Compliance in HOME Rental Projects:

A Guide for Property Owners

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

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A Guide for Property Owners

2009

Prepared by

ICF INTERNATIONAL

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

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Introduction

The U.S. Department of Housing and Urban Development (HUD) has invested approximately $8.7 billion in over 330,000 rental property units through the HOME Program since the program was first funded in 1992. In general terms, the HOME Program requirements are designed to increase the supply of affordable housing for a sustained period, by capping rents at affordable levels and restricting occupancy to low- and very low-income households. These HOME-assisted rental properties are subject to certain requirements for a period of time known as the "affordability period."

Property owners who receive HOME assistance and the jurisdictions that provide them share responsibility for ensuring that HOME-assisted housing units comply with HOME requirements throughout the affordability period. To comply, property owners need to:

- *Understand the HOME requirements;*
- *Incorporate the HOME requirements into property management operations; and*
- *When day-to-day operations are carried out by another individual(s) or entity(ies), communicate the HOME requirements effectively and supervise and monitor rental management activities.*

What Is the Purpose of This Guide?

This guide, *Compliance in HOME Rental Projects: A Guide for Property Owners*, helps owners of HOME-assisted properties comply with the HOME Program's ongoing affordability requirements. It describes the specific regulatory requirements that apply to HOME-assisted rental properties during the period of affordability. Further, it provides tools for owners and property managers—in the form of checklists, forms, and sample documents—to facilitate the day-to-day rental management of HOME-assisted properties.

Some property owners/managers are subject to additional rules, beyond the HOME requirements, due to the use of other funding in a project's acquisition or development. This guide highlights and identifies common areas of confusion when HOME is used in combination with other typical sources (such as low-income housing tax credits and project-based rental subsidies) and nontraditional property types (such as group homes and single-room occupancy housing).

Why Is this Guide Important?

The HOME participating jurisdictions (PJs) that invest HOME funds in affordable housing hold the owner responsible and accountable for compliance throughout the period of affordability. Although an owner may choose to delegate day-to-day property management to another person or entity (such as staff or family member, or another nonprofit or for-profit entity), this does not relieve the owner of its obligation to see that its HOME-assisted units comply with HOME requirements. Failure to comply with HOME requirements can result in a number of corrective actions, including the repayment by the PJ of HOME funds to HUD and suspension of future HOME awards to the owner. Therefore, it is critical that owners of HOME-assisted property understand the HOME requirements and comply with them.

HUD is providing this guidance to property owners and their managers to help them comply with HOME requirements. HUD evaluated how well owners of HOME-assisted properties carried out their obligations during the affordability period and issued its findings in *Study of the Ongoing Affordability of HOME Program Rents*.[1] HUD found that two years after project completion, most HOME-assisted properties were in compliance with long-term affordability requirements. Nonetheless, in some instances, compliance with HOME rules occurred by happenstance—it was not the result of effective management systems developed and established by owners. The study also found that the owners of units that were not in compliance were often confused about the HOME requirements. They frequently did not know how to carry out the property management tasks that would ensure compliance, such as how to determine rents, use utility allowances, or change rents when a tenant's income increased over the allowable HOME limit. For owners of properties with additional sources of public investment, there was often additional confusion about how to apply different program rules to the same property. *Compliance in HOME Rental Projects: A Guide for Property Owners* addresses the key areas of confusion identified in this HUD study.

[1] U.S. Department of Housing and Urban Development. *Study of the Ongoing Affordability of HOME Program Rents*. (Washington, D.C.: August 2001). This publication is available at a nominal cost through HUD User at www.huduser.org or 1-800-245-2691.

Who Should Read this Guide?

This guide is targeted to both owners and property managers of HOME-assisted properties. These two groups are varied. Owners of HOME-assisted properties include:

- Individuals who are entrepreneurs, owning and managing a limited number of housing units as a side business;
- Small community-based housing development organizations and other entities that own and manage property in a limited number of neighborhoods; or
- Other nonprofit organizations or for-profit entities that own and manage numerous properties locally or even nationally.

Property managers, who carry out leasing, rent collections, marketing, and property maintenance, among other things, are an equally varied group that includes:

- Owners themselves, who own a limited number of properties and carry out the full range of property management functions;
- On- and off-site property management staff that work directly for the owner, and who may undertake one or a number of different property management functions; and
- Nonprofit and for-profit property management firms that serve as contractors to the owner to undertake one or more property management functions.

Regardless of the type of ownership, property size or location, and who carries out property management functions, the long-term affordability requirements apply equally to all HOME-assisted housing.

Throughout the text, the owner is referred to as "it," in recognition that most property owners are legal entities such as nonprofits, corporations, or limited partnerships. For the purposes of this guide, this terminology includes individuals who own HOME-assisted properties, unless otherwise noted.

About the HOME Program Model Guide Series

Compliance in HOME Rental Projects: A Guide for Property Owners is one of a number of model program guides that HUD has issued to provide technical assistance to state and local government HOME PJs. These model program guides cover a range of topics related to HOME Program administration and activities, and are available at no cost through Community Connections at 1-800-998-9999. For a complete list of all the model program guides, see the HOME Program web page at www.hud.gov/homeprogram/.

Chapter 1: HOME Program Requirements That Every Owner Must Understand

This chapter explains the key program requirements that apply to HOME-assisted rental properties. Understanding these concepts helps owners and property managers avoid inadvertent noncompliance and is a pre-requisite for understanding the guidance in the other chapters in this publication.

The complete copy of the HOME Rule and other useful information about the HOME Program can be found on the HOME Program web page at: www.hud.gov/homeprogram/.

Attachment 1-1, *Responsibilities for HOME Compliance*, found at the end of this chapter, identifies PJ and owner responsibilities, in each of the key compliance areas summarized in this chapter.

1.1. Participating Jurisdiction

The HOME participating jurisdiction, or "PJ," is the unit of state or general local government that receives an annual block grant of Federal HOME funds from HUD. The PJ is accountable to HUD for the performance and compliance of the properties and activities it finances with HOME funds. The owner, in turn, is accountable to the PJ for the performance and compliance of its HOME-assisted rental property.

1.2. HOME Project

A HOME project is one or more sites or buildings, under common ownership, management, and financing, that is assisted with HOME funds as a single undertaking. It may be an individual rental property, or part of a multi-property undertaking. In this guide, the term "rental property" is used interchangeably with "project."

1.3. HOME-Assisted Rental Units

The HOME Program distinguishes between units in a rental property that have been assisted with HOME funds (HOME-assisted units) and those that have not (non-assisted units). When the PJ commits HOME funds to a project, it determines the total number and type of HOME-assisted units, by bedroom size, in the project. This information is usually found in a written agreement between the PJ and the owner.

See a discussion of written agreements in item #1.4, below.

HUD requires that a minimum number of rental units be designated as HOME-assisted. This number is based on the share of HOME funds to the total eligible costs invested in the project. However, the PJ may designate a higher number of HOME-assisted units (up to 100 percent) to achieve the PJ's own goals for increasing the supply of affordable housing.

In general, HOME requirements apply only to the HOME-assisted rental units and related common space.

1.4. Written Agreements

Attachment 1-2, *Checklist of Elements in a Written Agreement between a PJ and an Owner of Rental Housing,* lists all the elements that should be included in a written agreement between the PJ and the owner. It is located at the end of this chapter.

The written agreement is the legally binding document that the PJ executes with the owner or recipient of HOME funds. HUD requires the agreement to include certain minimum provisions, to ensure compliance with HOME rules. For HOME-assisted rental properties, the written agreement is enforced by a deed restriction, a covenant running with the land, or other mechanism approved by HUD.

1.5. Deed Restrictions and Covenants

A deed restriction or covenant is a legally binding document that is attached to a HOME-assisted rental property. The deed restriction or covenant "runs with the land" for the entire affordability period. It ensures that the HOME affordability requirements stay in place regardless of whether the mortgage or HOME assistance has been repaid, or property ownership transfers. Current and future owners are legally bound by the terms outlined in the HOME deed restriction or covenant. The deed restriction or covenant must be recorded and is enforceable by the PJ.

1.6. HOME Rule

The HOME Rule can be found on the HOME Program web page at www.hud.gov/homeprogram/, or can be ordered at no cost from Community Connections, at 1-800-998-9999.

The HOME Rule is the Federal regulation that establishes the requirements for the HOME Program. HUD issues the HOME Rule in the Code of Federal Regulations at 24 CFR Part 92. HUD also issues helpful model program guides and training materials.

1.7. Affordability Period

The affordability period is the length of time during which the HOME requirements apply to a HOME-assisted rental property. The affordability period can be 5, 10, 15, or 20 years, depending on the type of HOME project and the average per unit HOME investment.

The affordability period can be thought of as the "compliance period." During this time, the rental property owner must comply with the HOME requirements, including rent limits, tenant income limits, tenant lease protections, affirmative marketing, and property standards. After the HUD-required affordability period ends, the Federal HOME requirements no longer apply.

When a HOME-assisted rental property is also assisted by other public and/or private funding sources, the other funding sources may require a longer affordability period than the HOME Program. The owner must comply with the requirements of each of the funding sources for the duration of that program's affordability period.

Further, the PJ can establish a longer period of affordability than the minimum period required by HUD. After the end of the affordability period required by the HOME Rule, the local PJ specifies what requirements apply.

1.8. High HOME Rent Units and Low HOME Rent Units

HUD publishes two annual HOME rent limits: the High HOME rent limits and the Low HOME rent limits. These are the maximum rents that owners can charge tenants that reside in HOME-assisted units. HOME properties with five or more HOME-assisted units must have at least 20 percent of their HOME-assisted units designated as Low HOME Rent units. The remaining units are High HOME Rent units.

When the PJ commits HOME funds to a project, it determines the total number and type, by bedroom size, of High and Low HOME Rent units in the rental property. The owner must maintain this mix of High and Low HOME Rent units for the entire affordability period.

- **High HOME Rent Units**. High HOME Rent units must be occupied by tenants whose incomes do not exceed the HUD-published HOME low-income limits. The rents for these units cannot exceed the HUD-published High HOME rent limits.
- **Low HOME Rent Units**. Low HOME Rent units must be occupied by tenants whose incomes do not exceed the HUD-published HOME very low-income limits. The rents for these units cannot exceed the HUD-published Low HOME rent limits.

Item # 1.11, below, briefly explains HOME income limits. Chapter 3 explains the HOME income limits, rent limits, and unit mix requirements in more detail.

1.9. HOME Unit Mix

HOME-assisted rental properties must have the required "unit mix" of High HOME Rent units and Low HOME Rent units, by bedroom size, throughout the affordability period.

The total number of High HOME Rent units and Low HOME Rent units in a HOME-assisted rental property remains constant throughout the affordability period. However, these unit designations may change depending on whether the HOME units are fixed or floating HOME units.

Whenever a HOME-assisted unit becomes vacant or the existing tenant of a HOME-assisted unit becomes over-income, the owner/manager must take certain steps to restore compliance with the HOME unit mix requirements.

Chapter 3 explains the HOME income limits, rent limits, and unit mix requirements.

Item # 1.8, above, briefly explains High HOME Rent units and Low HOME Rent units.

Item # 1.10, below, briefly explains the concepts of fixed and floating HOME units.

1.10. Fixed HOME-Assisted Units and Floating HOME-Assisted Units

The designation of a specific rental unit as a HOME-assisted unit may remain the same, staying "fixed" throughout the affordability period, or the designation may change, "floating" among comparable rental units. The PJ determines whether the HOME-assisted units are fixed HOME units or floating HOME units at the time it commits HOME funds to the rental property.

See Chapter 3, Section 3.5 for a discussion of maintaining unit mix in properties with fixed HOME units.

a. Fixed HOME-Assisted Units. Fixed HOME units remain designated as HOME-assisted units for the entire affordability period—regardless of if the unit becomes vacant or when an existing tenant becomes over-income. Fixed HOME units can vary in terms of bedroom sizes, square footage, and amenities.

Although the designation of a unit as a HOME-assisted unit remains fixed, its designation as either a High HOME Rent unit or a Low HOME Rent unit can change, moving among all of the fixed HOME units within the same rental property. This movement ensures that the required unit mix of Low and High HOME Rent units is maintained throughout the affordability period.

For example, at project commitment, the PJ designates unit 110 as HOME-assisted. Unit 110 retains its designation as a HOME-assisted unit throughout the affordability period.

See Chapter 3, Section 3.6 for a discussion of maintaining unit mix in properties with floating HOME units.

b. **Floating HOME-Assisted Units**. Floating HOME units are initially designated as HOME-assisted, but the designation changes, or "floats," among all comparable units within the same HOME-assisted rental property as properties are vacated and/or tenants' incomes go over-income. The owner must maintain the *total number* of HOME units, High HOME Rent units, and Low HOME Rent units throughout the affordability period, rather than the specific units.

