHCS - Asset Management Responsibilities**

Once HOME funds from OHCS are allocated to a property, HUD requires the State, as the Participating Jurisdiction (PJ), to monitor program compliance on an ongoing basis. However, HOME program compliance is the responsibility of the property owner and OHCS will not assume liability for consequences which result from noncompliance.

OHCS’ Asset Management duties include and are not limited to the following:

- **Approve the property’s rent structure at lease-up and must approve all rent increases prior to implementation throughout the affordability period.**
- Provide a HOME Compliance Manual and related materials;
- Offer continuing education on compliance to the owner, management agent, and on-site personnel, primarily through periodic compliance training workshops and updates to the Compliance Manual;
- Complete desk audit that includes review of the annual OHCS HOME Monitoring Report that is required to be submitted with the annual owner certification (OHCS.14H);
- Review each HOME property annually or biennially. The review will consist of an on-site inspection of 20% of the HOME tenant certifications, supporting documentation, and HOME tenant records. The review will include a physical inspection of 20% of the HOME units and all of the property grounds. Asset Management reserves the right to inspect a higher percentage of units when deemed necessary or practical;
- Notify the owner when the property is found to be out of compliance with HUD or OHCS requirements, including reports and any other requested information not received by OHCS when due;
- Establish schedules with the property owner for correcting any noncompliance;
- Perform follow-up reviews of any building within a property or the entire property, if deemed necessary. A follow-up review may include a physical inspection of the building(s) and/or a review of property tenant records; and
- Retain records of noncompliance or failure to report for the most recent five-year period and until five years after the term of affordability expires.
- The following schedule outlines time frames for certain monitoring events:
**EVENT**

**Inspection scheduling**
OHCS will contact Owner/Agent a minimum of 14 days in advance to schedule visit

**Inspection results/findings report**
Owner/Agent will receive findings report within 30 days following the inspection from OHCS

**Correction Period**
Owner/Agent will have a minimum of 30 days to correct any reported non-compliance findings and respond to OHCS

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### Preparing for OHCS On-Site Monitoring Visit

The Owner/Agent will be required to submit the following items prior to any HOME Monitoring Visit/Audit-Inspection and will be asked for when the scheduling confirmation letter is sent to Owner/Agent:

- Management Agent Questionnaire
- HOME Monitoring Report – with current HOME unit information
- Rent Roll with move-in dates
- Copy of Waiting List
- HOME Lease Checklist – copy of current lease documents
- Current Utility Allowance documentation
- Budgetary information reports

Don’t wait until the last minute to submit the requested documentation. These materials are requested prior to an onsite monitoring review so that the compliance officer can prepare. The materials also ensure that your property will be accurately monitored. With tight state budgets, staff must do as much at headquarters as possible so that the time onsite is specifically for reviewing files, affirmative marketing, supportive services, physical inspections and other program requirements.

Owner/Agent **must** provide notice of entry:

- Provide all tenants with at least 24-hour notice of entry for inspection

Before the OHCS compliance team arrives at your property, it is recommended that:

- Management should pre-inspect units to avoid any common physical findings
- Make sure that tenant files are organized in a consistent manner for ease of auditing
- Set up a quiet area (if available) where the compliance team can audit tenant files without interruption
- Make sure that enough staff is available to accompany compliance team into units for inspection
- Have all required documents available for review such as the Administrative Notebook, waiting list, AFHMP, denied applications, and any other documents requested and not received by the compliance team prior to the inspection
- Have staff whom are knowledgeable of the property present during the inspection and exit interview for questions, suggestions or comments.

Post Inspection:
- Exit Interview: The compliance officer/team will provide an overview of information to owner/agent regarding any results of the inspection.
- EH & S findings: Compliance Officer will provide list of all physical inspection findings requiring immediate action to remedy (OHCS Annual Inspection Immediate Action Required Items form).
- Owner/agent is required to correct items on immediate action items list and report such correction date to the compliance officer within 24 hours for life-threatening items and 72-hours for non-life threatening items.
- OHCS will follow up by providing Owner/Agent a detailed findings report within 30 days following the onsite monitoring visit outlining all findings and noting any issues requiring attention.
- Owner/Agent is required to respond to the findings report by the due date indicated in the report: usually within 30 days.

**The Owner/Recipient of Home Funds Responsibilities**

In accordance with the HOME program regulations, the owner of a property receiving a HOME allocation is required, by acceptance of the allocation, to:

1. Implement rent structure approved by OHCS at lease-up and request approval from OHCS for further rent increases prior to implementation. The approval from OHCS for any further rent increases is required of HOME-assisted properties throughout the affordability period.

2. Manage the property in accordance with the HOME Regulations and all additional requirements agreed to during the allocation process for the duration of the compliance/affordability period. This includes continued compliance with regard to income and rent levels detailed in the initial application.

3. Certify that the property is being managed in accordance with all applicable federal, state and local fair housing laws.

4. Retain records/property files documenting eligibility for the HOME final allocation for at least five years after the last year of the compliance period.

5. Retain records documenting the designation of HOME units, HOME-like units, and non-HOME units using a method that clearly shows the status of all units at any point in time.

6. Assume liability for any instances of noncompliance and the correction of such deficiencies.

7. Submit, within 30 days of receipt, a copy of any formal housing discrimination complaint filed against the owner or agent.
Each owner has chosen to participate in the HOME Program to take advantage of available funds. In exchange for accepting HOME funds, certain requirements must be met by the owner that will benefit qualified low-income tenants. The requirements include owners placing qualified tenants in at least the minimum number of Low HOME rent and High HOME rent units as detailed in the restrictive covenants, charging appropriate rental rates for each qualified unit and maintaining documentation and verification of qualified low-income tenants.

The owner must further meet all requirements agreed to in the Home Grant Agreement and HOME Declaration regarding any additional restrictions on rent levels and income restrictions. The owner must certify annually on the HOME Program Owner’s Annual Certification of Continuing Program Compliance (CCPC) (OHCS.1H)) that all Program requirements have been met and include a completed HOME Monitoring Report (OHCS.14H). If the recipient fails to perform any of the provisions of the agreements, and does not correct such failure within the time frame that Asset Management may authorize, OHCS may provide written notice of default to the Recipient and terminate the agreement. Should the Agreement be terminated, the Recipient is liable to repay all of the HOME funds disbursed to the property.

Although an owner may have a managing agent acting on his or her behalf, the owner is responsible for ensuring compliance with all program regulations and rules. In selecting a managing agent, the owner should ensure the agent and all on-site personnel are knowledgeable of the provisions and requirements of the HOME program and have adequate experience in managing HOME-assisted properties.

Conflict of Interest - Applicability

No person who is an employee, agent, consultant, officer, or elected or appointed officer of the HOME funds recipient, who have exercised or currently exercise any functions or responsibilities with respect to activities associated with HOME funds may obtain financial interest or benefit from a HOME assisted property. This includes themselves or those with whom they have family or business ties during their tenure and for one year thereafter.

No owner, developer, or sponsor of a property assisted with HOME funds (or officer, employee, agent, or consultant of the owner, developer, or sponsor) whether private, for profit or non-profit, (including Community Development Organizations [CHDO], when acting as an owner, developer, or sponsor) may occupy a HOME-assisted affordable housing unit in the property. This provision does not apply to an employee or agent of the owner or developer of a rental housing property who occupies a HOME-assisted unit as the property manager or maintenance worker, if the employee or agent is otherwise qualified.

Upon written request from OHCS, HUD may grant an exception on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the program or property.
Proper Administration and Record Keeping

The Owner's record keeping requirements include, but are not limited to:

Inspections:
- Records that demonstrate each HOME-assisted unit meets applicable property standards – (annual UPCS or HQS inspection report or other inspection standards approved by the Department)

HOME Monitoring Report:
- Report (OHCS.14H) containing the unit and tenant data necessary to document unit restrictions and property standards requirements are being met as required by the HOME Program.

Individual Tenant File Requirements:
  - See page 27 in this manual for list of requirements

Administrative Notebook:
(Required to be kept on-site & available for inspection)
- Contents:
  - Applicable yearly income limits
  - Applicable yearly minimum and maximum rent limits (HUD established)
  - Deed restriction documents associated with the property
  - Minimum and Maximum Rent Limits in Effect at Initial Grant or Loan Agreement
  - Total number of units
  - Total number and/or percentage of units restricted and the type of restrictions
  - Proposed rental and utility rates for the following year
  - Waiting List(s) with dates of application for all families accepted/rejected
  - Current Management Plan
  - Current Affirmative Fair Housing Marketing Plan and records showing any review of the plan on a periodic basis
  - Documentation of the actions taken to affirmatively further fair housing in accordance with the Affirmative Fair Housing Marketing Plan

Utility Allowance Documentation:
If utilities are paid directly by the tenant, a utility allowance must be used when determining eligible unit rents. If utilities are included in gross rent, the utility allowance is zero.

To remain in compliance, owners must utilize the correct utility allowance in order to properly determine unit rents. Documentation of the current utility allowances must be submitted annually as an attachment to the HOME Monitoring Report. If the utility allowances change, the owner may need to adjust rents to remain in compliance with the rent restriction requirements.

It is the responsibility of the owner and/or management agent to obtain updated utility allowance information on an annual basis. OHCS maintains current utility allowance information per county provided from each local PHA and you may obtain them by contacting your Compliance Officer.
The utility allowance represents the average monthly cost for utilities and services, excluding telephone/television. They are based on:

- The utility allowance schedule that is established by the local public housing authority/agency (PHA) for the Housing Choice Voucher Program;
- Project-specific information = calculation based on actual unit usage amounts

For any HOME property that also has RD or HUD funding, the RD and HUD utility allowances must be used. Owners/Agents must receive written approval from OHCS before using any utility allowance other than those established by the local PHA.

**Tenant-Paid Utilities in HOME/LIHTC Properties:**

When a tenant pays for utilities, both HOME and LIHTC require the Owner/Agent to deduct a utility allowance from the rent limit, in order to determine the maximum amount that an Owner/Agent may charge for rent. However, each program may use a different utility allowance schedule. Therefore, when determining the maximum allowable HOME rents, Owner/Agent must subtract the tenant-paid utilities from the HOME rent limit using the authorized utility allowance. Then, Owner/Agent must use the LIHTC utility allowance to subtract tenant-paid utilities from the LIHTC rent limit. Once the Owner/Agent determines the maximum allowable rent for each program, the lower rent applies. Utility allowances for each program are updated and issued at least annually. It is important to use current allowances.

**Record Retention:**

All records pertaining to each fiscal year of HOME funds must be retained for the most recent five-year period, except as provided below:

“For rental housing properties, general rental records must be retained for five years after the property completion date; except that records of individual tenant income verifications, property rents and property inspections must be retained for the most recent five-year period, until five years after the affordability period terminates.” CFR 92.508C.1p89

Lead-Based Paint information and records must be kept at least three years.

All records must be available upon request for Asset Management monitoring staff review. If the property has Low Income Housing Tax Credits, refer to the LIHTC Compliance Manual for further record retention requirements.
Management & Reporting Requirements

Management Agent Plan & Qualifications
Owners/Management Agents of HOME properties are required to submit a Management Plan & Qualifications Packet. The plan must be reviewed and approved by Asset Management prior to lease-up activities and property completion. From time to time, OHCS will issue notices to explain, augment, or interpret these requirements. The owner or management agent must amend the Management Plan to include any changes in program requirements or management policies.

Changes of Management Agent
The selection of the management agent is the responsibility of the owner; however, the agent is subject to approval by the Asset Management section of OHCS. Owners must submit requests for changes in Management Agent at least 60 days prior to implementation. A completed Management Plan and Qualifications Packet are required and must be submitted to OHCS for the proposed new management company. OHCS does not give blanket approval for any management company. Proposed management must be reviewed and approved on a property-by-property basis, regardless of the number of HOME properties currently managed by the management company. Copies of the Management Agent Plan and Qualifications Packet are available on the OHCS website at:

http://www.ohcs.oregon.gov/OHCS/APMD_DivisionMain.shtml

Management Agreement
The Management Agreement between the owner and management agent stipulates the contractual requirements for property operations. The Agreement will continue in force until canceled by either party. A provision for this must be included in a section of the Agreement titled EXPIRATION AND TERMINATION. A copy of the management agreement must be submitted to OHCS along with the completed Plan & Qualification packet.

A change in management agents requires the submission to the Asset Management section and approval of the new Management Agent Plan and Qualifications, and the execution of a new Management Agreement between Owner and Agent. It is not required that HOME properties utilize the Department’s Management Agreement form, however this form/format is recommended.

The owner is responsible for keeping the Asset Management section informed of any event that might affect the property’s compliance with 24 CFR, Part 92, and for certifying annually the property’s continued compliance. The owner must submit written notification of changes in ownership, management company, portfolio/asset manager or agent, and site manager. Changes to contact information such as email address, mailing address, telephone number and fax number must be submitted in a timely manner as well.
**Transfer of Ownership**

An Owner which has received a grant, tax credit, or loan from the Department shall not transfer ownership, lease, or otherwise encumber any property which serves or will serve as security for a program without prior written approval from the Department. Approval will not be unreasonably withheld. Review the Project’s program documents for more information.

If a transfer is completed without prior Department approval, the Department may, at its sole discretion, enforce remedies as provided under the program documents or OARs which may include additional charges assessed and up to reversal of transfer of ownership.

For more information view the Transfer of Ownership request for Approval Sale, Partial Sale, Lease, or Merger and Ownership Entity Changes document at:


**Reporting and Certification**

The owner is responsible for reporting to the Asset Management section annually by submitting the HOME Monitoring Report (OHCS.14H) along with the completed Owner’s Certification of Continuing Program Compliance (OHCS.1H).

The owner of a property with HOME units must certify compliance with the following provisions:

- If the property has five or more HOME units, at least 20% of the HOME units must be designated as Low HOME – i.e., rented to households with gross incomes not exceeding 50% of area median income adjusted for family size; and

- The remaining HOME units must be designated as High HOME - rented to households with gross incomes not exceeding 60% of area median income adjusted for family size;

- The owner has received an annual low-income Tenant Income Certification (TIC) (OHCS.2H or OHCS.2) from each low-income tenant and required documentation to support each certification;

- That each low-income unit is rent-restricted as defined in HOME regulations.