For example, at project commitment, the PJ designates Unit 301 as HOME-assisted. If the income of the tenant increases over the HOME limit, the next available comparable non-assisted unit would be redesignated as a HOME-assisted unit and this unit would be designated as non-assisted.

Generally, all the units in a property (assisted and non-assisted) with floating HOME units must be comparable. This means that the assisted and non-assisted units in the property are the same in terms of square footage, number of bedrooms, and amenities.

1.11. HOME Income Limits

Tenants that occupy HOME-assisted housing must meet specified income limits. The HOME Program uses two income limits:

A. **Low-income** households must have incomes that do not exceed 80 percent of area median income;

B. **Very low-income** households must have incomes that do not exceed 50 percent of area median income.

During the affordability period, owners/managers must ensure that all tenants of HOME-assisted rental units have annual gross incomes that do not exceed the applicable HOME income limits. HUD updates and publishes HOME income limits each year. The PJ provides these updated income limits to owners/managers. Low-income limits apply to tenants of High HOME Rent units and very low-income limits apply to tenants of Low HOME Rent units.

Chapter 3, Section 3.2 provides guidance on how owners/managers must determine a tenant household's income-eligibility.

Owners must verify a tenant household's income-eligibility before renting a unit, and must recertify each the tenant's income-eligibility each year. The PJ must also provide a definition of income to the owner, so that the owner knows what income of tenant household "counts" as income when determining income-eligibility. Special rules apply when an existing tenant becomes over-income.

Chapter 3, Sections 3.5 and 3.6 describe what steps an owner must take when an existing tenant becomes over-income for properties with fixed and floating HOME units, respectively.

1.12. HOME Rent Limits

During the affordability period, owners/managers must ensure that the rents they charge for their HOME-assisted rental units do not exceed the applicable HOME rent limits. HUD updates and publishes HOME rent limits each year. The PJ provides the updated rent limits to owners/managers. Different rent limits apply to High HOME Rent units and Low HOME Rent units.

Special rent requirements apply for certain types of HOME properties such as those receiving Federal low-income housing tax credits or project-based rental subsidies, and for group homes or single-room occupancy housing. Chapter 3, Section 3.4 discusses these special cases.

HOME rent limits include utilities. This means that the rent that can be charged for a unit cannot be more than the HOME Rent limit *minus* the tenant-paid utilities. PJs provide owners with utility allowances to make these deductions.

Chapter 3, Section 3.3 provides guidance on how owners/managers must determine rents for High HOME Rent units and Low HOME rent units and how to use utility allowances.

Information-Sharing Between PJ and Owner Is Critical to Success of a HOME Property

To manage HOME-assisted properties in compliance with the HOME rules, owners and PJs need certain information from each other.

The PJ must provide the following information to the owner on an annual basis during the period of affordability:

- HOME income limits
- HOME rent limits (High HOME Rents and Low HOME Rents)
- PJ-Established utility allowances (for use when tenants pay their own utilities directly)
- Changes to policies or procedures that might impact the property's management, such as changes to affirmative marketing procedures or housing codes and/or standards.

The owner must provide the following information to the PJ on at least an annual basis during the period of affordability:

- HOME Rent and Occupancy Report (also known as the "Rental Project Annual Compliance Report")
- Affirmative marketing information, as specified by the PJ
- Financial reports, as specified by the PJ
- Other reports and information to document HOME compliance and property financial viability, as specified by the PJ.

PJs and owners should be proactive in obtaining the information they need to ensure that the HOME requirements are met, as they are held accountable for compliance even when their partners fail to provide needed information.

1.13. Property Standards

Chapter 5 provides guidance on with the HOME property standards and lead-based paint hazard elimination requirements.

Completed HOME-assisted units and shared common space must meet all applicable HOME property standards, including the Federal lead-based paint elimination requirements. The PJ must tell the owner which property standards apply. Throughout the affordability period, the owner/manager must ensure that HOME-assisted units and common space continue to meet or exceed the applicable property standards.

1.14. Accessible Units

Chapter 5 provides guidance on how owners/managers must comply with the Federal accessibility standards and requirements. Chapter 4 describes requirements related to the marketing and leasing accessible units.

In HOME properties with five or more total units, the common spaces and a certain number of units must be constructed or rehabilitated to be accessible to persons with mobility and/or sensory impairments in accordance with the Uniform Federal Accessibility Standard (UFAS). These units must be marketed to ensure that they are offered first to persons with disabilities.

1.15. Affirmative Marketing and Tenant Selection

The PJ must convey affirmative marketing requirements to the owner, and specify what the owner must do to attract tenants who are not likely to apply for the housing without special outreach, such as minorities, families with children, persons with disabilities, or other persons protected by fair housing laws.

Chapter 4 provides guidance on how owners/managers must comply with affirmative marketing and tenant selection requirements.

Owners/Managers must develop tenant selection policies and criteria to ensure that tenants are selected for occupancy at the property in a fair and equitable manner. Tenant selection policies must be based on objective criteria that expressly prohibit bias. Tenant selection procedures should be clear and easily understood by prospective tenants.

1.16. Prohibited Lease Terms and Tenant Protections

Tenants of HOME-assisted units must be protected by a written lease. Owners must make sure that leases do not exceed the HOME rent limits and do not contain any clauses that are prohibited by the HOME Rule. Lease terms must be for a minimum of one year, unless the owner and tenant mutually agree to a lesser term. In no event can the lease be for less than thirty days. Owners/Managers may not terminate a tenant's lease nor refuse to renew his or her lease without good cause. Even with good cause, the owner must provide the tenant with a thirty-day advance written notice before terminating the lease. Owners must also comply with applicable state and/or local tenant-landlord laws.

Chapter 4 provides guidance on how owners/ managers must comply with the lease and tenant protections requirements.

1.17. Conflict of Interest

With the exception of on-site managers and maintenance workers that reside in a unit, owners of HOME-assisted properties, and their officers, employees, agents, or consultants, may not occupy a HOME-assisted unit. PJs may grant exceptions to this rule on a case-by-case basis.

1.18. Reports

Owners must submit various reports to the PJ to document compliance with the Federal HOME requirements. At a minimum, owners must submit annual rent and occupancy data reports for their HOME-assisted units. PJs may require owners to submit other information, such as financial information, maintenance logs, and marketing activities. The PJ is responsible for reviewing submitted reports and contacting the owner with questions or concerns.

Chapter 6 summarizes the HOME record-keeping and reporting requirements.

1.19. Records

Chapter 6 provides guidance on record-keeping and records retention requirements for owners of HOME-assisted rental properties.

Owners must maintain records that document the compliance of their HOME-assisted rental properties with the HOME requirements. These records must also support the accuracy of the reports that owners/managers submit to their PJs. Required records include documentation related to tenant income verifications, unit rents, affirmative marketing, and property standards. Owners must keep records for the most recent five year period during the affordability period, until five years after the end of the affordability period.

1.20. Terms of Enforcement

Chapter 6 provides guidance on enforcement of the HOME requirements.

The PJ determines how it will enforce an owner's compliance with the HOME requirements and specifies these enforcement mechanisms in the written agreement. When noncompliance occurs, PJs can impose a range of corrective actions or remedies. The type of corrective action depends on the seriousness of the noncompliance. Some examples of remedies include:

- Correcting deficiencies, such as repaying tenants for overcharging rents, or making improvements to bring properties into compliance with applicable property standards;
- Making management changes or requiring submission and approval of management plans or changes to staffing; or
- Repaying HOME funds or paying financial penalties.

Since HUD may require the PJ to repay the HOME investment when a rental property fails to comply with the HOME requirements for the entire affordability period, PJs usually require repayment from owners as well. When the HOME assistance is in the form of a grant or deferred payment loan, owners may be required to repay the full amount of the HOME assistance. When HOME funds are loaned, the owner may be required to pay the outstanding principal balance of the loan. The PJ may also require that a fine or other financial penalty be paid.

Attachment 1-1:
Responsibilities for HOME Compliance

HOME Requirements	PJ Responsibilities	Owner/Manager Responsibilities
Affordability Period	• Determine the length of the affordability period. • Inform owners of the length of the affordability period.	• Contact the PJ to find out the affordability period that applies to its rental property, if not known.
Deed Restrictions	• Execute and record a copy of the deed restriction or covenant and provide a copy to the owner.	• Contact the PJ for a copy of the deed restriction or covenant, if needed.
Written Agreements	• Include all required HOME provisions in the written agreement. • Provide owners with a copy of the written agreement.	• Understand the terms of the agreement with the PJ. • Contact the PJ to obtain a copy of the written agreement, for clarification of terms, if needed.
HOME-Assisted Rental Units	• Determine the total number of HOME-assisted units, by bedroom size, in a property. • Inform owners about the total number of HOME-assisted units and identify which units are HOME-assisted.	• Contact the PJ for guidance to find out which units are HOME-assisted, if not known. • Manage property in compliance with the HOME rules.
High HOME Rent Units and Low HOME Rent Units	• Identify the total number and type of High and Low HOME Rent units before property lease-up. • Explain to the owner how to use the HOME income limits and the HOME rent limits. • Provide to the owner the HOME income limits and rent limits before property lease-up, and annually during the affordability period.	• Understand how to apply the HOME income and rent limits. • Contact the PJ to find out which units are High HOME Rent units and which units are Low HOME Rent units, if not known. • Contact the PJ for updated HOME rent limits, if needed.
HOME Unit Mix	• Explain to the owner how to maintain the required unit mix of High HOME Rent units and Low HOME Rent units by bedroom size. • Monitor the property to ensure that the required unit mix is maintained during the affordability period.	• Manage the property so that it maintains the appropriate HOME unit mix. • Contact the PJ for information on what the unit mix is for the property, or for more information about how to manage the unit mix, if needed.
Fixed and Floating HOME Units	• Inform owner about whether the property has fixed or floating HOME-assisted units.	• Contact the PJ to find out if the property has fixed or floating HOME units, if not known. • Manage the property for its unit type (fixed or floating units).
HOME Income Limits	• Provide owner with: 1. The HOME income limits that apply, before lease-up. 2. Updated HOME income limits on an annual basis until the end of the property's affordability period. 3. Definition of income that can be used for determining tenant income-eligibility. 4. Guidance on how to determine income-eligibility.	• Know what the correct annual published income limits are and how to apply them. • Collect and verify income information provided by applicants upon initial occupancy to determine income-eligibility. • Recertify income-eligibility for existing tenants on an annual basis. • Contact the PJ for initial and updated income limits, a definition of income, and/or guidance on how to determine income-eligibility, if needed.

Attachment 1-1: Responsibilities for HOME Compliance *(continued)*

HOME Requirements	PJ Responsibilities	Owner/Manager Responsibilities
HOME Rent Limits	• Provide owners with the HOME rent limits that apply before lease-up. • Determine which Low HOME Rent limits apply to the property. • Provide owners with the updated HOME rent limits on an annual basis until the end of the property's affordability period. • Approve the property's rent schedule and subsequent rent increases.	• Determine the rents that can be charged for HOME-assisted units, and ensure that rents do not exceed the Low HOME rent limit for units that are designated to be occupied by very low-income tenants, and the High HOME rent limit for the remaining units. • Submit rents and rent increases to the PJ for approval prior to charging tenants. • Contact the PJ for the updated HOME rent limits, if not provided. • Contact the PJ for guidance if the latest PJ rent limits exceed the most recent HUD-published HOME rent limits.
Property Standards	• Tell the owners which property standards apply, including lead-based paint hazard elimination requirements. • Provide owners copies of all applicable codes and standards. • Notify owners of any changes to the codes and standards during the affordability period. • Conduct periodic on-site inspections to ensure that properties continue to meet applicable standards.	• Maintain properties in accordance with all applicable codes and standards. • For pre-1978 buildings, provide required tenant/applicant disclosures, and monitor to ensure that regular maintenance and evaluation of lead-based paint hazards are undertaken. • Contact the PJ to find out which property standards and lead-based paint hazard elimination requirements apply, if not known.
Accessible Units	• Provide a copy of the UFAS standard to the owner and inform owner about the applicable accessibility standards. • Inform the owner about the requirements related to marketing accessible units to persons with disabilities first.	• Understand the accessibility standards and requirements. • Contact the PJ for information on the applicable accessibility requirements, if needed.
Affirmative Marketing and Tenant Selection	• Inform owner about the affirmative marketing requirements that apply. • Evaluate the success of the affirmative marketing procedures. • Provide guidance to owners about how to develop tenant selection procedures.	• Develop tenant selection policies and criteria that are fair and objective. • Carry out affirmative marketing in accordance with the PJ's procedures. • Report to the PJ on affirmative marketing, as required by the PJ. • Contact the PJ for information on the affirmative marketing requirements, or for guidance about the required tenant selection procedures.

Attachment 1-1: Responsibilities for HOME Compliance *(continued)*

HOME Requirements	PJ Responsibilities	Owner/Manager Responsibilities
Prohibited Lease Terms and Tenant Protections	• Review and approve leases in use by owners. • Inform owners about the prohibited lease terms and required tenant protections that apply to their rental properties.	• Ensure that no lease with any tenant of a HOME-assisted unit includes any prohibited lease terms. • Secure PJ approval for leases. • Execute a lease for at least one year with each tenant of HOME-assisted units, unless otherwise permitted by PJ. • Contact the PJ for guidance for information on the prohibited lease terms and required tenant protections, if needed.
Conflict of Interest	• Inform owners about the conflict of interest prohibitions.	• Understand applicable conflict of interest prohibitions. • Contact the PJ for more guidance, if needed.
Reports	• Inform the owner about the reports that must be submitted.	• Establish specific record-keeping, reporting, and tracking procedures for HOME-assisted units and properties. • Check the accuracy of reports that are prepared by staff or third parties. • Submit required reports to the PJ in a timely manner. At a minimum, submit annual rent and occupancy data for HOME-assisted units. • Contact the PJ to find out the reporting requirements, if not known.
Records	• Inform owners about: (1) the records that must be maintained, and (2) how long the records must be retained.	• Maintain required records, including: tenant income verifications, rents, affirmative marketing, and property standards. • Contact the PJ to find out the records retention requirements, if not known.
Terms of Enforcement	• Inform owners about the corrective actions or remedies that will be imposed if owners breach the terms of their written agreement with the PJ. • Monitor the owner to ensure that properties are managed in a manner that complies with HOME requirements. • Implement corrective actions when the property is out of compliance, as appropriate.	• Manage the property in a manner that complies with HOME requirements. • Notify the PJ with questions or concerns about compliance. • Understand the consequences of noncompliance. • Contact the PJ to find out the enforcement terms, if not known. • Monitor the work of others to ensure that management procedures are followed and records are retained in order to verify HOME compliance.

Attachment 1-2:
Checklist of Elements in a Written Agreement between a PJ and an Owner of Rental Housing

A PJ must execute a written agreement with each owner, developer, and sponsor of HOME-assisted rental housing before it can disburse HOME funds. PJs can use this checklist to determine whether or not their written agreements with an owner, developer, or sponsor of rental housing includes all the provisions that are required or recommended by HUD to protect the PJ's HOME investment before disbursing funds.

* Required items are denoted with an asterisk.

	Yes / No
***Provisions to Describe Use of HOME Funds**	
A. HOME activity to be undertaken	
B. Project description	
1. Project address	
2. Total unit(s) and unit size(s)	
3. Special project features, such as whether or not the project involves:	
a. Land assembly and subdivision	
b. Environmental remediation	
c. Lead-based paint treatment	
d. Demolition or other site preparation	
e. Relocation	
f. Infrastructure development	
4. Number of accessible units	
5. Target population of the project (mixed-use, special needs, etc.), if any	
6. PJ-approved plans and specifications, if any	
C. Unit designations	
D. *Schedule for completing tasks	
E. *Tasks to be performed	
F. *Budget	
1. Sources and uses statement, including amount, form, use, and terms of HOME subsidy	
2. Amount and use of non-HOME funds	
3. Maximum and actual per unit HOME subsidy amount	
Provisions to Clarify Roles and Expectations	
A. Roles and responsibilities of each party	
B. Performance goals and performance standards	

Attachment 1-2: Checklist of Elements in a Written Agreement between a PJ and an Owner of Rental Housing *(continued)*

	Yes / No
***Provisions to Convey Affordability Requirements of 92.252**	
A. Housing must meet affordability requirements of 92.252	
B. Duration of affordability period (start and end dates; if not known, indicate how PJ will determine these dates and notify the owner/developer)	
C. *Mechanism for securing affordability (recorded deed restriction or land covenant)	
D. Number of HOME-assisted and non-assisted unitsin the project	
E. Whether the property has fixed or floating HOME units	
F. Number of High HOME Rent units and Low HOME Rent units that must be maintained during the affordability period	
G. HOME income limits:	
1. Guidance on how to use HOME income limits	
2. Applicable HOME income limits	
3. Income targeting (how many households at what income levels must occupy the High HOME Rent units and the Low HOME Rent units)	
4. Initial income-eligibility verification requirements and guidance, including definition of income	
5. Income certification and recertification requirements, including acceptable methods of recertifying tenant income	
6. Steps that must be taken when a tenant becomes over-income	
H. HOME rent limits:	
1. Guidance on how to use HOME rent limits	
2. Applicable HOME rent limits	
3. Initial utility allowance and guidance on use	
4. *Initial rents the owner can charge	
5. *Procedures for securing PJ approval of rent increases	
***Project Requirements**	
A. Applicable requirements of Subpart F, including:	
1. Lease requirements	
2. Prohibited lease terms at 92.253(b)	
3. Termination of tenancy for cause only	
4. Tenant selection criteria required	
5. Conditions for faith-based organizations	
6. Compliance with state and local tenant-landlord laws	

Attachment 1-2: Checklist of Elements in a Written Agreement between a PJ and an Owner of Rental Housing *(continued)*

	Yes / No
Property Standards	
A. *Applicable property standards at 92.251	
B. *Lead-based paint requirements at 24 CFR part 35 subparts A, B, J, K, M, and R	
C. *Property standards apply throughout affordability period	
***Provisions Related to Other Federal Requirements**	
A. Project must be carried out in compliance with Subpart H, Other Federal Requirements, including:	
6. *Displacement, relocation, and acquisition provisions at 92.353	
7. Fair housing and equal opportunity provisions	
8. *Nondiscrimination provisions of 92.350	
9. *Labor provisions of 92.354:	
a. Davis Bacon (for projects with 12 or more units)	
b. Section 3	
c. Contract Work Hours and Safety Standards Act	
d. Anti-Kickback Act	
e. Fair Labor Standards	
10. *Conflict of interest provisions of 92.356(f)	
11. *Affirmative marketing and minority/women outreach requirements of 92.351 (for projects with five or more units)	
12. Guidelines for marketing and managing accessible units, if applicable	
Funds Disbursement	
A. When and how HOME funds can be requested	
B. *Statement that developer may not request disbursement of funds until funds are needed for payment of eligible costs	
C. *Statement that amount of disbursement request must be limited to the amount needed	
D. How often HOME funds can be requested	
E. Change order process and requirements	
F. Documentation needed to substantiate costs, including approvals for construction work, weekly payroll records, progress reports	
G. How and when costs will be paid	
H. Retainage that will be withheld and conditions under which the retainage is released	

Attachment 1-2: Checklist of Elements in a Written Agreement between a PJ and an Owner of Rental Housing *(continued)*

	Yes / No
***CHDO Provisions if owner, developer, sponsor is a CHDO using set-aside funds**	
A. *Specify applicable provisions of 92.300 and 92.301, including:	
1. CHDO proceeds- whether the CHDO retains CHDO proceeds or returns them to the PJ	
2. If CHDO retains proceeds, how they can be used	
3. Whether any funds are for project-specific technical assistance or site control loans and if so, the amount and terms of those funds	
B. Tenant participation plan	
C. Grievance procedures	
Reporting and Record-Keeping Provisions	
A. *What reports must be submitted to the PJ	
B. How often must reports be submitted	
C. Reserve right to change reporting requirements, as needed	
D. *What records must be maintained by the owner/developer/sponsor	
E. Reserve right to review records and reports by PJ, HUD, IG, etc.	
F. How long must records be retained	
G. Additional reporting or record-keeping requirements imposed by the PJ on the project	
***Enforcement Provisions**	
A. Reserve the right to inspect properties and units	
B. *Recorded deed restriction to secure affordability requirements	
C. Definition of breach of the agreement/default	
D. Requirements for the PJ to notify the owner/developer/sponsor of a default of the agreement, if any	
E. *Remedies or penalties for noncompliance/breach of agreement	
F. *Statement that repayment of HOME funds is required if the housing does not meet the affordability requirements for the period of affordability	

Attachment 1-2: Checklist of Elements in a Written Agreement between a PJ and an Owner of Rental Housing *(continued)*

	Yes / No
General Provisions	
A. *Anti-lobbying language, as required by Consolidated Plan certifications, in accordance with 24 CFR 91.225, 91.325, and 91.425 for local governments, states, and consortia respectively	
B. *Duration of the agreement for throughout the affordability period	
C. How agreement can be cancelled without cause	
D. Whether and how the owner/developer/sponsor can assign the agreement to another party	
E. How the agreement can be modified or amended	
F. Insurance requirements imposed by PJ, such as property insurance, workers compensation, employers' liability insurance, commercial general liability insurance, risk property damage insurance	
G. PJ requirements related to project publicity	
H. Indemnification	
I. PJ approval of subcontractors	
J. Whether agreement is binding to successors and assigns	
K. Waiver of jury trial in the event of legal proceedings	
L. Form of notice, as it may be required in agreement	
M. Additional requirements imposed by the PJ on the project	

Chapter 2: Property Owner's Responsibilities for Managing a HOME-Assisted Property

2.1. Overview

This chapter summarizes the key asset and property management functions that impact the property's financial and physical viability. This chapter explains the owner's responsibility to monitor the property's overall well-being and for meeting the HOME requirements for HOME-assisted properties, even when the owner contracts out rental management functions to staff or a third party.

2.2. Owner's Obligation for Asset and Property Management

By securing effective asset and property management, owners can influence how well a property meets HOME requirements and remains financially viable.

The asset manager plans for and monitors the financial health of the property. This entails establishing and monitoring the operating, maintenance, and capital expenditure budgets for the property; and ensuring that the property's rental income covers the property's expenses. The owner typically retains the overall responsibility for asset management but may hire a professional asset manager. In addition to the owner's interest in maintaining a profitable and reputable property, asset management is important to HOME compliance because the long-term financial and physical viability of the property affects the owner's ability to comply with HOME's long-term requirements to keep the property affordable.

The property manager carries out the day-to-day operations of the property, which involve leasing, marketing, and unit maintenance functions. HOME requirements impact these functions directly and significantly. These functions are often carried out by staff or a professional property management entity. If the owner hires a property manager, it is critical that the property manager understands the HOME requirements and obligations that apply to the property, in order to monitor the property manager's work.

For more information on asset and property management, see:

- HUD's model program guide, *Asset Management: Strategies for Successful Operation of Affordable Rental Housing* (HUD 2018-CPD, May 2000). This guide is available at no cost from Community Connections at 1-800-998-9999.
- HUD's training course, *Staying HOME: Property and Asset Management*. Information on this training course is available at: http://www.cpdtraininginstitute.com.
- The Institute of Real Estate Management (IREM) 430 North Michigan Avenue, Chicago, Illinois 60611.
  Phone, 800-837-0706.
  Web page: www.irem.org.

Summary of HOME Requirements:
Asset and Property Management

The HOME Program imposes several requirements that have a direct impact on how **property management** functions are carried out in a HOME-assisted property. These relate to tenant income limits, rent restrictions, minimum property standards, marketing, and record-keeping. Most HOME requirements have a less direct impact on **asset management** functions. However, effective asset management is also important because the long-term financial and physical health of a HOME-assisted property directly impact an owner's ability to maintain a property as affordable housing for low-income households.

Owners must be sure the asset and property managers they hire or contract with understand the HOME requirements and carry out their functions in a way that complies with HOME rules. Owners must enter into written agreements as a way of enforcing the HOME requirements

A. Asset Management: Ensuring the Property Is Financially and Physically Viable

1. Is Asset Management Required by the HOME Program?

No. Generally, asset management tasks are *not* specifically required by the HOME Program. However, the HOME Program requires that a HOME-assisted property be maintained as affordable housing throughout the affordability period. To do this, a property must remain financially and physically viable. The asset manager undertakes important tasks that ensure that the property remains financially and physically viable. How well these tasks are performed ultimately affects the success of a HOME-assisted rental property's operations.

See Section 2.2B, Questions 8 and 9, for a discussion on written agreements between the owner and the property manager.

Although not required by HUD, the PJ can impose specific requirements on a property manager to ensure that these asset management tasks are undertaken. The PJ should identify these requirements in its written agreement with the owner.

2. What Asset Management Tools Might a PJ Require?

The PJ might require the owner to submit a management plan and performance goals for the property for its review, in order to monitor the property's long-term financial and physical health.

3. What Are Performance Goals?

Performance goals describe how the owner would like its HOME-assisted property to perform from a financial perspective. These goals are communicated to the property manager and are the basis for the property manager's reports to the owner. The owner should specify these goals in a written agreement with the property manager.

4. How Are Performance Goals Tracked?

Progress towards performance goals are tracked by using a small number of "key indicators" that relate directly to the specific goal and can be measured and monitored frequently.

For example, in order to assess the performance goal of full occupancy, the owner might use the occupancy rate as a measurable indicator. By tracking the occupancy rate over time, the owner knows how well the property is meeting its full occupancy goal. This information then helps managers make operational decisions, such as how much marketing to conduct and where.