  **Note:** Some owners may have agreed through the Grant Agreement and/or other program funding documents to reduce rents lower than the requirements; if so, the lower (more restrictive) rents must be followed;

- That all units in the property are for use by the general public, and used on a non-transient basis;

- That each building in the property is suitable for occupancy; and,
• The owner has not refused to rent a HOME unit to a Section 8 voucher holder, on the basis of their status as a voucher holder.

Note: If other restrictive programs were included in the financing of the property, separate reporting requirements exist. Please refer to the appropriate manual(s) for details on other program requirements.

**Annual Reporting - Noncompliance**
Failure to submit a completed annual Owner’s Certification of Continuing Program Compliance and HOME Monitoring Report is considered to be noncompliance. The Certification and Monitoring Report are to be signed by the owner or a managing agent with signature authority and submitted to OHCS annually. A late fee will be imposed for any annual certification not received by OHCS by the due date issued each year. The due date is typically April 15th each year.

Further, the owner (HOME Recipient) is also responsible to correct any non-compliance findings within the required time frame. Failure to correct within the time specified by Asset Management, may result in termination of the HOME Grant or Loan Agreement. If the Agreement terminates, the Recipient is liable to repay all of the HOME funds disbursed to the property.

**Management Agent and On-site Personnel**
The management agent and on-site personnel are responsible to the owner for implementing the HOME Program requirements and the provisions of the property’s management plan. Anyone who is authorized to lease apartment units to tenants should be thoroughly familiar with and follow all federal and state laws, rules, and regulations governing certification and leasing procedures.

The management agent must provide information requested by the Asset Management section and submit, on behalf of the owner, all required reports and documentation in a timely manner. Annual certification documents may be signed on behalf of the owner by the managing agent with legal signature authority.

Management agent/staff should ensure that tenant occupancy information remains confidential, but is accessible to authorized representatives of OHCS and/or HUD.
Regulations & Requirements

The following discussion highlights some of the HOME Program regulations directly affecting property compliance. It is not a complete listing of compliance regulations.

**Maximum Income Limits**

HUD requires that every HOME-assisted rental unit be occupied by a household that is low-income. For properties with five or more HOME-assisted units, HUD also requires that at least 20% percent of the units be occupied by households that are very low-income. The HOME income targeting requirements specify who can live in HOME units (based on income) and how much rent the tenants can pay.

The following are the HOME income targeting requirements:

- **Low-income household**: The household's annual gross income is no greater than 60% percent of the area median income. These limits apply to tenants that live in High HOME rent units.

- **Very low-income household**: The household's annual gross income is no greater than 50% percent of the area median income. These limits apply to tenants that live in Low HOME rent units.

The maximum amount of annual gross income that a household may earn to qualify for a HOME-assisted unit is called the **income limit**. HUD establishes HOME income limits for different localities and adjusts them for household size, from one to eight persons. These limits establish the specific maximum annual dollar amount that a low-income and very low-income household can earn in order to qualify to reside in a HOME unit. Please refer to your HOME Grant or Loan Agreement to confirm how many units must be reserved for housing tenants at the very low-income level - 50% of area median income and for housing tenants at the low-income level – 60% of area median income. The property must maintain these percentages throughout the term of affordability.

HUD issues income limits for low-income households and for very low-income households on an annual basis. OHCS posts the limits on our website at: [http://www.ohcs.oregon.gov/OHCS/HPM_income_limits.shtml](http://www.ohcs.oregon.gov/OHCS/HPM_income_limits.shtml)

Owners **may not anticipate** increases in income limits. Limits remain in effect until new annual limits are officially published by HUD.
Maximum Rent Limits
HUD requires that the rents being charged for HOME-assisted units are affordable to low- and very low-income households. HUD provides HOME rent limits to define what is affordable.
OHCS posts these limits each year on our website:
http://www.ohcs.oregon.gov/OHCS/HPM_income_limits.shtml
The HOME rent limits are the maximum rents that can be charged to an income-eligible tenant household who is residing in a HOME-assisted unit. The HOME program has two rent limits: the High HOME rent limits and the Low HOME rent limits. The HOME rent limits include utilities. Therefore, the owner/agent must deduct tenant paid utilities from the published HOME rents to determine the maximum rents that can be charged for a HOME-assisted unit.

Each property may have two HOME rent levels, as explained in the following:

Low HOME Rents
Low HOME rents apply to a minimum of 20% of the units in properties with five or more HOME-assisted units and are occupied by very low-income tenants. These units must have rents that do not exceed the lesser of: Low HOME rent as calculated by HUD, with adjustments for the number of bedrooms in the unit, or: the Fair Market Rent (FMR) for the unit bedroom size, calculated annually by HUD. Should the FMR be lower than the Low HOME rent calculation, the FMR is then considered the Low HOME rent.

High HOME Rents
High HOME rents are the maximum rents that can be charged to low-income households. These units must have rents that do not exceed the lesser of: High HOME rent as calculated by HUD, with adjustments for the number of bedrooms in the unit, or: the Fair Market Rent (FMR) established annually by HUD. If the FMR is lower than the High HOME rent calculation but greater than the Low HOME rent calculation, the FMR is then considered the High HOME rent.

Subsidy Programs/Effect on HOME Rents
Tenant-Based Subsidy:
When a household receives tenant-based rental assistance provided by a Section 8 program or other funding source, the maximum allowable rent for the HOME-assisted unit cannot exceed the applicable HUD-published HOME rent limit. This means that the total rent collected for the unit (subsidy payment plus tenant rent portion plus utility allowance) cannot exceed the HUD-published High or Low HOME rent limit for the unit type (High or Low HOME).
The HOME Program prohibits properties from collecting more than the maximum HOME rents, **unless:**

**Property - Based Subsidy:**
The property is underwritten with a *property-based subsidy program* in place, and,
- Units are initially occupied by households making no more than 50% of AMI
- Households are paying no more than 30% of adjusted income for rent (which could exceed the maximum HOME rent)

**Property-Based Vouchers:**
Rent collected in a HOME-funded unit with a *Property-based voucher* (PBV) occupied by a very low-income household may be up to the maximum PBV rent (even if above FMR/HOME maximum): 24 C.F.R. 92.252(b) (2).

**Setting Rents for Units Receiving State or Federal Project-Based Rental Assistance**
Any unit with a project-based subsidy is a Low HOME Rent unit when it is occupied by a very low-income tenant who pays no more than 30 percent of their adjusted gross income for rent.

If an owner recertifies the tenant household’s income and determines that it has increased over the very low-income limit, the unit no longer qualifies as a Low-HOME Rent unit. The owner must re-designate the unit as a High HOME Rent unit. The rent can be adjusted up to no more than the High HOME Rent. This is typically less than the project-based assistance rent. The portion of rent charged to the tenant is still 30 percent of the tenant’s (now greater) adjusted income, in accordance with the rules of the project-based rental assistance program. The rent to the owner will change, and will be based on the difference between High HOME Rent minus the tenant’s rent contribution.

**Rent Adjustments**
OHCS must approve the property’s rent structure at project lease-up and must approve all rent increases throughout the affordability period. The Asset Management section must review the property’s rent structure to determine that the rents comply with the HOME rent limits and that the rents are reasonable for the local housing market.

Rent increase requests must be submitted to OHCS-Asset Management Section in writing no later than 60 days prior to the requested implementation date. Contact your Asset Management Compliance Officer with any questions.

**Rent increases might occur when:**
- HUD-published High HOME rent limits and Low HOME rent limits increase;
- The tenant pays utilities and the utility allowances decrease;
- The tenant becomes over-income

**Rent decreases might occur when:**
- The HUD-published HOME rent limits decrease; or
- If the tenant pays utilities and the utility allowance increases causing the total rent plus the utility allowance to be more than the HUD published HOME rent limits.
Owners/Agents are never required to charge rents that are lower than the HOME rent limits that were in effect at the time OHCS made its initial commitment of HOME funds to the HOME property. Any changes in rents for occupied units are subject to the terms of the tenant’s lease. Rent adjustments for over-income tenants are discussed later in this manual.

**Designated HOME units**

At the time of initial commitment of HOME funds, Owners may choose to establish either a “Fixed” or “Floating” designation for the HOME-assisted units at their property. This designation is made at the underwriting stage and is made prior to the property file being transferred to the Asset Management section for monitoring. Once the designation for “Fixed” or “Floating” units is made, it must remain as designated throughout the affordability period.

**Fixed or Floating Units**

Properties with **Fixed HOME units** have specific units (e.g., Units 101, 102 and 103) that are designated as HOME-assisted for the duration of the affordability period. Owners/Agents must maintain these specific units (Units 101, 102 and 103) as HOME-assisted units throughout the affordability period. In addition, OHCS will tell owners how many units must be designated as High HOME Rent and Low HOME Rent units. Owners/Agents must maintain the original number of High HOME rent units and Low HOME rent units throughout the affordability period.

Properties with **Floating HOME units** do not have specific units that are designated HOME-assisted for the duration of the affordability period. OHCS designates specific units as HOME-assisted initially, but the owner does not need to maintain those specific units as HOME-assisted. Instead, throughout the affordability period, the owner maintains the total number of HOME-assisted and non-assisted units that were originally designated. The HOME-assisted unit designations change, or “float” among comparable* assisted and non-assisted units during this time in order to keep the original mix of assisted and non-assisted units. For example, if a property has an over-income tenant in a HOME-assisted unit, when the next comparable non-assisted unit becomes available, it is re-designated as HOME-assisted and rented to an income eligible tenant. The unit occupied by the over-income tenant is re-designated as a non-assisted unit. In addition, the number of High and Low HOME rent units that are designated at the time of project commitment must also stay the same.

*Comparable units=same square footage, bedroom size and amenities.
When re-designating units in order to maintain the required unit mix, Owners/Agents must substitute a comparable unit. They can choose to substitute a “greater” unit for a “lesser” unit. A “greater” unit is one that might be considered more preferable because of larger size, additional bedrooms, or amenities. This type of substitution is not required. However, Owners/Agents are never permitted to substitute a “lesser” unit for a “greater” unit.

Maintaining the required number of HOME-assisted units, High HOME rent units and Low HOME rent units is called complying with the unit mix requirements

**Maintaining the HOME Unit Mix Requirements**
*The property must maintain the correct number of High and Low HOME rent units.*

**What are the factors in determining the correct unit mix?**
- Does the property have fixed or floating units?
- What was the original type of unit (Low HOME Rent unit or High HOME rent unit)?
- Did the household move-out?
- What happened to household income?
  - Stayed below 50%
  - Went above 50% but stayed below 80%
  - Went above 80%

Remember…

**Low HOME Rent Units:** Are occupied by very low-income households (income at or below 50% AMI). Rents are maintained at the Low HOME Rent Limits per bedroom size.

**High HOME Rent Units:** Are occupied by low-income households (income at or below 60% AMI). Rents are maintained at the High HOME Rent Limits per bedroom size.

The following examples are for HOME only and assume no LIHTC funding

**Vacated HOME-Assisted Units**
Generally, when a fixed or floating HOME-assisted unit is vacated and the property is in compliance with unit mix requirements (no over-income tenants in any of the HOME-assisted units), the owner must take the following steps to fill the vacancy:

- Rent a High HOME Rent unit that is vacated to a new qualified low-income tenant, at a rent that does not exceed the High HOME rent limit (60%).
- Rent a Low HOME Rent unit that is vacated to a new qualified very low-income tenant, at a rent that does not exceed the Low HOME rent limit (50%).

However, if there is an over-income tenant occupying a HOME-assisted unit in the property, the steps that the Owner/Agent must take will depend on whether the property has fixed or floating HOME-assisted units. See the following applicable steps for over-income tenants in HOME units.
Increases in Tenant Income - Fixed and Floating HOME Units:
When an Owner/Agent recertifies a tenant’s income, they may find that the tenant’s income has increased. In the HOME program, a tenant is considered over-income when:

- The tenant occupies a High HOME or Low HOME rent unit and the household income increases over the current HOME low-income limit for its family size, or
- The tenant occupies a Low HOME rent unit and the household’s income increases above the current HOME very low-income limit, but is still below the low-income limit for its family size.

When a tenant is over-income, the unit that the tenant occupies is considered temporarily out of compliance with HOME’s occupancy and unit mix requirements. Temporary noncompliance due to an increase in an existing tenant’s income is permissible as long as the owner takes specific steps to restore the correct occupancy and unit mix in the property as soon as possible. The rents of tenants whose incomes exceed the low-income limit must also be adjusted as soon as the tenant’s lease permits. However, Owners/Agents may not evict or terminate the tenancy of a household because their income has increased.

Over-Income Tenants in a Property with Fixed HOME units
When an Owner/Agent recertifies a tenant’s income and finds that it has increased above the HOME income limits, the steps that the Owner/Agent takes to restore compliance depend on whether the over-income tenant occupies a High HOME Rent unit or a Low HOME Rent unit. If the tenant occupies a Low HOME Rent unit, the steps also depend on whether or not the tenant is low-income. The possible steps are outlined below:

When an Over-Income Household Occupies a Fixed High HOME Rent Unit
The property is temporarily out of compliance until the unit with an over-income tenant is vacated and can be rented to another low-income tenant household. The Owner/Agent must raise the over-income household’s rent as soon as possible, in accordance with the terms of the lease. The rent for the over-income tenant must be adjusted such that the tenant pays the lesser of:

- The rent amount payable under state or local law;
- 30 percent of the tenant’s monthly adjusted family income; or
- If the unit is also tax credit (LIHTC), the tenant must pay the rent dictated by the tax credit program
**When a Tenant Household's Income is Low-Income (60%) but is Not Very-Low Income (50%) and the Household Occupies a Fixed Low HOME Rent Unit**

The property is temporarily out of compliance until either: (1) a High HOME Rent unit can be re-designated as a Low HOME Rent unit, or (2) the unit occupied by the over-income tenant is vacated and can be rented to another very low-income tenant household.

The unit that is occupied by the over-income tenant retains its designation as a Low HOME Rent unit until another unit can be re-designated as the Low HOME Rent unit. For as long as the unit retains the Low HOME Rent designation and is occupied by a low-income household, the Owner/Agent may not increase the tenant's rent above the Low HOME rent limit.