5. What Indicators Are Typically Included in Performance Goals?

The following indicators help owners track a number of common property management goals:

- Rent collection rate;
- Vacancy rate;
- Turnover rate;
- Compliance with HOME standards;
- Work order completion;
- Expense to budget ratio;
- Outstanding accounts receivable;
- Outstanding accounts payable; and
- Resident satisfaction.

6. What Is a Management Plan?

The management plan is a tool that owners and asset managers use to guide property oversight. It describes *how* the operations of property management will be carried out for a specific property.

Typically, the owner and/or the asset manager develops and adopts a management plan that establishes the systems and procedures the property manager uses to ensure that property operations comply with HOME requirements as well as the PJ's and the owner's specific requirements. It can be helpful to involve the property manager in the development of the management plan.

7. What Topics Are Addressed in a Management Plan?

The management plan might include topics such as:

- Site management;
- Personnel;
- Financial operations;
- Rents;
- Leasing;
- Tenant selection;
- Waiting lists;
- Terminations;
- Marketing;
- Maintenance;
- Procurement;
- Tenant relations;
- Record-keeping;
- Reports; and
- Supplemental services, if applicable.

8. Does the PJ Use the Management Plan?

Yes. The PJ should review the management plan to ensure that property management procedures reflect all applicable laws and requirements and that the plan for the property's financial and physical management appears feasible over the long-term. A comprehensive management plan facilitates the PJ's and owner's monitoring of compliance during the affordability period.

B. Property Management: Ensuring HOME Compliance

1. What Are the Key Roles of the Property Manager?

Some of the key roles of a property manager include:

- Marketing the property;
- Screening applicants;
- Determining and documenting tenant income-eligibility;
- Selecting tenants;
- Establishing rents;
- Collecting rents;
- Enforcing leases;
- Maintaining the property;
- Managing property finances;
- Keeping records; and
- Submitting reports.

2. Why Is Property Management Important to a HOME-Assisted Property?

The HOME requirements directly affect nearly all aspects of property management: marketing, tenant selection, establishing rents, property maintenance, and record-keeping.

3. Who Carries Out Property Management Functions in a HOME-Assisted Property?

Property management functions may be carried out by the owner directly, or the owner may hire a professional property manager—an individual or a firm—to oversee the ongoing operations and maintenance of the HOME-assisted property.

4. If the Owner Hires a Property Manager, Is the Owner Still Responsible for HOME Compliance?

See Chapter 6, Section 6.3 for a discussion of the owner's monitoring obligations.

Yes. Regardless of whether the owner hires a professional property manager, the PJ holds the *owner* accountable for compliance. Therefore, owners must also hold their asset and property managers accountable for compliance, monitor their performance, and take corrective actions if problems arise.

5. What Steps Can an Owner Take To Ensure Its Property Manager Complies with HOME Requirements?

The owner can take a number of steps to ensure that the property manager complies with the HOME requirements:

- Select competent and knowledgeable staff or contractor(s);
- Provide the property manager with detailed guidance on the HOME requirements and obligations that apply to the property. If a property manager does not already have experience in managing HOME-assisted properties, the owner should train the property manager in the HOME requirements. Even a HOME-experienced property manager will need to be apprised of the specific rules that apply to a particular property, such as whether the property has fixed or floating units, which units are HOME-assisted, or what affirmative marketing procedures apply. Owners should be sure that their property managers understand how the HOME requirements affect each of area of property management.
- Execute legally enforceable written agreements with the property manager that include all applicable HOME requirements as well as legal enforcement provisions; and
- Monitor and oversee the property manager's work.

Chapters 3, 4, and 5 provide detailed information that the property manager needs to manage HOME-assisted properties.

See Section 2.2B, Questions 8 and 9, in this chapter for a discussion on written agreements between the owner and the property manager.

6. When Hiring a Property Manager, What Should the Owner Look For?

When hiring, the owner or asset manager should consider the experience and capacity of the individual or firm to adequately manage the property. The owner should assess:

- Experience in reaching a broad market of renters;
- Knowledge of fair housing and affirmative marketing requirements;
- Experience in planning, budgeting, procurement, accounting, and report preparation;
- Knowledge of the legal requirements of leasing in general, and the HOME Program in particular;
- Knowledge of property management procedures and systems;
- Knowledge of local code requirements and property standards; and
- Established relationships with maintenance and service providers.

It is important that the owner always check references to determine the quality of service and responsiveness that the individual or firm provided to previous employers.

A potential property manager may have excellent credentials with respect to property management experience and capacity but may only have minimal or no experience with managing HOME-assisted properties. If a candidate appears to be the best candidate for the job, the owner must provide the property manager detailed instruction and/or training on the HOME requirements and obligations that apply to the property.

7. What Information Does the Front-Line Staff Need?

Since the front-line staff (also referred to as site-level or on-site staff) are generally responsible for direct contact with applicants and tenants, the owner should provide the property manager with sound guidelines for front-line staffing, covering:

- The type and number of employees the property manager may hire to work at the property;
- Whether the staff will reside at the property, and if so, on what terms;
- Employee compensation;
- Payment of applicable payroll taxes, workers compensation insurance, health insurance, and other employment benefits;
- What facilities within the property are available for on-site management use; and
- Training and performance expectations for implementing HOME requirements.

The owner should make sure the HOME-assisted rental property is adequately staffed with competent individuals who are compensated equitably. The owner may want to include guidelines on staffing requirements and compensation in the written agreement between the owner and the property manager.

8. What Is Included in a Written Agreement Between the Owner and Property Manager?

The owner should enter into a written property management agreement with the property manager that articulates:

Attachment 2-1, *HOME Provisions Needed in a Written Agreement between Owner and Property Manager*, lists the HOME-related provisions that should be included in an agreement between the owner and property manager. It is located at the end of this chapter.

- Performance goals and performance expectations;
- Owner and property manager roles and responsibilities;
- HOME regulatory requirements that affect property operations (as described in the following question);
- Sanctions for noncompliance with the terms of the agreement;
- Incentives for quality performance; and
- Any requirements imposed by the PJ or other subsidy programs.

9. What HOME Requirements Are Covered in a Written Agreement Between the Owner and the Property Manager?

The written agreement between the owner and the property manager should include the following HOME requirements:

- Using HOME income limits, including verifying and recertifying tenant income;
- Determining maximum HOME rents, including using HOME rent limits and PJ utility allowances;
- Procedures for maintaining correct occupancy and unit mix;
- Fair housing and affirmative marketing;
- Tenant selection;
- Lease terms;
- Rent collection;
- Lease enforcement;
- Maintenance and repair, including applicable property standards;
- Utilities and services;
- Record-keeping; and
- Required reports.

10. What Monitoring Does the Owner Do to Ensure HOME Compliance?

See Section 2.3 (below) and Section 6.2 of Chapter 6 for more information on reporting and record-keeping.

The owner must monitor as frequently as necessary in order to ensure that the property manager is carrying out property management functions in accordance with HOME requirements. The owner should ensure that the property manager has systems in place to track rents, incomes, marketing, property repairs, and property maintenance. These systems can be developed by the owner, asset manager, or the property manager.

Once adequate tracking systems are in place, the owner may rely heavily on reports from the property manager, coupled with periodic on-site monitoring, to ensure that the HOME Program requirements are met.

2.3. Reporting and Record-Keeping

Reports and records are the key way that owners demonstrate to the PJ that they are in compliance with HOME requirements, including applicable property standards and affordability and occupancy requirements.

The PJ's reporting and record-keeping requirements should be clearly stated in the written agreement with the owner. Owners, in conjunction with their property managers, need to develop a tracking system to track the information that must be reported to the PJ to demonstrate compliance. The PJ may specify data, format, reporting frequency, and submission timeframes in its requirements.

Summary of HOME Requirements:
Reporting and Record-Keeping

At a minimum, owners must submit an **annual rent and occupancy report** to the PJ to demonstrate compliance with HOME income limits, rent restrictions, and unit mix requirements. Owners must also submit any additional reports required by the PJ to demonstrate the financial and physical well-being of the property.

Owners must also retain all records necessary to demonstrate compliance with all the HOME Program requirements.

A. Reporting Requirements and PJ Review

1. What Reports Must the Owner Submit to the PJ?

The HOME Program requires owners to submit annual rent and occupancy data to the PJ. Many PJs require that owners submit additional reports as well, to help them assess a variety of issues, such as the property's operation, its financial status, its liabilities and loans, and its physical maintenance. The written agreement between the PJ and the owner should specify the PJ's reporting requirements.

2. What Reports Must the Property Manager Submit to the Owner?

Attachment 2-2, *Sample Monthly/Quarterly Report from the Property Manager to the Owner*, is a sample reporting form that might assist owners in collecting required information from property managers. It is located at the end of this chapter.

The HOME Program does not prescribe the specific reports that the owner must require the property manager to submit. However, the prudent owner imposes the PJ's reporting requirements on the property manager.

In general, the owner needs to require that the property manager submit all reports that may be required in order to demonstrate compliance with the HOME requirements, and to demonstrate continued financial viability of the property.

B. Record-Keeping and PJ Monitoring

1. Why Is Record-Keeping Important?

Organized records and effective record-keeping systems help the owner with:

- Preparation of the required annual rent and occupancy reports that must be submitted to the PJ;
- Compliance with the HOME Program requirements; and
- Identification and remedy of problems in a timely manner.

The same records that help the owner or property manager make day-to-day decisions enable the PJ to evaluate the property manager's performance and the property's compliance with HOME requirements.

2. What Records Must the Property Manager Keep?

The property manager should keep all records that are necessary to demonstrate compliance with the HOME requirements, and any additional records related to the financial well-being of the property that are required by the PJ or desired by the owner. In order to monitor compliance with HOME requirements, the owner must retain the right to access tenant and unit records to monitor tenant income verifications, unit rents, and property inspections.

If property management is contracted out, the property's financial and operational records typically belong to the owner and must be delivered to the owner at the end of the property management agreement.

Owners should address record retention and ownership in its written agreement with the property manager. The agreement should specify who maintains the records for the HOME-assisted units. The PJ may also require that the owner submit certain records for retention in the PJ's files.

Attachment 2-3, *Records that the Property Manager Must Retain*, summarizes the records that must be retained by the property manager. It is located at the end of this chapter.

In addition, Chapter 6 provides more information on monitoring, record-keeping, and reporting.

Attachment 2-1: HOME Provisions Needed in a Written Agreement between Owner and Property Manager

When the property management of a HOME-assisted property is contracted out, HUD expects the owner and property manager to enter into an agreement or contract to ensure that the property is operated satisfactorily and in compliance with the HOME Program requirements. The written agreement or contract is a legal document that the owner can use to convey the HOME requirements and the owner's performance expectations to the property manager. This checklist can be used by owners to ensure that their written agreements with property managers include all the terms and provisions that are necessary to manage HOME-assisted properties in compliance with HOME requirements.

Is this item included in the written agreement?	Yes / No
Roles and responsibilities of each party	
Owner's performance goals and performance standards and the manager's corresponding responsibilities	
Requirement to adhere to the management plan *Note: The management plan should include detailed guidance on how to manage the property, including how to comply with the HOME requirements. A key term of the written agreement should be compliance with the management plan.*	
HOME affordability requirements:	
• Duration of affordability period	
• Number of High HOME Rent units and Low HOME Rent units that must be maintained through the affordability period and property-specific guidance that describes how to maintain the unit mix	
• Guidance on how to use the HOME income limits: – Income targeting (how many households at what income levels must occupy the High HOME Rent units and Low HOME Rent units)	
– Determining initial income-eligibility, including definition of household income and acceptable source documents	
– Certifying continued income-eligibility, including acceptable method of income recertification	
• Establishing rents – Using HOME rent limits	
– Using the utility allowance, if applicable	
– Initial rents that can be charged	
– Rent increases, including when rents can be increased and procedures for securing owner and/or PJ approval of rent increases	
Tenant selection terms, including occupancy rules of HOME, the application process, tenant selection procedures	
Lease terms, including the length of the lease, prohibited lease clauses, and who approves the lease	

Attachment 2-1: HOME Provisions Needed in a Written Agreement between Owner and Property Manager *(continued)*

Is this item included in the written agreement?	Yes / No
Lease enforcement, including property manager's responsibility for monitoring tenant compliance with leases, what constitutes "good cause" for tenant evictions, and process for evictions	
Nondiscrimination provisions	
Marketing, including affirmative marketing requirements (for properties with five or more units) and marketing accessible units, if applicable	
Maintaining the property and making repairs	
• Meeting applicable property standards, including lead-based paint requirements	
• Identification of who performs maintenance tasks, who has authority to approve repairs, make capital expenditures, etc.	
• Service request response times	
• Providing utilities and services	
Managing property finances to ensure continued financial viability and operation as affordable housing	
• Operating budget and operating account disbursements (guidance on using property operating funds)	
• Rent collections and other accounts receivables	
• Accounting and bookkeeping requirements	
• Insurance	
Reporting to the owner and/or to the PJ, including what financial, maintenance, and rent and occupancy reports are required; who must prepare them; and to whom must they be submitted	
Record-keeping, including a description of tenant, property, and marketing files that must be maintained; for how long; and who has access	
Guidelines for staffing, to ensure adequate maintenance and compliance with HOME requirements:	
• The type and number of employees working at the property	
• Whether staff, such as an on-site manager or maintenance worker, will reside at the property, and if so, on what terms. (Note, due to a conflict of interest, the owner(s) and other employees, agents, and consultants should not reside at the property.)	
• Employee compensation	
• Payment of applicable payroll taxes, workers compensation insurance, health insurance, and other employee benefits	
Legal enforcement provisions (how the owner will enforce the agreement if the property manager does not comply with its terms or meet performance standards)	
Conditions under which the agreement will be terminated	
Additional requirements imposed by the PJ and/or the owner on the project	

Attachment 2-2:
Sample Monthly/Quarterly Report from the Property Manager to the Owner

Property Name: _____

Property Manager: _____

Reporting Period: _____

Indicator	Month 1	Month 2	Month 3
Gross Potential Rent			
Percentage of Gross Potential Rent Collected			
Total Income			
Total Expenditures			
Cash Balance (end of month)			
Accounts Receivable (end of month)			
Accounts Payable (end of month)			
Capital Reserve Account Total			
Vacancies (end of month)			
List all units that are off-line with an explanation and length of time off-line.			
List findings from the last physical inspection and current status, as of the end of the quarter.			

Attachment 2-2: Sample Monthly/Quarterly Report from the Property Manager to the Owner *(continued)*

List any outstanding code violations at the property.
Narrative statement of any other factors influencing the property's performance and statement of any anticipated concerns or issues.

Attachment 2-3:
Records that the Property Manager Must Retain

	Key HOME Requirement	Documentation
Initial Applicant Eligibility	• 100% of households at or below 80% area median income (AMI) • Initially, 90% of households at or below 60% AMI • If 5 or more HOME-assisted units, Low HOME Rent units occupied by households at or below 50% AMI • Income determined using PJ-provided/HOME allowable definition, verified by source documents at tenants' initial occupancy	• Completed application in the project file • Source documentation (wage statements, interest statements) in the project file • Completed calculation of household income • Determination of eligibility (based on current HOME income limits)
Continued Tenant Income Eligibility	• 100% of households at or below 80% area median income (AMI) • If 5 or more HOME-assisted units, Low HOME Rent units occupied by households at or below 50% AMI • Income determined using PJ-provided/HOME allowable definition, verified by method adopted by the PJ	• Tenant files documenting annual income certification • Every 6th year, source documentation (wage statements, interest statements) in the project file • Completed calculation of household income • Determination of eligibility (based on current HOME income limits)
Rents	• Low HOME Rents: 30% of tenant income, or 30% of income of a household at or below 50% AMI, or the rent allowable under project-based subsidy program, as determined by the PJ • If 5 or more HOME-assisted units, 20% of units must be at or below Low HOME Rents • High HOME Rents: based on lesser of FMR or 30% of income at 65% AMI	• Rent and occupancy reports, documenting High and Low HOME Rent units • Documentation of current, applicable High and Low HOME Rent limits used to determine rents • Documentation of utility allowances used to determine rents • Completed calculation of rent determination • Tenant leases documenting actual rents charged • Annual Rent Roll
Maintaining Unit Mix	• Take appropriate steps for maintaining unit mix, as needed for fixed or floating HOME units • Increase rent for tenants whose incomes exceed 80% AMI	• Rent and occupancy reports to show unit designations and redesignations • Tenant files and leases documenting rent increases
Fair Housing and Affirmative Marketing	• If 5 or more HOME-assisted units, follow PJ affirmative marketing procedures • Nondiscrimination in all rental activities	• Documentation showing all advertising and outreach activities
Tenant Protections	• Leases for at least one year; PJ approval required for shorter lease • Fair and equitable tenant selection policy • Written notification to rejected applicants	• Tenant selection policy • All prospective tenant applications and correspondence • Tenant files, including tenant leases • Documentation of PJ approval for any leases less than one year
Property Standards	• Continued compliance with applicable codes and standards: – Acquisition: state/local codes – Rehabilitation: state/local codes or national model code, rehab standards – New construction: state/local codes or national model code, rehab standards, International Energy Conservation Code, UFAS (for accessible units)	• Document state/local code, model code, and/or written rehabilitation standard provided by PJ • Documentation of work on property, work orders, capital improvements

Chapter 3: Maintaining Affordability

3.1. Overview

This chapter explains the HOME affordability requirements, including:

- The HOME income targeting and occupancy requirements that specify the number of low- and very low-income households that must reside in HOME-assisted units;
- The HOME income limits and how they are used, including how to verify tenant household income using source documentation at initial occupancy and how to recertify tenant household income during the affordability period;
- The High HOME rent and Low HOME rent limits, including how to determine the maximum allowable rents that can be charged for a HOME unit, how to use a utility allowance, and how to determine rents for special types of properties;
- Unit mix requirements that specify how many High HOME Rent units and Low HOME Rent units must be maintained throughout the affordability period, including what to do when a tenant's income increases over the HOME income limits and what steps to take to maintain the required unit mix during the affordability period; and
- Record-keeping and reporting requirements related to rent and occupancy.

3.2. HOME Income Limits

Over the term of the affordability period, owners/managers must make sure that tenants of HOME-assisted units have incomes that do not exceed the applicable HOME income limits for the occupied unit and the family size of the tenant. These income limits are provided to the owner by the PJ. Owners/Managers must determine and verify tenant incomes using source documentation at initial occupancy, and recertify tenant incomes on an annual basis thereafter.

Summary of HOME Requirements:
HOME Income Limits

Every HOME-assisted rental unit must be occupied by a household that is low-income. For properties with five or more HOME-assisted units, at least 20 percent of the units must be occupied by households that are very low-income.

HUD defines a low- and very low-income household:

- **Low-income household**. The household's annual gross income is no greater than 80 percent of the area median income.
- **Very low-income household.** The household's annual gross income is no greater than 50 percent of the area median income.

The maximum amount of annual gross income that a household may earn to qualify for a HOME-assisted unit is called the **HOME income limit**. HUD issues income limits for low-income households and for very low-income households on an annual basis. To comply with the HOME **income targeting** requirement, owners/managers must determine income-eligibility of tenants at the time of application based upon examination of **source documentation**. The PJ provides the owner/manager detailed guidance on what the owner must "count" in the household's income in order to determine its annual gross income. This is the **income definition.** If the tenant household's income is greater than the HUD income limit, the household cannot occupy a HOME-assisted unit.

In subsequent years, owners/managers must recertify tenant household income each year during the affordability period. Owners/Managers must verify the tenant household income with source documentation every sixth year during the affordability period. In the between years, the owner may accept alternate forms of certification.

A. HOME Income Targeting

1. What Is Income Targeting?

The process of designating units by income is called income targeting. The HOME income targeting requirements specify who can live in HOME units (based on income) and how much rent the tenants can pay.

2. What Are the HOME Income Targeting Requirements?

All HOME-assisted units must be occupied by low-income households. The PJ is subject to two HOME Program income targeting requirements, for initial occupancy and for properties with more than five units:

- **Initial Occupancy.** When the property first leases up, most PJs require all the HOME-assisted units to be occupied by households whose incomes are at or below 60 percent of area median income. This is because, for each annual HOME allocation that the PJ receives, at least 90 percent of the households assisted initially through all of its rental housing programs must have incomes at this level. The balance of assisted households must have incomes that do not exceed 80 percent of the area median income.
  - Since this HOME requirement applies to *all* of the PJ's rental programs combined, only the PJ can determine how to meet this requirement on a project-by-project basis. Owners/Managers must follow the income targeting requirements imposed by the PJ.
  - This initial income targeting requirement does not apply throughout the period of affordability, unless the PJ chooses to impose it for this duration.

Note: This initial occupancy requirement applies to all the PJ's rental housing programs. This includes its acquisition, new construction, or rehabilitation of rental housing; and its tenant-based rental assistance programs.

- **Properties with Five or More HOME-Assisted Units.** For rental properties with five or more HOME-assisted units, HOME requires deeper income targeting to serve a community's needier residents. At least 20 percent of the HOME-assisted rental units must be occupied by families who have annual gross incomes at or below 50 percent of area median income.
  - This requirement applies throughout the period of affordability.
  - Properties with fewer than five HOME-assisted units are not required to restrict any units to very low-income tenants or use the Low HOME Rent, unless the PJ so requires.

The PJ must specify in its written agreement with owners how many units in the property must be rented to households at specified income levels (low-income or very low-income).

Section 3.2B of this chapter explains the HOME low- and very low-income limits.

3. Can the PJ Establish Different Income Targeting Requirements than Those Established by HUD?

Yes, but the PJ can establish only income targeting requirements that are *stricter* than those established by HUD. Usually this is done when there is more than one funding source in the development of the property and the other source imposes different income targeting requirements than HOME, or if the PJ chooses to target HOME funds to assist extremely low-income tenants for policy reasons. HUD encourages PJs to target their HOME assistance to families with the greatest housing need, or those below 30 percent of area median income.

If the PJ establishes its own income targeting requirements, it must provide the owner with guidance on what income targeting to impose, by household size. The PJ must update its income guidance annually.

4. What Rents Are Charged to Low- and Very Low-Income Tenants?

The HOME Rents are discussed in detail in Section 3.3.

HOME-assisted units must remain affordable during the affordability period. HUD issues HOME rent limits that represent the maximum rents that can be charged for HOME-assisted units. Two rent limits are used: High HOME Rents and Low HOME Rents. The units that are set aside for very low-income families (at least 20 percent of the units in properties with more than five HOME-assisted units) *must* be rented at or below the Low HOME Rents. The remaining units can be rented at or below the High HOME Rents. Note, very low-income households may occupy High HOME Rent units and pay High HOME Rents.

Rent requirements apply throughout the affordability period.

B. HOME Low- and Very Low-Income Limits

1. What Are the HOME Income Limits?

The HOME income limits represent the *maximum* anticipated annual gross income of a household residing in a HOME-assisted unit.

The HOME Program has two income limits:

- **The HOME low-income limits.** Low-income households must have incomes that are at or below 80 percent of area median income. These limits apply to tenants that live in High HOME Rent units.
- **The HOME very low-income limits.** Very low-income households must have incomes that are at or below 50 percent of the area median income. These limits apply to tenants that live in Low HOME Rent units.

2. How Are the HOME Income Limits Established?

HUD establishes HOME income limits for different localities and adjusts them for household size, from one to eight persons. The income limits are 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 High HOME Rent or Low HOME Rent unit, respectively. For informational purposes, HUD also provides the amount that is 60 percent of area median income and 30 percent of area median income. Some PJs use these limits to impose their own income targeting requirements. Property owners/managers should always use the income limits that are provided by the PJ.

See Exhibit 3-1 for an illustration of a HOME income limit report.

Exhibit 3-1: Sample HOME Income Limit Report

U.S. DEPARTMENT OF HUD 03/2007
STATE:DISTRICT OF COLUMBIA

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
2007 ADJUSTED HOME INCOME LIMITS								
Washington-Arlington-Alexandria, DC-VA-MD HUD Metro FMR Area								
30% LIMITS	19850	22700	25500	28350	30600	32900	35150	37400
VERY LOW INCOME	33100	37800	42550	47250	51050	54800	58600	62350
60% LIMITS	39720	45360	51060	56700	61260	65760	70320	74820
LOW INCOME	42000	48000	54000	60000	64800	69600	74400	79200

3. When Are the Income Limits Updated?

HUD updates the HOME income limits each year, generally in February or March. The new HOME income limits cannot be implemented by the property owner/manager until the effective date specified by HUD, and in accordance with tenant leases.

4. How Does an Owner/Manager Get the HOME Income Limits?

The PJ must provide owners/managers with the applicable HOME income limits *before* a rental property begins to lease-up and on an annual basis thereafter, until the end of the property's affordability period.

If the PJ does not provide the applicable HOME income limits, the owner/manager should contact the PJ.

If the property uses the HOME income limits, the owner can get current limits on the HOME Program web page at: www.hud.gov/homeprogram/.

5. What Does an Owner/Manager Do with the HOME Income Limits?

Section 3.2D explains how to determine tenant income-eligibility.

Prior to renting a HOME-assisted unit to a prospective tenant, the owner/manager must verify that the household is income-eligible. This means that the owner/manager must secure source documentation to verify the tenant's annual gross income. Once verified, the owner/manager must determine that the tenant household's income is at or below the HOME income limit for the tenant's family size, and the type of unit (High HOME Rent unit or Low HOME Rent unit) that the tenant will occupy.

Sections 3.5 and 3.6 discuss what an owner/manager must do when an existing tenant becomes over-income for properties with fixed and floating HOME units, respectively.