When a High HOME Rent unit in the property vacates, regardless of bedroom size, the unit must be re-designated as a Low HOME Rent unit and rented to a very low-income tenant, at no more than the Low HOME Rent. Once a new Low HOME Rent unit has been designated, the unit that is occupied by the over-income tenant must be re-designated as a High HOME Rent unit. At this time, the Owner/Agent can increase the tenant's rent up to the High HOME Rent, subject to the terms of the lease.

**When a Tenant Household's Income is Above the Low-Income Limit (60%) and they occupy a Fixed Low HOME Rent Unit**

The property is temporarily out of compliance and will continue to be out of compliance until the over-income tenant moves out and a new income-eligible tenant household moves in. The Owner/Agent must adjust the over-income household’s rent as soon as the lease permits. The over-income tenant must pay the lessor of:

- The rent payable under or state or local law;
- 30 percent of the tenant’s monthly adjusted family income;
- If the unit is also tax credit (LIHTC), the tenant must pay the rent dictated by the tax credit program

When a High HOME Rent unit becomes available, regardless of bedroom size, it must be re-designated as a Low HOME Rent unit. This unit must be rented to a very low-income tenant, at no more than the Low HOME Rent. Then, the unit that is occupied by the over-income household must be re-designated as a High HOME Rent unit. Even though the unit is re-designated a High HOME Rent unit, since the tenant is over the low-income limit, the property continues to be temporarily out of compliance.

> **Note:** In units funded with HOME and Low Income Housing Tax Credits (LIHTC), the LIHTC rules apply. Under the LIHTC program, the tenant's rent is not adjusted, and the unit does not need to be replaced by another comparable unit until the tenant’s income rises above 140 percent of area median.

See flow chart next page:
Is the over-income tenant household in a High or Low HOME unit?

High HOME Rent Unit

This property remains out of compliance until the over-income tenant moves out

As soon as lease permits, adjust the rent of over-income tenant; Charge 30% of their monthly adjusted household income as rent. Rent is not capped at market rent

Low HOME Rent Unit

Is over-income tenant’s income above or below 80% AMI?

At or below 80% AMI (but above 50%)

Rent next available HOME-assisted unit to a very low-income tenant; charge no more than Low HOME Rent. Designate this unit a Low HOME Rent unit

Above 80% AMI

Rent next available HOME-assisted unit to very low-income household; charge no more than the Low HOME Rent

A low-income household has an annual gross income that is not more than 80% of the area median income.

A very low-income household has an annual gross income that is not more than 50% of the area median income.

An over-income household resides in a HOME-assisted unit and has either: (1) an annual gross income over 80% of AMI, or (2) an annual gross income over 50% of AMI that occupies a Low HOME rent unit.

When new low HOME Rent unit is designated, redesignate the unit with over-income tenant as a High HOME Rent unit. Adjust over-income tenant’s rent to no more than the High HOME rent, if desired

As soon as lease permits, adjust the rent of over-income tenant; charge tenant 30% of their monthly adjusted household income as rent
**Over-Income Tenants in a Property with Floating HOME units**

When an Owner/Agent recertifies a tenant’s income and finds that it has increased above the HOME income limits, the steps that the Owner/Agent takes to restore compliance depend on whether the over-income tenant occupies a High HOME Rent unit or a Low HOME Rent unit. If the tenant occupies a Low HOME Rent unit, the steps also depend on whether or not the tenant is low-income. The possible steps are outlined below:

**When an Over-Income Household Occupies a Floating High HOME unit**

- The Owner/Agent must adjust the rent of the over-income tenant household so that they pay 30 percent of their monthly adjusted income as rent. The rent adjustment must be made as soon as the lease permits, and in accordance with the terms of the lease. Note, unlike the rule for properties with fixed HOME-assisted units, in a property with floating HOME units a tenant household is not required to pay more than the market rent for comparable, unassisted unit in the neighborhood.

- The next vacant, comparable, non-assisted unit must be designated as a High HOME Rent unit. A comparable unit is one that is equal or greater in terms of size, number of bedrooms, and amenities. The Owner/Agent may not replace the unit with one that is lesser, unless doing so preserves the original unit mix. The newly designated High HOME Rent unit must be rented to a tenant whose income does not exceed the low-income limit, at a rent that does not exceed the High HOME Rent.

- Once a comparable non-assisted unit is designated the new High HOME Rent unit, the unit with the over-income household is re-designated as a non-assisted unit. At this point, the Owner/Agent may adjust the tenant’s rent without regard to the HOME rent requirements (other funding source requirements may still apply). Rent increases are subject to the terms of the household’s lease.

**When a Tenant Household's Income is Low-Income (60%) but is Not Very-Low Income (50%) and the Household Occupies a Floating Low HOME Rent Unit**

- The unit that is occupied by the over-income tenant keeps its designation as a Low HOME Rent unit until a comparable unit can be substituted. The rent of the over-income tenant must not exceed the Low HOME rent limit while the unit is a Low HOME Rent unit.

- When the next High HOME Rent unit in the property is vacated, it must be re-designated as Low HOME Rent unit rented to a household whose income does not exceed the very low-income limit, at a rent that does not exceed the Low HOME Rent.

- Once the new Low HOME Rent unit is designated, the unit with the over-income household is re-designated as a High HOME Rent unit. The household’s rent may be adjusted to no more than the High HOME rent limit.
**When a Tenant Household's Income is Above the Low-Income Limit (60%) and they occupy a Floating Low HOME Rent Unit**

- The next vacant, comparable, non-assisted unit must be designated as a Low HOME Rent unit, and rented to a tenant whose income does not exceed the very low-income limit, at a rent that does not exceed the Low HOME Rent limit.
- Until a comparable Low HOME Rent unit is designated, the unit that is occupied by the over-income household is considered a Low HOME Rent unit that is temporarily out of compliance.
- The rent of the over-income household in the original Low HOME Rent unit must be adjusted as soon as the lease permits, and in accordance with the terms of the lease.
- Until a comparable Low HOME Rent unit is substituted, the over-income tenant must pay 30 percent of the household’s monthly adjusted income as rent.
- After comparable Low HOME Rent unit is substituted, the unit with the over-income tenant is re-designated a non-assisted unit. The owner/agent may adjust the tenant’s rent without regard to the HOME restrictions. Rent increases are subject to the tenant’s lease.

See flow chart next page:
When new Low HOME Rent unit is designated, re-designate the unit with over-income tenant as a High HOME Rent unit.

Adjust over-income tenant’s rent; may be adjusted to no more than the High HOME rent.

As soon as lease permits, adjust the rent of over-income tenant. Tenant must pay 30% of their monthly adjusted income. Rent is capped at market rent for comparable, unassisted units in the neighborhood.

Rent next available non-assisted unit to low-income tenant. Charge no more than the High HOME rent. Designate this unit a High HOME Rent unit. Once a new High HOME Rent unit is designated, re-designate the unit with the over-income tenant as non-assisted if it is not needed to maintain the correct unit mix. HOME restrictions no longer apply.

NOTE: If there is more than one over-income household in the property and both a Low HOME Rent and a High HOME Rent unit are needed to restore unit mix, the owner must restore compliance with the Low HOME Rent unit first.

A low-income household has an annual gross income that is not more than 80% of the area median income.

A very low-income household has an annual gross income that is not more than 50% of the area median income.

An over-income household resides in a HOME-assisted unit and has either: (1) an annual gross income over 80% of AMI, or (2) an annual gross income over 50% of AMI that occupies a Low HOME rent unit.

A over-income tenant household in a High or Low HOME unit?

Is over-income tenant’s income above or below 80% AMI?

At or below 80% AMI (but above 50%)

Rent next available HOME-assisted unit to a very low-income tenant; charge no more than Low HOME Rent. Designate this unit a Low HOME Rent unit.

As soon as lease permits, adjust the rent of over-income tenant. Tenant must pay 30% of their monthly adjusted income. Rent is capped at market rent for comparable, unassisted units in the neighborhood.

NOTE: If there is more than one over-income household in the property and both a Low HOME Rent and a High HOME Rent unit are needed to restore unit mix, the owner must restore compliance with the Low HOME Rent unit first.
**Moving Existing Tenants to a different HOME Unit**

There is no such thing as a unit transfer in the HOME Program. Transfers from one HOME unit to another HOME unit must be treated like a new move-in. All applications, verifications, and certification procedures must be completed for the transferring tenant(s), including the execution of new income and asset verifications to determine continued eligibility for a HOME unit.

**Adding a New Household Member**

OHCS recommends Owners/Agents include language in the lease prohibiting the addition of a new household member during the first six months of occupancy. The only exception would be the addition of child/children born to or adopted by a member of the original household.

In the event a tenant wishes to add an additional person to the household, the following steps must be taken:

- The prospective tenant must complete an application and provide verification of income and assets as required of the initial tenant;
- Once accepted as a qualified tenant, the new household member must sign the lease;
- The new household member's income must be added to the next annual certification (or self-certification). Management can choose to execute a new Tenant Income Certification immediately to reflect the new composition and income of the household; however, it is not required.

**Fees and Other Surcharges**

Mandatory fees and surcharges are not encouraged in HOME properties, and are subject to OHCS’ written approval before they can be imposed on a tenant. Generally, if imposed, HUD requires the owner to deduct all mandatory fees from the HOME rent limit to determine the maximum rent that can charged for a unit.

**OHCS Policy on Mandatory Renter's Insurance**

If the owner's purpose in requiring tenant-paid renter's insurance is to assure that the household has liability coverage for damages to the property or other residents, then the monthly cost of this insurance must be included in any gross rent calculation. In this case, if properties are charging rents at the program maximum, the rent charged to the tenant must be reduced by any monthly insurance payment amount. This policy applies to rent calculations affected by any program funding source.

The exception to this policy is when the property has mandatory renter's insurance based upon the resident’s option to have household items that may have specific insurance coverage requirements such as waterbeds or large aquariums.
Compliance Monitoring

Monitoring by OHCS is an ongoing process involving continuous communication and evaluation. The process begins with the allocation of HOME funds through the CFC process. Asset Management will monitor HOME compliance throughout the affordability period of the property.

The Compliance Officer’s responsibilities:

Asset Management Section Compliance Officers perform file reviews and on-site visits as scheduled to ensure the owner and property management agent are operating the property in compliance with applicable rules, regulations, and policies.

The areas to be reviewed for compliance will include, and are not limited to:

- Tenant qualifications, income calculations, and appropriate supporting documentation;
- The gross rent (rent plus tenant-paid utility allowance);
- Provisions memorialized in the HOME Grant Agreement, HOME Land Use Declaration of Restrictive Covenants and other applicable documentation;
- Property characteristics attested to in the initial application for which ranking points were awarded;
- Property’s waiting list and applicant placement procedures;
- Property’s AFHMP and updates and
- Property’s Fair Housing Violations.

The Compliance Officers will also:

- Provide technical assistance to the sponsors, owners, and management agents when needed or requested to ensure compliance with program requirements;
- Review and approve any requested rent increases, the vacancy history of both low-income and market-rate units and the marketing strategies used to fill vacancies;
- Report instances of noncompliance, when appropriate, to HUD or the OHCS Finance Committee after giving the owner reasonable time to correct the issues of noncompliance;
- Maintain/keep the information used to complete the monitoring visit/audit for a period not less than five years following the calendar year in which it was received.
OHCS is mandated to perform on-site inspections of all HOME properties through the end of each property’s affordability period. If there are any additional funding sources for which OHCS is responsible for monitoring compliance, the time frame for inspections and reviews may be extended accordingly (longer affordability periods). These on-site inspections may be separate from any Uniform Physical Conditions Standards (UPCS) inspections, review of tenant certifications, supporting documents and rent records. Additionally, if other programs are allocated by OHCS, such as Low-Income Housing Tax Credit (LIHTC), Oregon Affordable Housing Tax Credit (OAHTC), HELP, Tax-Exempt Bond financing, or Trust Fund or any other source, a review of all requirements may be conducted along with the HOME review.

The HOME Monitoring Site Visit/Audit Process

Is based upon the following components:

- HOME Regulatory Requirements
- The Compliance Manual
- Tenant File Review
- Property Site & Unit Inspections
- Annual Owner’s Certification of Continuing Program Compliance and all attachments, including the HOME Monitoring Report
- Utility Allowance Documentation
- Use of Correct Income and Rent Limits
- Lease and Tenant Selection Criteria Review and Approval
- Record Keeping and Record Retention
- Noncompliance/Plans to Correct Noncompliance
- All other applicable documentation
- Compliance Training Workshops

Compliance Training

Asset Management will conduct periodic Compliance Trainings. The purpose of the state-sponsored training is to provide owners/agents with the tools to maintain property compliance.

Trainings will cover:

- A sampling of the basic HOME compliance requirements;
- OHCS policies and procedures for compliance monitoring;
- Specific information on the following low-income tenant eligibility requirements:
  - Income and Rent Limits
  - Definitions of Income and Assets
  - Tenant Income and Asset Certification
  - Leases
- Other owner responsibilities, including notifying Asset Management if any change in management or ownership of the property

Compliance training workshops are not intended to be the only training resource or a substitute for more formal certification or other technical recordkeeping training.
Home Compliance Forms
OHCS requires the use of certain forms. No other forms will be considered acceptable. All required forms can be located on our website – see link noted below.

The following are required forms:

- Owner’s Certification of Continuing Program Compliance (OHCS.1H)
- Applicant/Tenant Questionnaire (OHCS.3)
- HOME Program Monitoring Report (OHCS.14H)
- Tenant Income Certification (OHCS.2H or OHCS.2) 
  (HOME only TIC=OHCS.2H/HOME+LIHTC=OHCS.2)
- Employment Verification (OHCS.7)
- Unemployed/Zero Income Certification (OHCS.8)
- Asset Verification (OHCS.13H)
- Student Status/Financial Assistance (OHCS.6)
- HOME Program Self-Certification (OHCS.12)
- HOME Program Lease Checklist (OHCS.15H)
- Citizenship Declaration (OHCS.20H)
- Assessment of Household Demographics (OHCS.21)
- HOME Lease Compliance Form (OHCS.22H)

The following are recommended forms:
In addition to the required forms, the following recommended forms are also available. Any format the owner or managing agent chooses that provides, at a minimum, the information requested on these forms is acceptable to Asset Management:

- Income Verification (for self-employed person) (R.13/R.14)
- Public Assistance Verification (R.11)
- Periodic Monetary Assistance Verification (R.9)
- Public Housing Authority Statement (R.12)
- Child Support/Alimony Statement (R.4)
- Social Security Benefits Verification (R.16)
- Lead-Based Paint Disclosure (E.5H) [This form or similar is required for properties built prior to 1978].

All forms listed above and more can be found on the Oregon Housing website at:
**Asset Management Tenant File Reviews & Property Inspections**

The following are required documents that must be maintained in each tenant file:

- Rental Application
- Applicant/Tenant Questionnaire
- Tenant Income Certification (TIC)
- Third-party verifications and source documentation
- The social security number for all household members and verification of the number
- Declaration/verification from all family members of citizenship or eligible immigration status
- Lease with HOME Lease Compliance Form
- Tenant acknowledgement of provision of lead based paint information pamphlet and other notifications (as applicable)
- Unit maintenance records (separate maintenance file is acceptable)
- Other records (relevant to each tenant’s residence in the property)

Note: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 imposed restrictions on eligibility for receipt of public benefits. Essentially, the law provides that illegal aliens are not to receive public benefits and specifies how the inquiry into a person’s status is to be conducted. However, there is an exception to the law for community programs that are necessary for protection of life or safety. For permanent housing properties, grantees that are governments or for-profit enterprises are required to comply with the law and should contact their legal counsel for advice on how to comply. Grantees that are nonprofit charitable organizations are not required to, but may, verify an applicant’s citizenship or immigration status before providing assistance. If a nonprofit elects to verify citizenship or immigration status, they must follow the procedures required by the Act and should consult with their legal counsel on how to comply.

You can follow the link to the “Personal Responsibility and Work Opportunity Reconciliation Act of 1996" here.

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=104_cong_bills&docid=f:fh3734enr.txt.pdf

OHCS is mandated to review tenant files on-site and/or to perform physical inspections of all HOME properties as deemed necessary throughout the applicable compliance period for each property.

The assigned Asset Management Compliance Officer will conduct a physical inspection at least once per year for properties consisting of more than 25 total units (including non-HOME units), and once every other year for properties with 1-25 total units. Inspections may happen more frequently at the CO’s discretion.
When a property is scheduled for inspection, the CO will:

- Notify the owner and managing agent in writing of the date and approximate time of inspection;
- Perform the on-site file, property, and unit inspections;
- Inform the owner and managing agent of any findings of noncompliance with regard to the review- conduct an exit interview while onsite;
- Provide owner with findings letter that includes time period to correct non-compliance findings and respond to OHCS accordingly with corrective action/s.

Tips for Submitting Satisfactory Corrective Action/s
- Review the findings letter to ensure that what you are sending was requested. Sending too much information could result in additional questions;
- Submit the documentation in an organized manner. Label items so that we can determine what we are looking at. Be sure that your property’s name is on the materials;
- Prepare cover letter to explain the corrective action/s and put the corrective action in the same order as the findings letter;
- If e-mailing, request an acknowledgement that the person has received the corrective action/s;
- Always send with identifying information or explanation;
- Don’t wait till last minute to start working on your response-corrective action/s. You don’t want to be late and it is always okay to turn in your response prior to the due date.

Property Standards/ On-Site Physical Inspections–UPCS
OHCS is required to conduct on-site inspections of HOME-assisted properties throughout the properties’ affordability period. The inspection is an examination of the physical condition of the property. The owner must keep all property units in decent, safe, and sanitary condition at all times and in compliance with Uniform Physical Condition Standards along with any other local/state/federal building codes. OHCS conducts physical inspections of the property’s exterior, grounds, common spaces, and a reasonable sampling of HOME-assisted units using the Uniform Physical Conditions Standards (UPCS) (E.7).

The inspection will include monitoring of the Owner’s/Agent’s physical management practices including routine maintenance, capital planning, property standards, unit turn-over, security concerns and marketability.

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, owners must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Tenants must receive a federally approved pamphlet on lead poisoning prevention entitled “Protect Your Family from Lead in Your Home”.
Record Keeping and Retention

Owners must retain project records that document the compliance of their HOME-assisted rental properties for a minimum of five years beyond the property’s required effective period. Required records include: tenant records, including income verifications, unit rents, affirmative marketing, property standards and unit inspections. These records must be retained for the most recent five-year period, until five years after the period of affordability.

Owners must maintain applicant and tenant information in a way to ensure confidentiality. Any applicant or tenant affected by negligent disclosure or improper use of information may bring a civil action for damages against the owner and/or manager and seek other relief as appropriate. Owners must dispose of records in a manner that will prevent any unauthorized access to personal information, e.g., burn, pulverize, shred, etc.

Correction and Consequences of Non-Compliance

If OHCS does not receive the required certifications and/or compliance reports when due or discovers by audit, inspection, or review, or in some other manner that the property is not in compliance with the requirements of the HOME Program, or with the property’s loan documents, including the Declaration, OHCS will notify the owner as soon as possible.

Notice to Owner

OHCS will provide prompt written notice to the owner of a HOME-assisted property if OHCS does not receive the annual owner certification and income and occupancy report, or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records, or discovers by inspection, review, or in some other manner, that the property is not in compliance with the requirements of the HOME Program, or with the property’s loan documents, including the Declaration.

Correction Period & Extension Requests

The correction period will be established by OHCS and set forth in a Findings Report to the owner. OHCS may extend the correction period, but only if OHCS determines there is good cause for granting the extension. Requests for an extension must be in writing from the owner, must be received by OHCS no later than the last day of the correction period identified on the Findings Report and must include an explanation of the efforts to correct the noncompliance and the reason the extension is needed.

Owner’s Response

OHCS will review the owner’s response and supporting documentation, if any, to determine whether the noncompliance has been clarified, corrected or remains out of compliance.

Clarified noncompliance is, for example, where income eligibility was not properly documented and the inspector cannot make a reasonable determination that the unit is in compliance but the owner/agent conducts a retroactive (re)certification which completely and clearly documents the sources of income and assets that were in place at the time the certification should have been effective, and applies income and rent limits that were in effect on that date. If documentation is complete and it supports that the household was eligible as of the effective date, the file is considered clarified.
**Corrected non-compliance** is when a violation is observed, there is a period of time during which the unit is out of compliance, but the unit is brought back into compliance. For example, a late certification or re-certification is out of compliance on the certification due date, and back in compliance as of the date the last tenant signs the Tenant Income Certification.

**Uncorrected non-compliance** is a violation that is not corrected or clarified by the end of the correction period.

**Consequences of Non-Compliance**
Failure to correct all non-compliance could result in increased monitoring and reporting requirements, extension of the end of the affordability period, repayment of the HOME grant or loan, or other legal remedies and may also affect the owner’s eligibility for financing from OHCS under any or all of its programs.

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**Qualifying Tenants**

**The Tenant Application**
Applicants for low-income, rent-restricted units should be advised early in their initial visit to the property that there are maximum income limits that apply to the units. Management should explain to potential tenants that the income of all adult persons expecting to occupy the unit must be verified and included on the Tenant Applications, Applicant/Tenant Questionnaires, Verifications and Tenant Income Certification (TIC) prior to occupancy and prior to the household’s first anniversary date for continued eligibility. (See “Whose Income is Counted?” p. 36)

At the time of application, it is critical to obtain complete and accurate tenant information in order to determine eligibility and retain low-income status for program compliance. It is the management agent’s responsibility to obtain a fully completed application and to ensure sufficient information on all prospective tenants is received. Obtaining accurate and complete information is critical in order to make an accurate determination of tenant eligibility. The management agent’s application should request information regarding all household members, their sources of income, assets, and income from assets.

OHCS strongly recommends that roommates complete separate applications.

Applicants and tenants must meet the following requirements to be eligible for occupancy or to change units – (completed as move-out then move-in)

1. The household’s gross annual income must not exceed the HOME Program limits applicable to the unit.
2. Applicants must disclose social security numbers for all family members and provide proof of the numbers reported.
3. The applicants must declare their citizenship or eligible alien status. Only US citizens or eligible non-citizens may reside in a HOME assisted unit.

4. The household must agree to identify/report the gross amount of all income and assets coming into the household. All information reported by the household must be verified according to the HUD Handbook 4350.3 Change 3.

The management agent/staff should handle all disclosed information in a confidential manner. Additionally, the applicant may need to be assured that the provided information is considered sensitive and will be handled accordingly.

**The application should include:**

- The name and birth date of each person that will occupy the unit. The applicant’s legal name, as it will appear on the lease and other documents, should be given;
- The social security number for each family member;
- Page to declare citizenship or immigration status;
- All sources and amounts of annual income expected to be earned during the twelve month certification period (this includes income values calculated from non-income generating assets and other asset income);
- The signature of the applicant and the date the application was completed; and
- The signature of the management staff person who accepted the application and the date it was received.

**Waiting Lists**

After the units are initially occupied, the Owner/Agent must establish a waiting list containing the names of eligible applicants. The waiting list should be maintained in such a way that OHCS and/or HUD can easily follow the progression of applicant placement.

Applicants must be notified of their eligible/ineligible status. A written application is required for placement on the waiting list. Once an application is received, the applicant must be notified in writing that either they are ineligible and the reason for such determination or they appear to be eligible and they will be contacted when an appropriate unit becomes available. The notification of apparent eligibility should include the approximate amount of time it will take for a unit to become available.

Applicants must be housed in the order indicated by a written Tenant Selection Policy. Applicants must be accepted or rejected before the unit is offered to the next applicant on the list.

**Rejected Applicants**

When Owners/Agents deny an applicant because they are ineligible to reside in HOME-assisted housing and proper notice of the determination has been provided to the applicant, documentation must be kept on file. The applications along with the denial notice should be made available to the OHCS Compliance Officers during the onsite monitoring visit.
Determining Household Size
Based on information provided by the applicant and through careful interviews with management staff, applicant/tenant household size and composition must be determined. Some households may include persons who are not counted as family members for the purposes of HOME Program Income Limits and whose income, if any, is considered when calculating annual (gross) income. Therefore, do not count the following household members when determining household size for the purpose of comparing “annual income” to HOME Program Income Limits:

- Foster children
- Live-in aides
- Children of live-in aides
- Unborn children
- Children being pursued for legal custody or adoption who are not currently living with the household

**NOTE:** a child who is subject to a shared-custody agreement in which the child resides with the household at least 50% of the time can be counted.

Establishing Eligibility
Citizenship
Determining program eligibility will normally include verifying that the applicant is who he or she claims to be. Although many of the documents and procedures relevant to determining citizenship or immigration status may also be relevant to identity verification, it is the Owner’s/Agent’s responsibility to assure, pursuant to non-discriminatory procedures the identity of the applicant. Verification of the applicant’s status as a U.S. Citizen, U.S. Non-Citizen National or Qualified Alien is required for HOME-assisted properties. The first step in this procedure is to have the applicant declare their status. The OHCS required Form –Citizenship Declaration OHCS.20H must be used for this purpose.

To verify that an applicant is a U.S. citizen or non-citizen national, an Owner/Agent should do the following:
Ask the applicant to present a document demonstrating that he or she is a U.S. citizen or non-citizen national.

Primary Documents to request:
- **Birth Certificate** showing birth in one of the 50 states, District of Columbia, Puerto Rico, Guam, The US Virgin Islands, America Samoa, and Swain’s Island or the Northern Mariana Islands, unless the person was born to foreign diplomats residing in the US.
- United States Passport
- Report of Birth Abroad of US Citizen
- Certificate of Naturalization
**Income**
The Owner/Agent must determine that a household is income-eligible before signing a lease to rent a HOME-assisted unit. The income of all household members must be included, and the determination must be based on income that is expected in the next twelve months. For the initial income-eligibility determination, Owners/Agents must examine income source documents and complete 3rd party verifications to ensure the accuracy of the income information that the tenant reports on the application.

A fully completed Applicant/Tenant Questionnaire (OHCS.3) is required and critical to an accurate determination of eligibility. The information furnished on the questionnaire should be used as a tool to determine all sources of anticipated income and assets. Any differences in reported information on the application versus the questionnaire should be investigated to ensure accurate information is received and verified.

After the household completes the Applicant/Tenant Questionnaire, the Owner/Agent must have all income and assets verified. The application, questionnaire, income & asset verifications, and lease are to be executed prior to move-in. All occupants in a HOME-assisted unit must be certified and have a valid lease on file. All household members age 18 and over must sign the documents.

**The Owner/Agent determines the applicant household’s income-eligibility as follows:**

- If the applicant will occupy a High HOME Rent unit, the household’s anticipated annual gross income cannot exceed the published Low HOME income limit – 60% limit for OHCS funded properties.

- If the applicant will occupy a Low HOME Rent unit, the household’s anticipated annual gross income cannot exceed the published Very low HOME income limit – 50% limit for OHCS funded properties.

**Source Documentation**
Acceptable source documents include:

- Third party verifications from employers, banks or others with first-hand information about the applicant household's finances. These verifications should be in writing
- Wage statements for approximately the preceding 3 months, if employment is steady;
- Interest statements
- Unemployment compensation statements

Unacceptable source documents include:

- An applicant’s income self-certification
- The certification from another program
A note regarding EIV (Enterprise Income Verification):
OHCS Compliance Officers are not authorized to view any documentation obtained from EIV. Therefore, any tenant files that contain EIV verifications will need to be re-formatted; the EIV documentation will need to be removed from the tenant files prior to an auditing visit or kept in separate files for ease of tenant file maintenance.

Tenant Income Certification (TIC)

Initial Certification
After all income and asset information has been obtained, verified and calculated, management personnel must prepare a Tenant Income Certification – [Form OHCS.2H for HOME only or form OHCS.2 for HOME and LIHTC mixed] for each household placed in a HOME unit.

The Tenant Income Certification must be executed, along with the lease, on or just prior to the move-in date: must be no more than 10 days prior and never after the move-in date. If household members sign the certification prior to move-in date, management must verify at actual move-in that the information included on the certification (TIC) is still accurate and has not changed since signing and make determination that household remains eligible for the HOME-assisted unit.

Recertification
Owners/Agents must examine each tenant household's income every year during the affordability period to determine if the household continues to be income-eligible to occupy their HOME-assisted unit. All households must be re-certified on or before the first anniversary of their move-in date. The first year re-certification must include third party verifications completed in the same manner as the move-in certification. The original move-in date must be carried over onto all subsequent re-certifications. In addition, all tenants living in a HOME unit must fully (with third party verifications) recertify every sixth year from the property's IDIS closeout date – regardless of any other funding source certifications taking place for the household.