After the tenant moves in, owners/managers must recertify the existing tenant's income-eligibility every year during the affordability period, using HUD's updated income limits. If the income of an existing tenant increases above the HUD-published limits, the tenant is over-income. When this happens, the property is temporarily out of compliance. The owner/manager must take certain steps to restore the property's compliance.

C. HOME Income Limits for Large Families

1. What Income Limits Are Used If the Tenant Household Has More than Eight Members?

The HUD-published HOME income limits are adjusted for each household size from one to eight persons. For households with more than eight persons, owners/managers must calculate the income limit.

Attachment 3-1, *Illustration of How to Calculate the Income Limit for Households with More Than Eight Members*, illustrates how this calculation is made. It is located at the end of this chapter.

This is done by adding eight percent of the four-person income limit for each additional household member. For example:

- 9 person household income limit = 1.40 x 4 person income limit
- 10 person household income limit = 1.48 x 4 person income limit
- 11 person household income limit = 1.56 x 4 person income limit

D. Determining Income-Eligibility

1. How Does an Owner/Manager Determine Income-Eligibility?

In this guide, Section 3.2.E explains how to determine initial tenant income-eligibility. Section 3.2.F explains how to recertify tenant income-eligibility in subsequent years.

Owners/Managers must determine that a prospective tenant is income-eligible before renting a HOME-assisted unit to that household. This means verifying the tenant household's anticipated annual gross income and determining that it does not exceed the HOME low-income limit (for a High HOME Rent unit) or very low-income limit (for a Low HOME Rent unit). In subsequent years during the affordability period, the owner/manager must recertify the tenant's income eligibility.

HUD has developed two tools to help owners/managers determine tenant income-eligibility:

- **A web-based income calculator** to calculate if a family's income meets HOME requirements is available on HUD's HOME Program web page at: http://www.hud.gov/offices/cpd/affordablehousing/training/web/calculator/calculator.cfm.
- ***Technical Guide for Determining Income and Allowances for the HOME Program: Third Edition*** (HUD 1780-CPD, issued January 2005) has instructions on how to use each of the three definitions of annual gross income. It includes forms to collect income information from tenants, verify reported income with source documents, and calculate income determinations. This guide is available at no cost from Community Connections, at 800-998-9999.

2. What Constitutes "Annual Gross Income?"

The PJ must define annual gross income for the owner and should provide detailed written guidance about how to apply the definition. Owners/Managers who do not know the definition of annual gross income that applies to their property should contact the PJ for this information.

The HOME Program allows the PJ to choose from one of three definitions of annual gross income:

1. The Section 8 Program definition of annual gross income; or
2. The definition of annual income as defined by the U.S. Census long form; or
3. The Internal Revenue Service (IRS) definition of adjusted gross income as defined for reporting on the IRS Form 1040. Note: while the IRS calls this calculation "adjusted" gross income for tax purposes, it is considered "annual" gross income for purposes of the HOME Program.

3. Does the Definition of Income Change During the Affordability Period?

No. Owners/Managers must use the same definition of income to determine the income-eligibility of prospective tenants and to recertify the income-eligibility of existing tenants throughout the affordability period.

E. Initial Income-Eligibility Determinations

1. When Does the Owner/Manager Determine Initial Income-Eligibility?

Before signing a lease to rent a HOME-assisted unit to a new tenant household, the owner/manager must determine that the household is income-eligible. If the applicant's income exceeds the HUD income limit, that household cannot occupy a HOME-assisted unit.

2. How Does an Owner/Manager Determine the Tenant Household's Income?

The preceding section (Section 3.2D, Question 2), explains the definition of annual gross income.

The owner/manager uses the definition of annual gross income provided by the PJ. The owner/manager must include the income of *each* household member and must examine income source documents to verify the initial income-eligibility.

The family's anticipated annual income must be based on the actual income the family receives at the time the income determination is made. The owner/manager should secure source documentation that states the family's actual current income. The owner/manager can also request that the family provides documentation of current income dated either within the 60-day period preceding the determination date or the 60-day period following the request date. When the family reports little or no income, or when the income fluctuates throughout the year, the owner/manager can review source documents and determine an average of the family's past annual income over 12 months. The owner/manager can project the actual income forward 12 months to determine the family's anticipated annual income.

For instance, if the family provides pay stubs to show that its current income is $400/month, the owner/manager can project this documented monthly income forward for a twelve-month period, resulting in a determination of an annual income $4,800.

Annual income must include income from all family members. Income or asset enhancement from the HOME-assisted project is not considered in calculating annual income.

3. What Are Acceptable Source Documents?

Source documents are written documentation, generated by a third party (such as an employer), that verifies the income sources that the applicant reports.

Acceptable source documents include:

- Wage statements for approximately the last three months, if employment is steady; or for the past year, if employment is not steady or seasonal (such as construction workers, or teachers);
- Interest statements;
- Unemployment compensation statements; and
- Third party verifications from employers, banks, or others with first-hand information about the applicant's finances. These verifications should be in writing, and can include documented telephone interviews.

Owners/Managers cannot use an applicant's income self-certification or the certification from another program.

4. Once the Applicant's Income Is Determined, What Does the Owner/Manager Do?

Once the applicant household's anticipated annual gross income is determined, the owner/manager must compare it to the latest HUD income limits, as follows:

Section 3.2 explains the HOME income limits.

- If the applicant will occupy a High HOME Rent unit, the household's anticipated annual gross income cannot exceed the HUD-published HOME low-income limit.
- If the applicant will occupy a Low HOME Rent unit, the household's anticipated annual gross income cannot exceed the HUD-published HOME very low-income limit.

Section 3.3 discusses High HOME Rent units and Low HOME Rent units.

5. For How Long Is the Income-Eligibility Determination Valid?

Owners/Managers can use a prospective tenant household's income-eligibility determination for up to six months after the determination is made. If the tenant does not execute the HOME unit lease before six months have elapsed, the owner/manager must conduct a new income-eligibility determination, based on a review of current source documents.

F. Recertifying Tenant Income-Eligibility during the Affordability Period

1. How Frequently Must the Owner/ Manager Examine Tenants' Incomes?

Owners/Managers must examine each tenant's income every year during the affordability period. The owner is required to verify the income *with source documentation* every sixth year during the affordability period. For the intervening years, an alternative recertification process is allowed, described in Question 3, below.

See Section 3.2E, Question 3 for a discussion of source documentation.

The definition of annual gross income is discussed in Section 3.2D of this chapter.

2. What Definition of Income Is Used for Income Recertifications?

When recertifying tenant income-eligibility, owners/managers must use the same definition of annual gross income that they used to make the initial tenant household income-eligibility determination.

HUD permits these methods to recertify income:

- **Source documents**, as required at initial occupancy. This method is described in Section 3.2E, Question 3, above.
- **Written statement and certification by tenant that**: (1) Specifies household's size and anticipated annual income; and (2) Certifies that the information is complete and accurate; acknowledging that source documentation is available upon request. If it is not, the owner must examine source documentation.
- **Written statement by administrator of government program** under which the tenant receives benefits. The statement must: (1) Indicate the household size; (2) Specify the current income limit for the program and verify that the household's income does not exceed that limit; and (3) Acknowledge that the household's income is examined each year.

3. What Method of Income Recertification Must an Owner/Manager Use?

The PJ must inform owners which method of income recertification must be used at their properties. This information should be found in the written agreement between the PJ and the owner. When the PJ has not provided this guidance, the owner/manager should contact the PJ for this information.

Every sixth year during the affordability period, however, owners/manager must recertify tenant incomes with source documentation. In the intervening years, the PJ can choose one of three methods permitted by HUD.

4. Can the Owner/Manager Use Different Income Recertification Methods, Depending on the Tenant?

The owner may *not* use different methods of income recertification for different tenants in the same HOME-assisted property. However, the method can vary among different properties, if so required by the PJ.

5. Once the Tenant's Income Is Recertified, What Does the Owner/Manager Do?

See Section 3.2D, Question 4 of this chapter explains how to compare tenant's income to HUD's income limit.

The steps to restore compliance when a tenant becomes over-income are outlined in Sections 3.5 and 3.6 for properties with fixed and floating HOME units, respectively.

Once the tenant household's anticipated annual gross income is recertified, the owner/manager must compare it to the most recent HUD income limits, as was done for the initial income verification.

It is important that the owner/manager use the most recent income limits issued by HUD. If the tenant household's income is greater than the HOME income limits for the type of unit it occupies, the tenant is "over-income" and the property is temporarily out of compliance. This is permissible, as long as the owner takes specific steps to restore compliance to the property.

6. When Must an Owner/Manager Recertify Tenant Incomes?

HUD does not require that tenant income recertifications be done at any particular time in the year. However, to ensure that the recertification is done annually, owners/managers should develop a routine schedule for performing the annual income recertification. This schedule might be based on:

- The anniversary of the original income verification for the tenant;
- Time of lease renewal; or
- An annual schedule whereby verifications for all tenant households are performed at the same time.

G. Recertifying Tenant Income for Persons with Disabilities

1. Do Special Income Recertification Rules Apply to Persons with Disabilities?

In general, owners/managers recertify the incomes of tenant households that include a person with a disability in the same way they do for other tenants. However, when a tenant with a disability was previously unemployed, and his or her family's household income increases because of the disabled person's employment or participation in a self-sufficiency program, a special exception applies. When recertifying the income of such a household, the owner/manager can exclude all the income earned by the disabled person in the first year; and exclude half of the income earned in the second year. These exceptions apply regardless of which definition of annual gross income is used.

Note, *previously unemployed* is defined as having "earned, the twelve months previous employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage." Additional guidance to implement this exclusion can be found at 24 CFR 5.617.

Section 3.2.D, Question 2 discusses the different definitions of annual gross income.

H. Over-Income Tenants

1. What Is an Over-income Tenant?

A tenant that occupies a High HOME Rent unit becomes over-income when the household's income exceeds the HUD-published HOME low-income limit. A tenant that occupies a Low HOME Rent unit becomes over-income when the household's income exceeds the HUD-published HOME very low-income limit.

An existing tenant can become over-income when the household's income increases, the household size decreases, or the HUD-published HOME income limits decrease.

The steps that owners/managers must take when a tenant is over-income are discussed in detail in Sections 3.5 and 3.6 for properties with fixed and floating HOME units respectively.

2. What Does an Owner/Manager Do If a Tenant Is Over-Income at Recertification?

When the tenant of a HOME unit becomes over-income, the unit and property are in temporary noncompliance with the HOME requirements. Temporary noncompliance is permissible as long as the owner/manager takes steps, at the next available opportunity, to restore the property's compliance. These steps will vary, depending on if the property has fixed or floating HOME-assisted units. Note, the owner/manager cannot terminate or fail to renew the tenant household's lease because the household is over-income, but the household's rent must be adjusted. Over–income tenants are protected by the terms of their leases; rent changes go into effect only when the lease permits.

When the PJ establishes income limits that are *lower* than the HUD-published income limits, it is possible for an existing tenant household's income to go over the PJ-imposed income limits and still be income-eligible under the HOME rules. Owners/Managers should contact the PJ for guidance when this occurs.

3.3. HOME Rent Limits

Under the HOME Program, tenants must be low- or very low-income and rents must be affordable to those tenants. Owners are responsible for ensuring that rents charged for HOME-assisted units do not exceed the HOME rent limits for the unit. HUD updates and publishes HOME rent limits each year. The PJ must provide these limits to owners/managers.

Summary of HOME Requirements:
HOME Rent Limits

HUD requires that the rents that are charged for HOME-assisted units be affordable to low- and very low-income households. HUD provides **HOME rent limits** to define what is affordable.

High HOME Rents are the maximum rents that can be charged to low-income households. These are based on the *lesser of:*

- The Section 8 Fair Market Rents (FMRs) for existing housing; or
- Thirty percent of the adjusted income of a family whose annual income equals 65 percent of median income.

Low HOME Rents are the maximum rents that can be charged to Low HOME rent units that are occupied by very low-income households. Low HOME Rents are based on one of the following:

- Thirty percent of the tenant's monthly adjusted income; or
- Thirty percent of the annual income of a family whose income equals 50 percent of median income (the HUD-issued Low HOME Rent); or
- If a property has a Federal or state project-based rental subsidy and the tenant pays no more than 30 percent of his or her adjusted income toward rent, the maximum rent may be the rent allowable under the project-based rental subsidy program.

The HUD-published HOME rent limits include utilities. When a tenant pays directly for utilities, the owner/manager must subtract a PJ-approved **utility allowance** to determine the maximum rent that can be charged for the unit.

HUD updates the HOME rent limits every year. If the rent limits go up and utility costs remain steady, the owner can raise rents accordingly. If the HOME rent limits go down or the utility costs go up, the owner may be required to decrease rents. The owner is never required to decrease rents below the initial rents approved by the PJ, although market conditions may make it necessary to do so. The PJ must approve all rent schedules for a property prior to lease-up. The PJ must also approve all rent increases during the affordability period.