For example: a property with a 20-year affordability period, must examine source documentation to verify tenant income at initial lease-up, at each new household’s move-in, and in each of years six, twelve and eighteen following the properties IDIS closeout date, verify the income and complete a HOME TIC for all HOME unit households.

During the years between years 6, 12, 18, the Owner/Agent must still recertify each tenant household’s income. However, during the interim years the tenant household must complete a HOME Program Self-Certification (OHCS.12). The Owner/Agent must review the information provided to determine continued eligibility.

Determining Continued Eligibility
Once the tenant household’s anticipated annual gross income is recertified, the Owner/Agent must compare it to the most recent HOME income limits for the type of unit the household occupies (High or Low HOME Rent unit). If the Owner/Agent recertifies a tenant's income and finds that it has increased above the HOME income limits for the type of unit they occupy, the tenant is “over-income” and the property is temporarily out of compliance. This is permissible, but the owner must take steps to restore compliance for the property. See Maintaining Unit Mix Requirements earlier in this manual starting on page 16.
During the interim years, if the household reports their income on the Self-Certification as greater than the current 80% income limit or there is evidence that the household statement failed to completely and accurately provide information about their characteristics and/or income, then an annual income recertification with source documentation is required.

- Households with an annual income greater than the 80% applicable income limit at recertification must be designated as over income and the rent charged must be 30% of the household’s adjusted income.

- In 100% HOME properties, if a household goes over income, the next available unit must be leased to a household with an income and rent less than the Low or High HOME limit depending on the designation needed to maintain compliance with the HOME Loan or grant agreement.

- In properties with HOME and Market Rate units, if a household goes over income, the next available unit(s) must be leased to HOME eligible households (Low or High as appropriate) until compliance with the HOME agreement is restored. The over income household unit can be re-designated to a market unit once the over income unit is replaced with another low-income unit in accordance with the lease terms. A 30-day written notice of a rent increase must be provided to the over income household.

For further information regarding over income households, please refer back to Maintaining the HOME Unit Mix earlier in this manual.

**RD & Project-Based Section 8 Programs**

For HOME-assisted projects, HOME Tenant Income Certifications (TICs) must be completed at initial move-in and every 6th year from the property’s IDIS close-out date. The following exceptions for completing the HOME TIC apply:

- Properties that were financed through RHS Section 515 Program and complete the RD Tenant Income Certification Form 1944-8 for each household (with all adult household member signatures), must complete a HOME TIC at initial move-in and every 6th year from the property’s IDIS close-out date.

- Properties that receive project-based Section 8 rental assistance and complete the Form HUD-50059 (which includes all adult household member signatures) must complete the HOME TIC at initial move-in and every 6th year from the property’s IDIS close-out date.

Owners/Agents are not required to complete HOME TICs or self-certifications when completing RD and/or Section 8 interim re-certifications. When RD interim re-certifications are completed prior to the anniversary of the move-in, the re-certification becomes the new annual date under the RD program. If management chooses to complete a HOME TIC concurrently, the new RD annual date can also be used as the new HOME program annual date for the purposes of recertification. However, a full HOME TIC with verifications must be completed again at every 6th year from the property’s IDIS close-out date. Remember, the HOME TIC must show annual gross income at move-in (prior to considering allowances and deductions for the RD or Section 8 programs).
Moving households?
Remember, there is no such thing as a unit transfer in the HOME program. When a tenant household moves from one HOME-assisted unit to another HOME-assisted unit, it must be treated like a move-out then move-in with full HOME certification procedures completed, including a new HOME TIC. RD and Section 8 programs allow transfers; HOME program does not. Be sure to fully complete a new HOME TIC when moving tenant households from one HOME-assisted unit to another.

For important information regarding EIV see page 34 in this manual.

Income Inclusions and Exclusions

Annual income is the total gross income from all sources received by each adult member of the household, including all income from assets, anticipated to be received for the 12 month period following the date of certification of income. The goal in qualifying applicants to live in a HOME property is to use a reasonable method to determine and verify total income for the household. Third-party verifications through outside sources are required. Use the Exhibit 3: Acceptable Forms of Verification guide from the HUD Handbook 4350.3 Rev.1 Change 3 and the Technical Guide for Determining Income and Allowances for the HOME Program. See “Annualizing Income” later in this manual.

Whose Income is Counted?
Knowing whose income to count is as important as knowing which income to count. Under the Part 5 definition of annual income, special consideration is given to minors, live-in aides, temporarily absent family members, adult students living away from home, foster children, and permanently absent family members.

Adults:
Count the annual income of the head, spouse, or co-head, and other adult members of the family. In addition, persons under the age of 18 who have entered into a lease under state law are treated as adults, and their annual income must be counted. These persons will be either the head, spouse, or co-head of the household.
NOTE: If a minor is residing with a family as a member other than the head, spouse or co-head, the individual would be considered a dependent and his or her income is handled in accordance with paragraph below:
**Dependents:**
A dependent is a family member who is under 18 years of age, is disabled, or is a full-time student. The head of the family, spouse, co-head, foster child, or live-in aide are never dependents. Some income received on behalf of family dependents or foster children is counted and some is not.

- *Earned* income of minors (family members under 18 years of age) is **NOT** counted.
- Benefits or other *unearned* income of minors **IS** counted.
- *Earned* income of a foster child who is not yet 18 years of age is **NOT** counted.
- *Earned* income of a foster adult who is at least 18 years of age **IS** counted.
- Except as noted above, the unearned income of a foster child or foster adult including SSI disability payments and income from assets owned by or on behalf of a foster child or foster adult is counted.
- When two families share custody of a child and both families live in assisted housing, only one family at a time can claim the dependent. The family that counts the dependent also counts the unearned income of the child. The other family claims neither the dependent nor the unearned income of the child.
- When the full-time students who are 18 years of age or older are dependents, a small amount of their earned income will be counted. Count only earned income up to a maximum of $480 per child for full-time students, age 18 or older, who are not the head of the family or spouse or co-head. If the income is less than $480 annually, count all the income. If the annual income exceeds $480, count $480 and exclude the amount that exceeds $480.
- The income of full-time students 18 years of age or older who are members of the household but away at school is counted the same as the income for other full-time students. The income of minors who are members of the household but away at school is counted as the income for other minors.
- All income of a full-time student, 18 years of age or older, is counted if that person in the head of the family, spouse, or co-head.
- Payments received by the family for the care of foster children or of foster adults are not counted. This rule applies only to payments made through the official foster care relationships with local welfare agencies.
- Adoption assistance payments in excess of $480 are not counted.

**Income of Temporarily Absent Family Members**
1. Owners must count all income of family members approved to reside in the unit, even if some members are temporarily absent.
2. If the owner determines that an absent person is no longer a family member, the individual must be removed from the lease and Tenant Income Certification.
3. A temporarily absent individual on active military duty must be removed from the household, and his or her income must not be counted unless that person is the head of the family, spouse, or co-head
   a) However, if the spouse or a dependent of the person on active military duty resides in the unit, that person’s income must be counted in full, even if the military member is not the head, or spouse of the head of the family.
   b) The income of the head, spouse or co-head will be counted even if that person is temporarily absent for active military duty.
Income of Permanently Absent Family Members

If a family member is permanently absent from the household (e.g., a spouse who is in a nursing home), the head of household has the choice of either counting that person as a member of the household, and including income attributable to that person as household income, or specifying that the person is no longer a member of the household.

Annual income includes, but is not limited to:

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

- Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling; and
- All regular pay, special pay, and allowances of a member of the Armed Forces, except as provided under Income Exclusions.

**Annual income excludes:**

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

- Temporary, nonrecurring, or sporadic income (including gifts);
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. (Examples include payments by the German and Japanese governments for atrocities committed during the Nazi era);
- Earnings in excess of $480 for each full-time student 18 years or older (excluding the head of household and spouse);
- Adoption assistance payments in excess of $480 per adopted child;
- Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts;
- Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
- Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

The following is a list of income sources that qualify for that exclusion:

a. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017[b]);
b. Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058) (employment through AmeriCorps, Volunteers in Service to America [VISTA], Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);
c. Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626[c])
d. Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
e. Payments or allowances made under the Department of Health and Human Services’ Low-Income Home Energy Assistance Program (42 U.S.C. 8624[f]);
f. Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552[b]); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 [29 U.S.C. 2931], e.g., employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs, career intern programs, Ameri-corps);

g. Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04);

h. The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first $2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);

i. Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

j. Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056[f]), e.g., Green Thumb, Senior Aides, Older American Community Service Employment Program;

k. Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

l. Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);

m. The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);

n. Earned income tax credit (EITC) refund payments received on or after January 1, 1991, including advanced earned income credit payments (26 U.S.C. 32[j]);

o. Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);

p. Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637[d]);

q. Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from Spina Bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);

r. Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or
reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and


**Persons with Disabilities-Income Exclusion**

During the annual recertification of a family's income, owners/agents are required to exclude from annual income certain increases in the income of a disabled member of qualified families residing in HOME-assisted housing. 24 CFR 5.167 (a) outlines the eligible increases in income. These exclusions from annual income are limited duration. The full amount of increase to a qualified family’s annual income is excluded for the cumulative 12-month period beginning on the date the disabled family member is first employed or the family first experiences an increase in annual income attributable to the employment. During the second 12-month period, owners/agents are required to exclude from annual income 50 percent of any increase in income. The disallowance of increased income of an individual family member who is a person with disabilities is limited to a lifetime 48-month period.

**Annualizing Income**

The HOME regulations at 24 CFR 92.203(d)(1) require that, for the purpose of determining eligibility for HOME assistance, Owners/Agents must project a household’s income in the future. To do so, a “snapshot” of the household’s current circumstances is used to project future income. In general, Owner/Agents should assume that today’s circumstances will continue for the next 12 months, unless there is verifiable evidence to the contrary.

This method should be used even when it is not clear that the type of income received currently will continue in the coming year. For example, assume a family member has been receiving unemployment benefits of $100 per week for 16 weeks at the time of income certification. It is unlikely that the family member will continue on unemployment for another 52 weeks. However, because it is not known whether or when the family member will find employment, the Owner/Agent should use the current circumstances to anticipate annual (gross) income. Income would therefore be calculated as follows: $100 per week X 52 weeks, or $5,200.

The exception to this rule is when documentation is provided verifying that current circumstances will change. For example, the family member has been offered a job projected to start in two weeks and has received confirmation of a planned start/hire date. Another common example would be when a third-party verification of employment indicates that the family member will be receiving a pay rate increase/raise in the next 12 months.

In addition to hourly earnings, Owners/Agents must account for all earned income. In addition to the base salary, this will include annual cost-of-living adjustments, bonuses, raises and over-time pay. In the case of over-time, it is important to clarify whether over-time is sporadic or a predictable component of family member’s income. If it is determined that the
family member has earned and will continue to earn over-time pay on a regular basis, Owners/Agents should calculate the average amount of over-time pay and add it to the total amount of projected income. For those whose annual employment is less stable or does not conform to a 12 month schedule, Owners/Agents should examine income documentation covering the entire previous 12 month period.

Verified income must be converted to an annual figure by using the following calculations:

**To annualize full-time employment, multiply:**
1. Hourly wages by the number of hours worked per year  
   Example: $5.00 per hour x 2080 hours per year = $10,400 annually  
   $5.00 per hour x 40 hours per week x 52 weeks = $10,400 annually
2. Weekly wages by 52  
   Example: $190 per week x 52 weeks = $9,880 annually
3. Bi-weekly wages by 26  
   Example: $500 biweekly x 26 pay periods = $13,000 annually
4. Semi-monthly wages by 24  
   Example: $400 twice a month x 24 pay periods = $9,600 annually
5. Monthly wages by 12  
   Example: $1,000 paid monthly x 12 months = $12,000 annually

Note: For those individuals with an annual salary, the annual amount should be used to cover the full 12-month period regardless of the pay schedule.

**To annualize income from other than full-time employment, multiply:**
1. Hourly wages by the average number of hours worked;  
2. Average weekly amounts by the average number of weeks worked;  
3. Other periodic amounts by the average number of periods worked.

**Asset Inclusions and Exclusions**

Assets are items of value, other than necessary personal items. Income from assets is added to regular income to determine the eligibility of a household. Asset information (total value and any income) must be obtained from the applicant/tenant.

All income from all household members’ assets must be 3rd-party verified. The greater of the actual income from assets or the imputed income of the total value of the assets must be added to regular income. See HUD Handbook 4350.3 REV 1Change 3 for more detail on imputed income.

In general terms, an asset is a cash or non-cash item that can be converted to cash. Market value and cash value assets have both a market value and a cash value. The market value of an asset is simply its dollar value on the open market. Cash value is the market value less reasonable expenses required to convert the asset to cash.
Assets include:

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

- Revocable trusts. Include the cash value of any revocable trust available to the family. (Do not include irrevocable trusts, e.g., ones that no household or family member can control).

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

- NOTE: If the person’s main business is real estate, then count any income as business income. Do not count it both as an asset and business income.

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

- Individual retirement, 401K, and Keogh accounts. These are included when the holder has access to the funds, even though a penalty may be assessed. If the individual is making occasional withdrawals from the account, determine the amount of the asset by using the average balance for the previous six months. (Do not count occasional withdrawals as income).

- Retirement and pension funds.

  1. While the person is employed. Include only amounts the family can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs. Follow paragraph 5-7 G.4 of the HUD Handbook 4350.3 on determining the value of assets.

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

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

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

     c) If the individual initially receives a lump-sum benefit, followed by periodic payments count the lump-sum benefit as an asset and treat the periodic payment as income. In subsequent years, count only the periodic payment as income. Do not count the remaining amount as an asset.
• **NOTE:** This paragraph assumes that the lump-sum receipt is a one-time receipt and that it does not represent delayed periodic payments. However, in situations in which a lump-sum payment does represent delayed periodic payments, then the amount would be considered as income and not an asset.

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

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

• Lump-sum receipts or one-time receipts. These include inheritances, capital gains, one-time lottery winnings, victim's restitution, settlements on insurance claims (including health and accident insurance, worker's compensation, and personal or property losses), and any other amounts that are not intended as periodic payments.