For some types of projects special rent limits apply, including: units that have state or Federal project-based rental assistance, units with low-income housing tax credits, group homes, and single-room occupancy units.

A. High HOME Rent Limits and Low HOME Rent Limits

1. What Are the HOME Rent Limits?

The owner/manager must adjust the HOME rent limits when the tenant pays for utilities. See Section 3.3.D for guidance on how to determine the maximum rents in properties where the tenants pay their own utilities.

The HOME rent limits are the *maximum* rents that owners/managers can charge an income-eligible tenant residing in HOME-assisted unit. The HOME Program has two rent limits: the High HOME Rent limits and the Low HOME rent limits. The HUD-issued rent limits are adjusted for different localities and for each bedroom-size unit from zero (efficiency) to six bedrooms. The HOME rents include utilities.

2. What Are the High HOME Rent Limits?

The "Summary of HOME Requirements," above, explains the basis of the High HOME Rent limits issued by HUD.

High HOME Rent limits are the maximum rents that can be charged for High HOME Rent units that are occupied by low-income tenants. The PJ tells the owner what High HOME rent limits apply to the property.

3. What Are the Low HOME Rent Limits?

See Section 3.4 for discussion of HOME rent limits in properties with project-based rental subsidies.

Low HOME Rent limits are the maximum rents that can be charged for Low HOME rent units that are occupied by very low-income households. The PJ tells the owner what Low HOME Rent limits apply to the property. The "Summary of HOME Requirements," above, specifies the basis of three options the PJ has.

Exhibit 3-2 provides an example of HUD's published HOME rent limits.

Exhibit 3-2: HUD Rent Limit Report

U.S. DEPARTMENT OF HUD 03/2007
STATE:DISTRICT OF COLUMBIA

	PROGRAM	EFFICIENCY	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
		---------- 2007 HOME PROGRAM RENTS ----------						
Washington-Arlington-Alexandria,	DC-VA-MD HUD Metro FMR Area							
	LOW HOME RENT LIMIT	827	886	1063	1228	1370	1511	1653
	HIGH HOME RENT LIMIT	995	1086	1286	1500	1654	1806	1959
	For Information Only:							
	FAIR MARKET RENT	995	1134	1286	1659	2171	2497	2822
	50% RENT LIMIT	827	886	1063	1228	1370	1511	1653
	65% RENT LIMIT	1013	1086	1306	1500	1654	1806	1959

4. Which of the Low HOME Rent Options Is Used?

The PJ determines which of the Low HOME Rent options will be used in a HOME-assisted property. Most PJs use the HUD-published Low HOME Rents (based on 30 percent of adjusted income of a very low-income family), or the project-based rent limits for properties that have project-based rental assistance. Very few PJs base Low HOME rent limits on 30 percent of the tenant's adjusted income. This is because it is very difficult to underwrite projects and make sound financial projections based on rental income to the property that will vary depending on specific tenant household incomes.

5. Do All Properties Use Both High HOME Rents and Low HOME Rents?

In properties with five or more HOME-assisted units, the PJ must designate at least twenty percent of the HOME-assisted units as Low HOME Rent units, for by very low-income occupants. The PJ always has the option to designate more Low HOME Rent units than HOME requires. The remaining units are High HOME Rent units.

In properties with fewer than five HOME-assisted units, the PJ may designate all the HOME-assisted units (100 percent) as High HOME Rent units that are rented at rents up to the High HOME Rents.

6. Must the Owner/Manager Use HUD's HOME Rent Limits?

Not necessarily. The owner/manager must charge the rents that are no greater than the maximum rents approved by the *PJ*. Owners/Managers are not permitted to charge rents that are *higher* than the HOME rent limits, with a few limited exceptions.

These exceptions are discussed in Section 3.4.

7. Can the PJ Establish Different Rent Limits than Those Established by HUD?

Yes. However, the PJ can establish only rent limits that are *lower* than the High and Low HOME rent limits that are published by HUD. For example, the PJ may want to cap the amount of rent that extremely low-income tenants must pay. The PJ also has the option of requiring that the rent for very low-income tenants in Low HOME Rent units be based on thirty percent of the tenant's adjusted household income.

8. How Does the Owner/Manager Get the HOME Rent Limits?

The PJ must provide the HOME rent limits to the owner/manager before the rental property begins to lease up, and must provide updated HOME rent limits on an annual basis throughout the property's affordability period. When the PJ does not provide the applicable HOME rent limits, the owner/manager should contact the PJ for guidance.

HUD updates and publishes HOME rent limits each year, generally in February or March. If the property is using the HUD-published HOME rent limits, these are available at www.hud.gov/homeprogram.

9. Can the Owner/Manager Charge Any Amount of Rent, as Long as It Does Not Exceed the HOME Rent Limits?

The owner/manager should charge rents that are fair and in concert with the local housing market. The PJ must approve the property's rent structure at lease-up, and must approve all rent increases to ensure rent reasonableness for the housing market, as well as compliance with the HOME rent limits.

The written agreement between the PJ and the owner should specify the initial rent structure as well as procedures for PJ approval for subsequent rent increases.

10. What Are "Unit Designations?"

Assisted and non-assisted units, and Low and High HOME Rent units are discussed further in Sections 3.5 and 3.6

The PJ tells the owner which units in a property must be HOME-assisted and which units are non-assisted, and which and how many units are Low HOME Rent units and which and how many are High HOME Rent units. These are the "unit designations."

11. Do the HOME Rent Limits Apply to All Types of HOME-Assisted Properties?

Section 3.4 discusses these special situations.

There are a limited number of situations when alternate HOME rent limits may apply.

B. Rent Limits for Large Units

1. How Does the Owner/Manager Determine Rent Limits for Large Units?

The HUD-published HOME rent limits are adjusted for each bedroom size unit from zero bedrooms (efficiency) to six bedrooms. For units with seven or more bedrooms, owners/managers must calculate the rent limit.

Attachment 3-2, *Illustration of How to Calculate HOME Rents for Units with More than Six Bedrooms*, illustrates how this calculation is made. It is located at the end of this chapter.

This is done by adding fifteen percent of the four-bedroom rent limit for each additional bedroom. For example:

- 7 bedroom rent limit = 1.45 x 4-bedroom rent limit
- 8 bedroom rent limit = 1.60 x 4-bedroom rent limit

C. Rents for Tenants Receiving Section 8 or Tenant-Based Rental Assistance

When a household receives *tenant-based* rental assistance (TBRA) provided by the Section 8 Program, HOME, or another funding source, the maximum allowable rent for the HOME-assisted unit cannot exceed the applicable HUD-published HOME rent limit. This means that the tenant's rental assistance payment *plus* the tenant's contribution towards rent cannot exceed the HUD-published High HOME rent limit for a High HOME Rent unit and the Low HOME rent limit for a Low HOME Rent unit.

Rents charged to tenants with TBRA (subsidy plus tenant contribution) must be the same as the rents charged to other tenants for comparable units. Section 8 rules specifically prohibit an owner from charging a different rent for units occupied by voucher holders than the rent charged for comparable units not occupied by voucher holders. This means that if the owner charges less than the maximum HOME rent for HOME units not occupied by voucher holders, it can only charge that rent to the voucher holder.

For example, the tenant of a Low HOME Rent unit receives HOME TBRA. Under the PJ's guidelines, the family contributes 30 percent of its income toward rent, which is $750/month. The Low HOME Rent for the unit is $880. This is generally considered market rate for the area. Therefore, the maximum rent the owner can receive in TBRA is $130 ($880 - $750).

D. Utility Payments and Fees

1. Do the HUD Rent Limits Take Utility Costs and Other Fees Into Consideration?

The HUD-published HOME rent limits include utilities. This means that when a tenant pays directly for utilities, the owner/manager must subtract a PJ-approved utility allowance from the applicable HUD-published HOME rent limit, in order to calculate the maximum rent that can be charged for that HOME-assisted unit.

See Section 3.4B, Question 2 for a discussion of applying utility allowances in properties that have both HOME and LIHTC assistance.

For example, suppose the HOME rent limit for a unit is $750/month and the tenant pays his own gas. The PJ's utility allowance for gas is $90/month. The maximum rent the owner can charge for this unit is $660/month ($750-$90).

2. What Is a PJ-Approved Utility Allowance?

The PJ-approved utility allowance represents the average monthly cost for utilities and services, excluding telephone. The utility allowance is established by the PJ, and is updated by the PJ annually. The owner/manager must receive written approval from the PJ before using any utility allowance other than that the one provided by the PJ.

Attachment 3-3, *Illustration of how to Determine Rents for Units with Tenant-Paid Utilities*, illustrates how to deduct utility allowances in order to determine the maximum rents that can be charged.

3. How Does the Owner Get the Utility Allowance?

The PJ must provide owners/managers with the applicable HOME utility allowances before a rental property begins to lease-up. The PJ must also provide updated HOME utility allowances on an annual basis until the end of the property's affordability period. When the PJ does not provide the applicable HOME utility allowances, the owner/manager should contact the PJ for guidance.

4. Can Owners Charge Other Fees to Tenants?

Other than utilities, owners/managers must receive approval in writing from the PJ before charging any mandatory fee or surcharge to tenants of HOME-assisted units. Generally, all mandatory fees must be deducted from the HOME rent limit to determine the maximum rent that can be charged for a unit.

E. Changes in Rent

1. How and When Can the Owner/Manager Increase a Tenant's Rent?

Rent adjustments for over-income tenants are discussed in Sections 3.5 and 3.6 for properties with fixed and floating HOME units, respectively.

An owner/manager may be able to raise a tenant's rent, depending on changes in the HUD-published HOME rent limits, changes in the PJ's utility allowances, or changes in the tenant's income. PJs must approve all rent increases in HOME-assisted units, in accordance with the approval process prescribed by the PJ, and documented in the written agreement between the PJ and the owner.

Rent adjustments for occupied units are subject to the terms of the tenant's lease.

2. Are Owners Ever Required to Lower Tenants' Rents?

Yes. The owner/manager *must* lower the rents if the HUD-published HOME rent limits decrease, or if the tenant pays utilities and the utility allowance increases more than the HUD-published HOME rent limits. However, the owner/manager is never required to charge rents that are lower than initial rents approved by the PJ. (Although market conditions may make it necessary to do so.) If subsequent HOME rent limits are lower than current rents, owners/managers should contact their PJ for guidance.

Any changes in rents for occupied units are subject to the terms of the tenant's lease

F. Rent Exceptions

1. Can an Owner/Manager Charge Rents that Exceed the HOME Rents If the Property Is in Financial Trouble?

See Chapter 6, Section 6.4 for a discussion of options for intervening when a property is in fiscal distress.

An owner/manager should contact the PJ at the earliest sign of financial hardship. In the case of *extreme* financial hardship, the *PJ* can ask HUD to increase the rent limits for a particular property in order to maintain the property's financial viability. HUD uses this authority for a rent exception sparingly, however. Rent exceptions are made only for existing properties that are suffering severe financial hardships, when all other reasonable steps to restore financial viability to the property have been exhausted. Rents cannot exceed market rates.

3.4. HOME Rent Limits for Special Types of HOME Units

This section discusses rent limits for projects where more than one funding source is invested in a property, and for certain types of special projects.

Summary of HOME Requirements: Special Types of Units

For certain types of properties, the HOME rent limits vary from the general guidance provided in Section 3.3 of this chapter, as follows:

	Low HOME Rent Limit	High HOME Rent Limit
Units with state or Federal project-based rental assistance	The project-based rent may be charged for any unit that: 1. Receives state or Federal project-based rental assistance; 2. Is occupied by a very low-income tenant; and 3. The tenant household pays no more than 30% of its adjusted monthly income toward rent.	The *lesser of* the project-based rent or the High HOME Rent may be charged when the tenant household either: 1. Is low-income, but not very low-income, or 2. Pays more than 30% of its income towards rent.
Units with LIHTC assistance	Capped at the *lesser of* the Low HOME rent limit or the LIHTC rent limit for that unit.	Capped at the *lesser of* the High HOME rent limit or the LIHTC rent limit for that unit.
Group homes	Does not apply because a group home is considered a single unit under the HOME Program.	Rent is based on the rent of a single unit with multiple bedrooms. Capped the HUD-published Fair Market Rent (FMR).
SRO housing	The Low HOME Rent that is used depends on (1) whether the unit has food preparation and/or sanitary facilities, and (2) if the unit has state or Federal project-based assistance. Note, for all SRO projects with five or more units, at least 20% of the units must be occupied by very low-income households. See Exhibit 3-6 for details.	The High HOME Rent that is used depends on (1) whether the unit has food preparation and/or sanitary facilities, and (2) if the unit has state or Federal project-based assistance. See Exhibit 3-6 for details.

A. Units with State or Federal Project-Based Rental Assistance

1. In a Property with State or Federal Project-Based Rental Assistance, How Are Rent Limits Determined?

The HOME regulations at 24 CFR 92.252 (b)(2) establish specific requirements for charging the correct rents in projects that receive project-based assistance.