• A mortgage or deed of trust held by an applicant:
  a) Payments on this type of asset are often received as one combined payment of principal and interest with the interest portion counted as income from the asset.
  b) This combined figure needs to be separated into the principal and interest portions of the payment. (This can be done by referring to an amortization schedule that relates to the specific term and interest rate of the mortgage.)
  c) To count the actual income for this asset, use the interest portion due, based on the amortization schedule, for the 12-month period following the certification.
  d) To count the imputed income for this asset, determine the asset value as of the effective date of the certification. Since this amount will continually be reduced by the principal portion paid during the previous year, the owner will have to determine this amount at each annual recertification.

• Assets disposed of within two years before effective date of certification/recertification:
  1. If the cash value of the disposed assets exceeds the actual amount the family received by more than $1,000, include the whole difference between the cash value and the amounts received. Do not include if the difference is less than $1,000.
  2. Do not consider assets disposed of for less than fair market value as a result of a foreclosure, bankruptcy, or a divorce or separation agreement.
  3. Do consider:
     a) Assets put into trusts,
     b) Business assets disposed of for less than fair market value. (Business assets are excluded from net family assets only while they are part of an active business.

**Example:** A couple gave $2,000 to each of their three grandchildren and deeded a home to their son. The home had a cash value of $40,000 and the son paid his parents $12,000 for the home. $34,000 ($40,000 less $12,000 plus $2,000 x 3) is counted as an asset until such time as the household can certify on an Income Certification form that they did not dispose
of any assets during the two years preceding the certification date. (The $12,000 paid by the son may also be counted as an asset, depending on what was done with the payment.)

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

**Assets do not include:**

- Necessary personal property such as clothing, furniture, automobiles, personal jewelry, etc.
- Vehicles specially equipped for the handicapped.
- Interest in Indian Trust Land.
- Value of term life insurance.
- Equity in a cooperative unit in which the family lives.
- Assets that are a part of an active business (“business” does not include rental properties that are held as investments and not a main occupation).
- Assets held in the applicant’s/tenant’s name but are actually owned by someone else, such as;
  1. Assets and earned income that is accrued or paid to the benefit of someone else; or
  2. A situation wherein another person is responsible for income taxes incurred on income generated by the asset(s); or
  3. An applicant/tenant is responsible for disbursing someone else’s money, such as in the case of having Power of Attorney, but the money is not his/hers and no benefit is received.

**Sale or Disposition of Assets**

At the time of application or annual certification, all adult members of the household must declare any assets sold for less than fair market value in the past two years before the effective date of the Certification. If there is more than $1,000 difference between the
amounts received for the asset and the fair market value, then include in asset value the entire difference. If there is less than $1,000 difference, do not count it.

Note: Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, or divorce or separation settlement are not to be included in the fair market value determination. However, if an individual is still the owner of record of property, include as an asset the value of the individual’s share of the property.

**Calculating Income from Assets**

**Determining the Value of an Asset:**

When computing asset value, use the cash value of the assets. The cash value is the amount an individual would receive if the asset(s) were converted to cash. Expenses which may be deducted from the value include:

- Penalties for withdrawing funds before maturity;
- Broker and/or legal fees assessed to sell or convert the asset to cash; and
- Settlement costs for real estate transactions.

**Determining Income from Assets:**

All income from assets must be verified using 3rd-party verification and source documentation. If the value of family assets is less than $5,000, add the verified actual amount of income from the asset to the total household income. If all assets are valued at $5,000 or more, add the greater of actual income from assets or the imputed income from assets to the total household income.

**Count in household income:**

1. The actual income from assets; or
2. The imputed income from assets based on the passbook rate established by HUD (currently 2%).

Example: An applicant has $6,400 in assets. Actual income from assets has been verified at $168. Imputed income from assets is calculated at $128 ($6,400 x .02 = $128). Use the greater amount, or in this case $168, and add to the household’s total annual income.

**Assets Owned Jointly**

Assets owned by more than one person should be prorated according to the percentage of ownership. If no percentage is specified or provided by state or local law, prorate the assets evenly among all owners.
Tenant Income and Asset Verification

All regular sources of income including asset income must be verified. Verification must be received by the management agent prior to the execution of the Tenant Income Certification and the actual move-in date. Verifications must contain complete and detailed information, and include, at a minimum, direct written information from all sources of income and income from assets. Faxed verifications will be accepted as long as the verifiable source receives and re-submitts the fax.

Effective Term of Verifications:

Verifications of income are valid for 120 days. After 120 days, the verifications become invalid and new verifications must be obtained – no exceptions.

Methods of Verification:

Written Verification:

At a minimum, an attempt to obtain written third-party verification is required. Any request for income verification must:

1. State the reason for the request;

2. Include a release statement signed and dated by the applicant (refer to the Forms Section for an example); and

3. Provide a section for the third-party source to disclose the requested information. The signature of the third party source, their job title (if applicable), phone number and date must be included.

Verification Transmittal:

1. It is strongly recommended that applicants sign two (2) copies of each verification form. The second copy may be used if the first request has not been returned in a timely manner.

2. Income verification requests must be sent directly to and returned by the source, not through the applicant. It is suggested that a self-addressed, stamped envelope be included with the request for verification.

3. Verifications may be hand-carried by the applicant only if reasonable attempts to mail or fax the request(s) for verification to the third-party have failed. When using this method, the file should be documented with a phone verification indicating the name and title of the person contacted and confirmation the information received by hand-carry method is accurate.

4. The management agent should review and check verifications for accuracy and completeness. Verifications should be date stamped as they are received.
**Verbal Verification:**
When written verification is not possible prior to move-in, direct contact with the source will be acceptable to OHCS only as a last resort and must be followed by written verifications. The telephone or personal conversation should be documented in the applicant’s tenant file to include all information that would be included in a written verification. Include the name and title of the contact, the name of the on-site management representative accepting the information, and the date.

**Differences in Reported Income:**
The management agent should give the applicant the opportunity to explain any significant differences between the amount reported on the application and amounts reported on third-party verifications. The file should be documented to explain the disparity and support the actual income figure used.

**File Clarifications:**
When there is information in the tenant file that needs further clarification, the management agent should include written statements to provide such clarification. When the clarification statements are provided by the tenant or contain information clarified by the tenant, the tenant should sign and date each clarification.

**Acceptable Forms of Income Verification**
Specific information must be obtained on income verification forms or alternate methods must provide the same detail or information as contained on the verification forms.

Listed below are the types of income and their corresponding acceptable sources of verification in order of preference.

**Employment Income**
*(Including Tips, Gratuities, Over-time & Bonuses)*

1. OHCS Employment Verification Form completed by the employer (OHCS.7).
2. Statement from the employer on company letterhead (which must include the anticipated income for the following 12 months);
3. Three months of check stubs from the employer showing gross income per pay period and frequency of pay; or
4. A copy of the most recent filed Federal Form 1040 signed by the applicant/tenant or copies of Form W-2 providing the amount of income, including income from tips and other gratuities, supported by current check stubs from the employer.

**Minimum Wage Increases**
Because income calculations are based upon what is expected to be received during the future 12 months, if the minimum wage increases during the future 12 months, include the increase as appropriate;
Self-Employment Income
(Any salary being paid from as well as any net income from the business itself)

1. The prior year’s Federal form 1040 with Schedule C, E, or F along with a statement from the applicant/tenant forecasting the anticipated income for the 12 months following certification;
2. Financial statement(s) of the business along with an affidavit or notarized statement from the applicant forecasting the anticipated income for the 12 months following certification;
3. Any loan application listing income derived from business during the preceding 12 months;
4. For rental property, copies of recent checks, lease and receipts for expenses, or IRS Schedule E;

Social Security, Supplemental Security Income (SSI), Disability Income & Pensions:

1. An award or benefit notification letter prepared by the authorizing agency.
2. A Social Security verification form completed by the agency providing the benefits (Form R.16);
3. Copies of current or recent check stubs with date, amount and check number recorded by the owner, award letters or computer printout from court or public agency, copies of validated bank deposit slips, with identification by bank, most recent quarterly pension account statement;

   Because income calculations are based upon what is expected to be received during the future 12 months, if the Social Security Administration or other plan provider has published a cost of living adjustment, include the increase as appropriate;

Unemployment Compensation
(Frequency of payments and expected length of benefit term must be verified)

1. A verification form completed by the unemployment compensation agency;
2. Records from the unemployment agency stating payment dates and amounts;
3. Benefit notification letter from authorizing agency;
4. Copies of checks or records from agency provided by applicant stating payment amounts and dates;
**Alimony or Child Support**

1. A copy of a separation or divorce agreement provided by ex-spouse or court indicating type of support, amount and payment schedule;
2. Written statement provided by ex-spouse or income source indicating all of above;
3. A printout or statement from the Support Enforcement Agency (for child support verification), recent original letters from the court;
4. A notarized statement or affidavit signed by applicant indicating amount received.

**Recurring Contributions and Gifts**
(Sporadic contributions and gifts are not counted as income)

1. A notarized statement or affidavit signed by the person providing the assistance giving the purpose, dates and value of the gifts.
2. A notarized statement or affidavit signed by the applicant/tenant stating the purpose, dates and value of gifts.

**Unemployed Applicants/Tenants**

1. The income of unemployed applicants/tenants with regular income from any source, such as Social Security, pension, TANF, child support, alimony, recurring gifts, etc., must be verified as described previously. Additionally, the applicant/tenant must complete an Unemployed/Zero-Income Certification (OHCS.8).
2. If the applicant/tenant is currently unemployed and claiming zero income or is unemployed but has secured new employment with a start date determined, verification of new employment must take place. Verified income from new employment will be counted on the TIC.

**Section 8 or RD Programs**

Households participating in the Section 8 or RD programs can accept a copy of the 50058, 50059, RD Certification or a PHA statement in place of independently obtained third-party verifications for the first year annual re-certification. However, for the initial certification, source documentation and HOME TIC is required per 92.203 (a) (1) of the Final Rule. The HOME program also requires that even if the property uses the 50058, 50059, RD certification or PHA statement, that at every 6th year from the property’s IDIS close out date, third-party verification and HOME Tenant Income Certification must be completed.
Acceptable Forms of Asset Verification
The owner must verify all asset income received/earned by household members occupying a HOME unit. Use the OHCS required form OHCS.13H – Asset Verification.

The OHCS form OHCS.4 – Under $5,000 Asset Certification is **NOT** allowed for any HOME unit verification regardless of any other funding source.

**All income from assets held by all family members must be verified:**

**Current Family Assets-from all sources**
1. Verification forms, letters or documents received from financial institutions, stock brokers, real estate agents, employers indicating the current value of the assets and penalties or reasonable costs to be incurred in order to convert non-liquid assets into cash;
2. Passbooks, checking, or savings account statements, certificates of deposit, property appraisals, stock or bond documents, or other financial statements completed by financial institution;
3. Copies of real estate tax statements, if tax authority uses approximate market value;
4. Quotes from attorneys, stockbrokers, bankers, and real estate agents that verify penalties and reasonable costs incurred to convert asset to cash;
5. Copies of real estate closing documents that indicate distribution of sales proceeds and settlement costs;
6. Notarized statement or signed affidavit stating cash value of assets or verifying cash held at applicant's home or in a safe deposit box.

**Tips:**
- Use current balance in savings accounts and average monthly balance in checking accounts for last 6 months.
- Use cash value of all assets (the net amount the applicant would receive if the asset were converted to cash).

Finding and Keeping Tenants

Owners/Agents must comply with all fair housing laws, which prohibit discrimination in housing based on race, color, religion, sex, familial status, national origin, age and disability. Affirmative Fair Housing Marketing Plans (AFHMP) for properties with five (5) or more HOME-assisted units must be established. Owners/Agents must conduct special outreach to those groups least likely to apply for the HOME-assisted housing. Accessible units in HOME-assisted properties must be offered first to persons with disabilities.
Owners/Agents of HOME-assisted properties must treat applicants and tenants fairly and equitably by:

- Establishing and following standard **tenant selection procedures**;
- Using **leases** that protect tenants’ rights; and
- Using established procedures to resolve conflicts with tenants

**Special Needs Properties**

Once HOME-assisted properties are developed, the units in a special needs property must be affirmatively marketed to all persons with a special need. For housing that is developed for persons with disabilities, the housing must be marketed to all individuals with disabilities and cannot be restricted to persons with specific types of diagnoses or subclasses of persons with disabilities. Owners/Agents should ensure that HOME-assisted units are affirmatively marketed and open to any persons with a disability, not just to one sub-set of disability. Owners/Agents should not rely on only one source to fill vacancies.

**Leases**

OHCS does not provide a model lease agreement. However, owners must execute Lease Agreements with tenants that incorporate specific provisions that establish tenant responsibilities and avoid certain prohibited provisions. In addition to the owner/agent required lease, OHCS requires the use of the HOME Lease Compliance Form (OHCS.22H)

**Lease provisions must include:**

- The legal name of the parties to the agreement and all other occupants;
- A description of the unit to be rented;
- The term of the lease;
- The rent amount;
- Utility information;
- The permitted and restricted use of the premises;
- The amount of the security deposit and/or fees charged;
- The signatures of all parties;
- Any security deposit collected must be refundable;
- Non-refundable “fees” for the purpose of covering the cost of cleaning the apartment at the end of tenancy are not permissible;
- Any other deposits or fees must be defined and reasonable, i.e., application fees are allowable to cover the cost of tenant screening.

All tenants in HOME assisted units must be offered a one-year lease. A shorter term is acceptable only by **mutual agreement** between the tenant and owner. If a shorter term is agreed on, documentation must be provided that the tenant was offered a one-year lease and elected a shorter term. As an example of such documentation, the lease might include language such as: “I have been offered a one-year lease and have elected to:

[ ] one-year Lease [ ] ___-month Lease [ ] month-to-month”
• A provision that upon a 24-hour written notice to the tenant, OHCS, accompanied by the owner or agent, shall be permitted to enter the dwelling unit during reasonable hours for the purpose of performing an inspection;
• A mechanism that will allow termination of the agreement and eviction for violation;

| An owner may not terminate the tenancy or refuse to renew the lease except for serious or repeated violation of terms and conditions of the lease; for violation of applicable federal, state, or local law; for completion of the transitional housing tenancy period; or for other good cause. **The HOME program does not allow “no-cause” evictions.** |

• A provision that to terminate tenancy or refuse to renew the lease of a HOME assisted unit, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before termination of tenancy;

| The 30-day notice requirement applies regardless of the reason for termination, including failure to pay rent. |

• A provision that the tenant(s) must provide accurate information to determine HOME Program eligibility at move-in and required re-certifications, and failure to provide such information and cooperate with the re-certification process will be deemed a violation of the lease;
  **Note:** If, at the annual recertification, a household’s income reaches 80% of area median income adjusted for family size, the household shall be required to pay rent equaling 30% of their adjusted income (as defined by the HUD Handbook 4350.3 REV 1) for rent and tenant-paid utilities. While this is not a required lease provision, this information should be provided to the household prior to move-in. *(However, for HOME coupled with LIHTC, the maximum tenant rent is the applicable LIHTC rent).*
• A provision that the tenant must execute a release for verification of utilities on an annual basis, unless utilities are included in rent, or the property uses the PHA allowance rather than actual consumption;
• A clause that the tenant will receive a 30-day advance written notice of any increase in the monthly rent;
• Must clearly state that the Owner/Agent reserves the right to adjust tenant rents, in accordance with the HOME rent limits and in the event a tenant’s income increases above the low-income or very low-income limits for the unit type the tenant occupies;
• And, a provision that any material misrepresentation in the tenant’s application for the leased premises, whether intentional or otherwise, may be treated by the owner, at the owner’s sole discretion, as an act of default under the lease and all remedies available to the owner in the event of other defaults shall likewise be available to the owner in such case.
**Prohibited Lease terms include:**

- 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.
- Agreement by the tenant that the owner may take, hold, or sell personal property of the 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 from the unit. The owner may dispose of this personal property in accordance with state law.
- Agreement by the tenant not to hold the owner or owner's agents legally responsible for any action or failure to act, whether intentional or negligent.
- Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant.
- 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.
- Agreement by the tenant to waive any right to a trial by jury.
- Agreement by the tenant to waive the right to appeal or otherwise challenge in court a court decision in connection with the lease.
- Agreement by the tenant to pay attorney fees or other legal costs, even if the tenant wins in a court proceeding by the owner against the tenant. If the case is lost, the tenant, however, may be obligated to pay costs.

**Dispute Resolution**

Owners and managers of HOME-assisted rental properties should have written procedures in place that address the following situations:

- Disputes between individual tenants or households; and
- Tenant grievances against management

Generally, it is acceptable business practice for the owner to act as the first intermediary in a conflict under limited circumstances, such as when one tenant complains about noise from another tenant’s unit. However, Owners/Agents should establish an impartial way to address complaints about property management staff or the way in which the property is being operated. This generally requires the involvement of a neutral third party.
Tenant Selection Procedures

The Owner/Agent is responsible for establishing tenant selection procedures. These procedures describe the methods and procedures for taking applications and screening tenants at the property. These requirements are found in 24 CFR 92.253(d).

Tenant selection procedures must:

- Be consistent with the purpose of providing housing for low-income and very low-income families;
- Be reasonably related to HOME Program eligibility and the tenant’s ability to perform the obligations of the lease;
- Provide for the selection of tenants based on a written waiting list in the chronological order of application, to the extent practicable; and
- State that the owner or manager will give prompt written notice to any rejected applicant, with an explanation of the grounds for rejection.

Elements of the Tenant Selection Procedures

The following are the required and recommended elements of tenant selection procedures:

- Tenant selection procedures should identify the criteria that will be used to select tenants.
  - Tenants should be selected based on objective criteria, related solely to program qualification and ability to pay the rent and abide by the terms of the lease. These criteria should include household income & lack of criminal history and might include housing history & credit history. Property owners/agents must apply the criteria consistently to all applicants, in accordance with fair housing laws.
  - Tenant selection criteria should expressly prohibit bias in the selection process including discrimination or favoritism toward friends or relatives, or other situations in which there may be a conflict of interest.
  - Tenant selection criteria can give preference to persons with special needs if OHCS has so directed.
- Tenant selection procedures must state that Owners/Agents will promptly notify an applicant in writing if he/she has been rejected, and will explain the grounds for rejection.
- Owners/Agents must maintain a written waiting list and must select tenants in the chronological order of application, to the extent practicable. The tenant selection procedures should describe how the waiting list will be maintained.
- The tenant selection procedures should describe the HOME requirements that affect tenants and tenant selection in terms that are clear and easy to understand. Specifically, the procedures should describe:
  - How vacant units will be filled;
  - HOME unit occupancy requirements;
  - Nondiscrimination policies and the affirmative marketing procedures, including accessibility requirements;
  - Marketing strategy for accessible units;
- Tenant selection records that must be maintained; and
- Community Housing Development Organization (CHDO) tenant participation plan as required for CHDO properties

Therefore, it is acceptable to:
- Set reasonable eligibility criteria as long as they are applied consistently for all applicants
- Require sufficient income to meet rent and utility payments
- Require certain terms and conditions such as security deposits for fees (if approved), provided they are consistently applied for all applicants
- Inquire whether an applicant for a dwelling is a currently addicted to or is an abuser of any controlled substance(s)
- Inquire whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance
- Restrict the number of occupants in a unit according to policy standards

Section 8 voucher holders may not be refused tenancy based upon status as a voucher holder as long as they are eligible for the HOME-assisted unit.

**Exemptions:**
The Fair Housing Act provides a specific exemption from discrimination suits for housing for the elderly or near-elderly. Housing may be reserved for the elderly under the following “Housing for Older Persons” programs:

**“62 and Over”**
- Intended for, and solely (100%) occupied by persons 62 years of age or older; or

**“55 and Over”**
- Intended and operated for occupancy by households where at least 80% of the units are occupied by households containing at least one person 55 years of age or older.

**Other Exemptions:**
- Housing which could result in common use of bath or bedroom facilities by men and women who are not related to each other,
- the rental of rooms within one's home,
- a duplex where one unit is owner-occupied, and
- the rental of space in a church or other religious institution.
Tenant Handbook

It is recommended that properties develop a tenant handbook. This handbook provides management with the assurance that tenants have written reference and access to a more comprehensive explanation of general property residency requirements and rules that may be outlined in the lease and house rules.

Suggested Components:
1. Letter of Welcome and an introduction to the property. The introduction should help to establish the necessary rapport between the manager and each tenant.

2. Emergency phone numbers should be listed prominently. Some important numbers to include are: police station, fire department, rescue squad, ambulance, hospitals, electric, gas, water, telephone, and the resident manager.

3. A section should describe the neighborhood. Information offered might include data on community recreation facilities, nearby schools with addresses and telephone numbers, a map with an index, and more.

4. Property information should pertain to the following categories:
   a) A summary of information about paying rent, including the date it is due, the name to whom checks are payable and the address where checks are to be sent or delivered.
   b) List all charges to be assessed for damages, delinquent rents, and returned checks.
   c) Describe the visitor policy.
   d) Explain the lead-based paint notice procedure and acknowledgment requirements.
   e) All community facilities should be listed along with the hours they are open and rules for their use. Describe recreational programs sponsored by management or tenants.
   f) The cost of using utilities should be emphasized in terms of the relationship between waste and rent increases. Tips should be given concerning how to conserve energy.
   g) The tenant should be informed of regulations regarding garbage disposal, parking, noise, guests, windows, balconies, appliances, storage rooms, pets, televisions, antennas, flammable materials, solicitors, waterbeds, etc.
   h) How to report maintenance problems and who will be responsible for maintenance.
   i) Outline both tenant and landlord responsibilities.
   j) Clearly define process and reasons for eviction along with cause for grievances and procedure to follow in reporting these.
   k) A section of the Handbook should describe the owner's policy regarding:
      - Methods for payment.
      - Delinquencies and follow up.
      - The procedures that are to be followed in evicting a tenant.
      - Security deposits.
      - Transfer Policy (Must be treated as new move-in)
Lead-Based Paint

Exempt Housing
- Properties built after January 1, 1978
- Properties found not to have lead-based paint during earlier testing that meets the requirements of prior evaluations
- Properties where all lead-based paint has been identified and removed using approved methods
- Properties where rehab will not disturb paint and no paint hazards are identified
- Properties where occupancy by a child is unlikely, typically:
  - Elderly and disabled housing, or SRO units

Basic Requirements
The HOME Program requires owners to take actions to reduce lead-based paint hazards in HOME-assisted units. Owners must comply with 24 CFR 35, the regulations implementing the Lead-Based Paint Poisoning Prevention Act along with requirements for dealing with lead-based paint found in the Uniform Physical Condition Standards (UPCS). Current Part 35 requirements stipulate that all occupants receive and acknowledge notice of the possible presence of lead paint.

Notification Requirements
Owners must distribute a HUD or Environmental Protection Agency (EPA) approved pamphlet to prospective buyers and renters of pre-1978 homes, and tenants of homes where renovations will take place. A widely used EPA pamphlet entitled “Protect Your Family from Lead in Your Home” is available for download in both English and Spanish on the OHCS website with the Consolidated Funding Cycle (CFC) materials. OHCS requires that owners obtain evidence of tenant receipt of any pamphlet distributed. Owners may create their own receipt of disclosure form or use form E.5H, “Disclosure of Information on Lead” located on the OHCS website. The Asset Management section will audit for proof of receipt.

Effective October 4, 2011, The Environmental Protection Agency (EPA) revised various materials including the “Renovate Right” Brochure that must be provide to residents prior to many repairs that may disturb lead based paint in home built prior to 1978. The Brochure can be found on-line at: http://epa.gov/lead/pubs/renovaterightbrochure.pdf.

All of these changes are addition to the requirement to distribute the booklet entitled “Protect Your Family from Lead in Your Home” from the EPA and HUD, and get the “Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards” signed by renters prior to
their becoming obligated under a rental contract and the pre-existing Renovation Repair and Painting rule of 2008.

**Applicability**
The Lead-Based Paint Poisoning Prevention Act applies to all units in a property assisted with HOME funds -- *not only to HOME-assisted units*. During the compliance review, the Asset Management Section Compliance Officer will monitor to ensure that the owner has conducted all necessary activities and maintained appropriate documentation in their files.

**Affirmative Fair Housing Marketing**

The Affirmative Fair Housing Marketing Regulations (24 CFR 200.600) implement HUD's policy of assuring that persons of similar income levels in a housing market area have a like range of housing choices available to them, regardless of race, color, religion, sex, or national origin. The act, pattern, or intent of discrimination also extends to classes or groups. The Department will annually assess a property's affirmative marketing program to determine the success of affirmative marketing efforts and any necessary corrective actions.

**Basic Requirements:**
- Affirmative marketing procedures and requirements **must** be adopted for rental properties containing 5 or more HOME-assisted housing units. *Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability.*
- All properties with five or more HOME assisted units **must** have an approved Affirmative Fair Housing Marketing Plan (AFHMP) (E.6H) before the property is transferred to the Asset Management Section. This document outlines the strategies that will be addressed to market the property. More specifically, it outlines the strategies necessary to attract to the property those applicants who are considered least likely to apply. It also specifies racial and ethnic targets, not quotas, and the marketing strategies to attract this mix.
- Owners of properties **must** maintain records documenting outreach efforts in accordance with the AFHMP. *Owners of properties must retain data on race and ethnicity of the head of household for all applicants who are accepted or rejected for HOME units.*
- The Equal Housing Opportunity Slogan, logo, or statement **must** be used in all advertisement, public service announcements, press releases, and information mailings.
- The HUD Fair Housing poster **must** be displayed in offices where rental activity takes place for all properties with five or more units. A copy of the AFHMP and Management Plan, with all attachments, should be retained on site for reference.
Advertising - Marketing Efforts

It is unlawful to make, print or publish any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin. All written or oral notices or statements by a person engaged in the sale or rental of a dwelling are subject to this provision.

A file must be maintained with all marketing efforts related to the property including newspaper ads, social service contacts, photos of signs, etc. Records will be reviewed during the monitoring of the property to ensure that all efforts are in compliance with federal requirements and are being adequately documented. Marketing efforts should be reviewed by Owners/Agents on a continual basis and the AFHMP must be updated at least once every five years. Marketing efforts should be sent to various sources. Limiting efforts to one source is not acceptable. Using the internet must not be relied upon as the only source of marketing as some people do not have access to the internet.

For more information regarding AFHMP advertising guidelines, go to:

Fair Housing & Equal Opportunity (FHEO)

Title VIII of the Civil Rights Act of 1968 makes it unlawful to discriminate in any aspect relating to the rental of dwellings, or in the provision of brokerage services or facilities in connection with the rental of a dwelling, because of race, color, gender, religion, or national origin (protected classes). The Fair Housing Amendments Act of 1988 expanded coverage of Title VIII to prohibit discriminatory housing practices based on disability and familial status (protected classes). In addition, states and local jurisdictions may establish ordinances that identify additional “protected classes” within that jurisdiction. Owners should be aware of the individual laws and ordinances enacted in their areas that may have established “protected classes”.

Federal Protected Classes:

- Race: Racial Background
- Color: Additional distinction within the category of race
- Gender: Male/female
- Religion: A person's religion; or lack thereof
- National Origin: Where the person or their ancestors came from
- Disability: A mental or physical impairment that substantially limits one or more of a person’s major life activities.
- Familial Status: Familial status means having a child in the household, whether living with a parent, a legal custodian, or their designee. It also covers a woman who is pregnant, and people in the process of adopting or gaining custody of a child
HUD published a final rule in the Federal Register entitled *Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity* effective March 5, 2012. This rule will ensure that HUD programs, including programs administered by the Office of Community Planning and Development (e.g., CDBG, HOME, NSP, and HOPWA) are open to all eligible individuals regardless of sexual orientation or gender identity.

- HUD-assisted and HUD-insured housing, including housing acquired, rented, or rehabilitated with CPD funds, must be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.
- The definition of “family” is revised to include families regardless of the actual or perceived sexual orientation, gender identity, or marital status of its members.
- Owners and administrators of HUD-assisted housing and HUD-insured housing are prohibited from inquiring into an applicant or occupant’s sexual orientation and gender identity for the purpose of determining eligibility or otherwise making housing available.*
- Sexual orientation and gender identity may not be taken into consideration by an FHA lender in determining the adequacy of a mortgagor’s income.

As a new program regulation, failure to comply with the requirements of this rule will be considered a violation of program requirements and will subject the non-compliant grantee to all sanctions and penalties available for program requirement violations. HUD and its fair housing partners are preparing additional guidance and plan to conduct trainings to assist HUD grantees in understanding the new rule. As these procedures become available, you will be able to access them at: [www.hud.gov/lgbthousingdiscrimination](http://www.hud.gov/lgbthousingdiscrimination).

*Please note: This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant’s sex where the housing provided or to be provided to the individual is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled. This provision is intended to ensure privacy, safety and modesty in temporary, emergency shelters. Please also note: This provision does not prohibit voluntary or anonymous reporting of sexual orientation or gender identity pursuant to local, state or federal data collection requirements.

**State of Oregon Protected Classes:**

- Marital Status: Actions/decisions based on whether or not someone is married, single, divorced, etc.
- Source of Income: Any legal source of income is counted, including alimony, welfare, etc.
- Sexual Orientation
- Gender Identity

In addition, Oregon effectively created another protected class for domestic violence survivors by adding language to the state’s Landlord Tenant Act found in ORS 90.449. See [http://www.leg.state.or.us/090.html](http://www.leg.state.or.us/090.html).
Local Jurisdictions: Counties-Cities in Oregon Protected Classes:
In addition to Federal and State protected classes, some counties and cities in Oregon have designated additional protected classes. These can be viewed at:
www.FHCO.org/pdfs/matrix_ore.pdf

More Information:
Oregon's fair housing laws can be found in the Oregon Revised Statues (ORS), Chapter 659A at: http://www.leg.state.or.us/ors/659a.html

For more information regarding fair housing in Oregon, view the Fair Housing Council of Oregon's website at: http://www.fhco.org

ADA, 504 and Fair Housing Accessibility
Most housing properties fall under several different laws. Federal programs and the age of the property determine which laws apply.
- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) protects race, religion, sex and national origin
- The Fair Housing Amendments Act of 1998 (Amendments Act - FHAA) added disability and familial status
- The Americans with Disabilities act (ADA) of 1990 addresses public accommodations (rental offices and common areas are considered public accommodations)
- Section 504 of the Rehabilitation Act of 1973 (Section 504) applies to those receiving federal assistance
- Persons with disabilities have their rights protected under three main laws (ADA, FHAA, and 504)

Disability Rights in Housing
Definition of Disability: Federal laws define a person with a disability as "Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such impairment."

In general, a physical or mental impairment includes hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex, and mental retardation that substantially limits one or more major life activities. Major life activities include walking, talking and hearing, seeing, breathing, learning, performing manual tasks, and caring for oneself.

Disability Rights in Private and Public Housing regardless of whether you live in private or public housing, Federal laws provide the following rights to persons with disabilities:
• Prohibits discrimination against persons with disabilities. It is unlawful for a housing provider to refuse to rent or sell to a person simply because of a disability. A housing provider may not impose different application or qualification criteria, rental fees or sales prices, and rental or sales terms or conditions than those required of or provided to persons who are not disabled.

Example: A housing provider may not refuse to rent to an otherwise qualified individual with a mental disability because they are uncomfortable with the individual’s disability. Such an act would violate the Fair Housing Act because it denies a person housing solely on the basis of their disability.

• Requires housing providers to make reasonable accommodations for persons with disabilities. A reasonable accommodation is a change in rules, policies, practices, or services so that a person with a disability will have an equal opportunity to use and enjoy a dwelling unit or common space. A housing provider should do everything they can to assist, but they are not required to make changes that would fundamentally alter the program or create an undue financial and administrative burden. Reasonable accommodations may be necessary at all stages of the housing process, including application, tenancy, or to prevent eviction.

Example: A housing provider would make a reasonable accommodation for a tenant with mobility impairment by fulfilling the tenant’s request for a reserved parking space in front of the entrance to their unit, even though all parking is unreserved.

• Requires housing providers to allow persons with disabilities to make reasonable modifications. A reasonable modification is a structural modification that is made to allow persons with disabilities the full enjoyment of the housing and related facilities.

Examples of a reasonable modification: would include allowing a person with a disability to install a ramp into a building, lower the entry threshold of a unit, or install grab bars in a bathroom.

• Reasonable modifications are usually made at the resident's expense. However, there are resources available for helping fund building modifications. Additionally, if you live in federally assisted housing the housing provider may be required to pay for the modification if it does not amount to an undue financial and administrative burden. For more information, see the Reasonable Accommodations section of the Section 504 Frequently Asked Questions page.

- Requires that new covered multifamily housing be designed and constructed to be accessible. In covered multifamily housing consisting of 4 or more units with an elevator built for first occupancy after March 13, 1991, all units must comply with the following seven design and construction requirements of the Fair Housing Act:
  - Accessible Entrance on an Accessible Route
  - Accessible Public and Common-Use Areas
  - Usable Doors
  - Accessible Route Into and Through the Dwelling Unit
  - Accessible Light Switches, Electrical Outlets, Thermostats, and Environmental Controls
  - Reinforced Walls in Bathrooms
  - Usable Kitchens and Bathrooms

- In covered multifamily housing without an elevator that consists of 4 or more units built for first occupancy after March 13, 1991, all ground floor units must comply with the Fair Housing Act’s seven design and construction requirements.

For information on how to comply with the physical accessibility requirements of the Fair Housing Act, visit the Fair Housing Accessibility FIRST Web site:

http://www.fairhousingfirst.org/

These requirements apply to most public and private housing. However, there are limited exemptions for owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

If you live in federally assisted multifamily housing consisting of 5 or more units, 5 percent of these units (or at least one unit, whichever is greater) must meet more stringent physical accessibility requirements. Additionally, 2 percent of units (or at least one unit, whichever is greater) must be accessible for persons with visual or hearing disabilities. For more information, visit Section 504 Questions and Answers:


People with Disabilities in Federally Assisted Housing: Federal law makes it illegal for an otherwise qualified individual with a disability to be excluded, solely because of his or her disability, from programs receiving federal financial assistance. For more information on the rights of persons with disabilities in federally assisted housing as well as the responsibilities of housing providers who receive federal financial assistance, visit our Section 504: Disability Rights in HUD Programs site:
Zoning and Land Use: It is unlawful for local governments to utilize land use and zoning policies to keep persons with disabilities from locating to their area. For more information, see the Joint Statement of DOJ and HUD on Group Homes, Local Land Use, and the Fair Housing Act:

http://searchjustice.usdoj.gov/search?q=crt%20housing%20final8_1&q=site%3Awww.justice.gov%2Fcrt&sort=date%3AD%3AL%3Ad1&output=xml_no_dtd&client=default_frontend&proxystylesheet=default_frontend&site=default_collection

State and Local Laws: Many states and localities have fair housing laws that are substantially equivalent to the Federal Fair Housing Act. Some of these laws prohibit discrimination on additional bases, such as source of income or marital status. Some of these laws may impose more stringent design and construction standards for new multifamily housing.

The Americans with Disabilities Act: In most cases, the ADA does not apply to residential housing. Rather, the ADA applies to places of public accommodation such as restaurants, retail stores, libraries, and hospitals as well as commercial facilities such as office buildings, warehouses, and factories. However, Title III of the ADA covers public and common use areas at housing developments when these public areas are, by their nature, open to the general public. For example, it covers the rental office since the rental office is open to the general public.

Title II of the ADA applies to all programs, services, and activities provided or made available by public entities. This includes housing when the housing is provided or made available by a public entity. For example, housing covered by Title II of the ADA includes public housing authorities that meet the ADA definition of "public entity," and housing operated by States or units of local government, such as housing on a State university campus.

For more information on the Americans with Disabilities Act, visit the Department of Justice ADA Home Page. http://www.ada.gov/

For information on how HUD processes housing discrimination complaints, see Fair Housing-It's Your Right:


US Department of Housing & Urban Development Office of Fair Housing & Equal Opportunity UFAS Accessibility Checklist:

Community Housing Development Organizations (CHDOS)

Community Housing Development Organizations, or CHDOS, are specific types of nonprofit organizations defined exclusively for the HOME Program. According to the HOME regulations, CHDOS must be developers, sponsors, or owners of HOME-assisted housing. CHDOS must have effective management control of properties, and must be organized and structured according to strict standards specified in the HOME regulations.

Properties that are owned, developed, or sponsored by CHDOS, must have a tenant participation plan to ensure that tenants are involved in the management and decision-making with respect to the property. Two ways to enable tenant participation in management decisions are:

- Involvement of a tenant association to act as a formal body to provide input for project management; or
- Tenant election of a representative to act as a liaison with management.

Specific questions regarding CHDO requirements and the application for allocation may be directed to the Housing Resources Section of OHCS.

HOME with Tax Credits (LIHTC)

Important Program Differences for Management Purposes

In general, when a property has both HOME and Low-Income Housing Tax Credits (LIHTC), both sets of program rules apply, so the stricter requirements of each program must be met. Key property management issues that vary between the programs include:

- **Income Targeting and Occupancy Requirements**
  The Owner or manager must rely on its use agreements and the rules for each program to determine the number of HOME and tax credit units in the property, and the required household income at move-in for each unit. When a household’s income meets both sets of requirements and the rent is below the maximum for both programs, the unit that household occupies can be counted toward the requirements of both programs. Otherwise, if a household meets only one set of requirements, the unit can be counted for that one program only.

- **Maximum Allowable Rent Determinations**
  The Owner/Agent must determine the maximum allowable rents for both programs and use the lower rents as the rent limit for the unit. Maximum rent limits include utilities for both programs and use the lower rents as the rent limit for the unit. Maximum rent limits include utilities for both programs, so if the tenant pays for utilities, the owner/agent must deduct the appropriate utility allowance to determine the rent limit.

  - **Utility Allowances**
    LIHTC and HOME may use different utility allowances. The owner/agent must deduct the LIHTC utility allowance from the LIHTC rent limit to determine the maximum allowable LIHTC rent. The owner/agent must
deduct the correct utility allowance from the HOME rent limits to
determine the maximum allowable High HOME Rent and the Low HOME
Rent. The maximum rent the owner/agent can charge is the lesser amount.

- **Affordability and Market Rents**
Home and LIHTC each have established rent limits. In some cases, the rent limits imposed
by the LIHTC and HOME programs will result in a higher rent for a unit than the market
will actually bear. For example, a two-bedroom unit might have a maximum tax credit rent
of $600, a maximum HOME rent of $625, and a maximum achievable market rent of $500.
Regardless of the program rent limits, in this situation the property cannot charge more than
the market will pay. This lower market rent complies with the LIHTC and HOME rent
restrictions. It is perilous to assume that the property will achieve its ‘use restricted’ rent
limits, particularly in an area where rents are low in relation to area median incomes. Owners
and managers should establish rents that reflect the market for the community.

- **Reduction in Rents**
If HOME rent limits or Fair Market Rents decline, rents at HOME/LIHTC properties may
have to be lowered. The HOME Program does not require that owners reduce rents for
HOME-assisted units below the level in effect at the time of project commitment. However,
LIHTC rules do not provide similar protections. Therefore, if a unit is counted toward both
sets of requirements, and the rent limit decreases, a rent decrease may be necessary to ensure
continued compliance with LIHTC rules.

- **Initial Tenant Income-Eligibility**
Both LIHTC and HOME require owners/agents to determine a tenant household’s income-
eligibility prior to leasing a unit, and both programs require owners/agents to use source
documentation to do so.
  
  - **Definition of Income** - LIHTC requires the use of the Section 8 (Part 5)
    Program definition of income; OHCS requires the same use of the Section 8
    (Part 5) for the HOME Program as well.
  
  - **Asset Income** – Although LIHTC permits tenants to certify asset amounts
    and asset income that are less than $5,000, the HOME Program requires
    ALL asset income to be verified with source documentation. Therefore, all
    asset income must be verified for any unit that will count as a HOME unit
    and any unit that will count as both a tax credit and a HOME unit.

- **Recertifying Tenant Income**
Both the HOME and LIHTC programs require assisted units to remain occupied by
income-eligible persons throughout the affordability (compliance) period. For both
programs, property owners/agents must certify tenants’ incomes to ensure they continue to
be income-eligible in accordance with applicable income limits. Both programs use limits
that are updated and issued by HUD annually, although each program may impose different
income targeting requirements. For a unit to continue to count as both a HOME and
LIHTC unit, the tenant’s income must continue to qualify under each program.
- **Source Documentation** – The HOME Program permits some flexibility in methods of recertifying income. For properties with both LIHTC – assisted and non-assisted units, the LIHTC Program requires a review of source documentation every year to verify income-eligibility; for projects with 100 percent LIHTC units, income re-certifications are required for the first year annual completed at time of first anniversary of the move-in date. Self-certifications should be completed after the first year annual re-certification. Therefore, property owners/agents of HOME/LIHTC properties that are not 100 % LIHTC must verify tenant income using source documentation annually. The HOME program requires full Tenant Income Certifications to be completed using verifications procedures at move-in and every 6th year from IDIS date regardless of other funding sources in the property. See explanation earlier in this manual.

- **Over-Income Tenants** - Generally, a tenant household is considered “over-income” when its income increases to 140 percent or more of the qualifying income for that unit. Until the household’s income reaches this threshold, the tenant must pay no more than the lesser of the HOME rent limit or the tax credit rent. Once the tenant household’s income increases to over 140 percent of the qualifying income, the household is over-income. The steps the owner/agent must take to restore compliance to the property for HOME and LIHTC will vary, depending on whether the property has fixed or floating HOME units, whether or not 100 percent of the units are either HOME-assisted or LIHTC units, and what percentage of units are assisted and non-assisted units.

- **Affordability (Compliance) Period**

  HOME affordability periods are specified in the written agreement between the property owner and OHCS. LIHTC compliance periods are specified in the property’s allocation agreement and regulatory agreements with OHCS and are specific to each property. The property must comply with HOME rules for the duration of the established HOME affordability period for the property and must also comply with LIHTC rules for the duration of the established LIHTC compliance period.

- **Property Inspections**

  Both programs require OHCS to inspect the property on a periodic basis. HOME/LIHTC units must comply with HOME’s applicable property standards throughout the affordability period. OHCS will notify owners of the property inspection prior to the inspection. OHCS will inspect all properties with HOME units every year for properties with 25 or more total units. For properties with 24 or fewer units, HOME inspections will take place every other year.

- **Section 8**

  Both the HOME and LIHTC Programs permit the maximum rent to exceed program requirements on units with **project-based Section 8 rental assistance**. This exception applies only for Low-HOME Rent Units. For tenant-based rental assistance, the HOME rent limits still apply – no exceptions.