See Section 3.3.C for a discussion on how rent limits are determined for units where the tenants have *tenant-based* rental assistance.

The PJ has two options for establishing the Low HOME rent limits for units with project-based rental subsidies:

1. The PJ can require the owner/manager to charge rents that do not exceed the *lesser of* the state or Federal project-based rent limit or the HUD-published Low HOME rent limit (minus the PJ-approved utility allowance, when applicable); or

2. The PJ can authorize the owner/manager to use the state or Federal project-based rent limit when *all* of the following conditions apply:

   – The unit is designated as a Low HOME Rent unit;
   – The unit is occupied by a very low-income tenant; and
   – The tenant does not pay more that 30 percent of the family's monthly adjusted income as a contribution towards rent.

Attachment 3-4, *Calculating Adjusted Household Income for the Purposes of Establishing Rent*, explains how to calculate monthly adjusted income.

When all of these conditions are met, owners/ managers can charge the unit rent that is allowed by the state or Federal project-based rental assistance program. The unit rent is the tenant rent contribution plus the project-based rental assistance for the unit.

Remember, the PJ must approve all rent schedules and rent increases.

2. What Happens When a Tenant in a Unit with a Project-Based Subsidy Becomes Over-Income?

For a tenant in a unit with a project-based subsidy, if an owner recertifies a tenant's income and determines that the income has increased over the very low-income limit, the unit no longer qualifies as a Low HOME Rent unit. The unit must be redesignated as a High HOME Rent unit. The tenant's rent can be adjusted to no more than the High HOME Rent. This is typically less than the project-based assistance rent.

Note, 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 that is paid to the owner will change, and will be based on the difference between the High HOME Rent minus the tenant's rent contribution (30 percent of income).

Exhibit 3-3 illustrates how to adjust rents in these circumstances.

Exhibit 3-3: Illustration of How to Adjust Rents when a Tenant in a Project-Based Unit Goes Over-Income

In ABC Town, the following income and rent limits apply:

Income limits for a 4-person household

- Very low-income: $25,850
- Low-income: $31,020

Rent Limits for a 3-bedroom unit

- Low HOME Rent: $671
- High HOME Rent: $840
- Project-Based Rents: $870

The Nimble Family has 4 members. It occupies a 3-bedroom HOME-assisted unit in a property with Section 8 project-based subsidies. When the family initially moved in, the household annual income was $24,500. Because the household was very low-income, they were rented a Low HOME Rent unit. The PJ permitted the owner to charge the project-based rent, or $870. The Nimbles paid 30% of their income for rent, or $612/month ($24,500/12 X .30). The project-based subsidy paid the remaining $258/month to the owner.

When the owner recertified the Nimble's household income, it found that Mr. Nimble received a raise at work and the household income had increased to $27,000. The family is low-income, but no longer qualifies as very low-income. When a substitute Low HOME Rent unit has been designated in the property, the owner must redesignate the Nimble's unit as a High HOME Rent unit and adjust the rent accordingly. Now, the owner can charge no more than the lesser of the High HOME Rent ($840) or the project-based rent ($870), or $840/month. The Nimble's contribution toward rent needs to be adjusted to reflect 30% of its new income, or $675/month ($27,000/12 X .30). The project-based subsidy will now pay the remaining $165 to the owner ($840 - $675).

B. Rents in Units Financed with Low-Income Housing Tax Credit (LIHTC) Assistance

1. In a HOME/LIHTC Property, How Is the Rent Limit Determined?

The HOME and LIHTC programs have different rent limit requirements. So, when a HOME-assisted unit is also designated as a LIHTC unit, the rent for the unit cannot exceed the *lesser of* the HUD-published HOME rent limit or the LIHTC Rent limit for that unit.

This means that the owner/manager must determine the maximum allowable rent for each of the programs, and the lower rent must be used.

For more information on using HOME with LIHTC, see:

HUD online training, *HOME and LIHTC,* http://www.hud.gov/offices/cpd/affordablehousing/training/web/index.cfm; and

Using HOME with Low-Income Housing Tax Credits, 1998. Available on HUD's HOME web page at www.hud.gov/homeprogram/. Update of this publication expected in 2009.

For more information about managing LIHTC properties, see *Managing Housing Credit Apartments*, by Anker Heegaard and Charles S. Wilkins, Jr. (The Compass Group, LLC, 927 15th Street, N.W., Suite 600, Washington, D.C., 20005.) 1998.

2. What Utility Allowance Is Used in a HOME/LIHTC Property?

When a tenant pays for utilities, both HOME and LIHTC require the owner/manager to deduct a utility allowance from the rent limit, in order to determine the maximum rent allowed. However, each program may use a different utility allowance. If so, the owner/manager must subtract the PJ's utility allowance from the HOME rent limit to determine the maximum HOME rent that can be charged, and subtract the LIHTC utility allowance from the LIHTC rent to determine the maximum LIHTC rent that can be charged. The lesser of these two amounts is the maximum rent that can be charged for the unit. Exhibit 3-4, below, demonstrates how this is done.

Exhibit 3-4: Example of How to Calculate Maximum Rent in a HOME/LIHTC Property when Tenant Pays Utilities

The owner must deduct the PJ's HOME utility allowance from the HOME rent limit, and deduct the LIHTC utility allowance from the LIHTC rent limit. The lesser amount is the maximum rent that can be charged for the unit. For example:

	HOME	LIHTC
Rent Limit	$550	$600
(minus) Utility Allowance	-$ 110	-$ 120
Maximum Rent	$440	$480

The maximum rent that can be charged for the unit is $440/month.

See Section 3.3D of this chapter for a discussion on how to use utility allowances.

Utility allowances for each program are updated and issued annually. It is important to use current allowances.

3. What Happens If a Tenant of a HOME and LIHTC Unit Becomes Over-Income?

How to restore compliance when a property has over-income tenants is explained in Sections 3.5 and 3.6 for properties with fixed and floating HOME units, respectively. This guidance does not apply to any unit that is counted as both a HOME and LIHTC unit.

Attachment 3-5, *Differences in LIHTC and HOME Rules for Property Management*, summarizes the key rental management differences between the LIHTC and HOME Programs in more detail. It is found at the end of this chapter.

During recertification, owners/managers may find that some tenants have become over-income. This means that the income of the household increases to a level above the income limit for each program for that year. For HOME/LIHTC properties, the HOME Program has adopted the LIHTC guidelines for establishing rent for over-income households. Generally, a tenant household is considered "over-income" when its income increases to 140 percent or more of the qualifying income for that unit. (There is some variation state by state in terms of how this situation is handled.) 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/manager 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.

The guidance in Sections 3.5 and 3.6 of this guide does *not* apply to any unit that is counted as both a HOME and LIHTC unit when a tenant's income goes over-income. Guidance on what steps must be taken is provided in HUD's HOME/LIHTC model program guide, expected publication 2009. The availability of this publication will be announced on the HOME Program web page at www.hud.gov/homeprogram/.

C. Group Homes

1. What Is a Group Home?

A group home is housing that is occupied by two or more single persons or families. It consists of common space and/or facilities for group use by the occupants of the units (except in the case of shared one bedroom units), and separate private space for each individual/family. Group homes also include group housing for elderly or disabled persons. Often, each individual/family pays a share of the total rent for a group home.

2. How Is the Rent Limit Determined for a Group Home?

A HOME-assisted group home is treated as a single HOME-assisted housing unit with multiple bedrooms. The HOME rent limit for a group home is the HUD-published Fair Market Rent (FMR) limit for the total number of bedrooms in the group home. Although under the Section 8 program some localities use an exception to the Section 8 rents, these exception rents cannot be used as the rent for a HOME-assisted group home.

The HOME Program publishes the FMRs with the HOME rent limits. See Exhibit 3-2 in Section 3.3 of this chapter for an example of HUD's published HOME rent limits and FMR limits.

The HUD-published FMR limit is the *maximum combined* rent that owners/managers can charge *all* the income-eligible tenants that reside in the group home unit, regardless of the total number of tenants.

The PJ can establish rent limits that are *lower* than the FMR limits that are established by HUD.

3. Do the Bedrooms of Live-In Staff "Count" in Determining the Number of Bedrooms in the Group Home?

No. The bedrooms of live-in supportive service providers or other staff are not included when determining the number of bedrooms in a unit for the purpose of establishing the rent. For example, if a service provider lives in one bedroom of a four-bedroom group home, then the maximum rent for the group home is based on the three-bedroom FMR limit.

4. How Does the Owner Get the FMRs?

The PJ must provide the applicable FMRs to the owner/manager before the property begins to lease-up, and on an annual basis thereafter, throughout the property's affordability period.

HUD generally updates and publishes the FMRs in February or March, along with the High HOME Rents and the Low HOME Rents. The FMR limits are adjusted for different localities and bedroom sizes.

When the PJ does not provide the applicable HOME rent limits, the owner/manager should contact the PJ for guidance. The owner/manager should also contact the PJ if the latest PJ-imposed group home rent limits exceed the most recent HUD-published rent limits.

5. Can Each Tenant Pay a Share of Rent in a Group Home?

Yes. When the group home space is shared by all tenants, owners/managers can pro-rate the total rent to determine each tenant's rent charge. The method of determining each tenant's share of rent should be fair and equitable.

6. How Does an Owner/Manager Determine the Maximum Rent for a Group Home with More than Six Bedrooms?

The HUD-published FMRs are adjusted for each bedroom size unit from zero bedrooms (efficiency) to six bedrooms. For units with seven or more bedrooms, owners/managers must calculate the rent limit. This is done by adding fifteen percent of the four-bedroom rent limit for each additional bedroom. For example:

- 7-bedroom rent limit = 1.45 x 4-bedroom rent limit
- 8-bedroom rent limit = 1.60 x 4-bedroom rent limit

Exhibit 3-5 provides an illustration of how this calculation is made.

Exhibit 3-5: Calculating Fair Market Rents for Group Homes with More than Six Bedrooms

Scenario: The property manager needs to determine the FMR for a seven-bedroom group home unit.

Step 1. Identify the starting points.

- The percentage increase allowed by HUD for each additional bedroom is 15 percent.
- The FMR for a 4-bedroom unit in the area is $691.

Step 2. Determine by how many bedrooms the unit exceeds four bedrooms.

7 bedrooms – 4 bedrooms = 3 bedrooms

Step 3. Multiply 15 percent by the number of additional bedrooms over four bedrooms.

15% x 3 = 45%

Step 4. Add this percentage to 100 percent and convert to a decimal.

45% + 100% = 145%, or 1.45

Step 5. Multiply the decimal percentage (from Step 4) times the HUD-published 4-bedroom FMR.

1.45 x $691 = $1,001.95

7. Do the FMRs Account for Utility Costs in a Group Home?

Section 3.3.D discusses utility allowances and Attachment 3-3, *Illustration of How to Determine Rents for Units with Tenant-Paid Utilities*, provides an example of how to use one. This attachment is located at the end of this chapter.

When group home tenants pay directly for utilities, the owner/manager must subtract the PJ's utility allowance from the HUD-published FMR limit in order to determine the maximum combined rent that can be charged to all the tenants.

8. Can Food and Service Costs Be Included in the Rent in a Group Home?

No. Group home rents may *not* include food costs or the costs of any supportive services. Costs for food and services must be billed as separate charges. For group home units that are developed for persons with disabilities, disability-related services must be *non-mandatory*.

Mandatory fees must be approved by the PJ. The lease must list the HOME rent and fees separately, and must specify whether fees are optional or mandatory. In general, owners must deduct mandatory fees from the HOME rent limit in order to determine the maximum rent that can be charged for the unit.

D. Single-Room Occupancy (SRO) Housing

1. What Is Single-Room Occupancy Housing?

A single-room occupancy (SRO) housing unit consists of a single room dwelling unit that is the primary residence of its occupant(s). It may or may not have food preparation and sanitary facilities.

2. How Is the Rent Limit Determined for SRO Housing?

The rent limit for an SRO unit is based *either* on the HUD Fair Market Rent (FMR) limit or the High and Low HOME rent limits, depending on the unit's characteristics. Exhibit 3-6 explains how the HOME rent rules apply to SRO housing units.

Exhibit 3-6: HOME Rents for SRO Housing

If the SRO housing has . . .	Then . . .
A unit with *neither* food preparation nor sanitary facilities, or with *one* (food preparation or sanitary facilities)	The rent may not exceed 75 percent of the HUD-published FMR limit for a 0-bedroom (efficiency) unit. This limit is used for High HOME Rent units and Low HOME Rent units. Even though the rent limits are the same for High and Low HOME Rent units, in projects with five or more HOME-assisted units, at least 20 percent of the units must be occupied by very low-income tenants.
A unit with *both* food preparation and sanitary facilities	The High HOME Rent cannot exceed the HUD-published High HOME rent limit or Low HOME rent limit for a 0-bedroom (efficiency) unit. The Low HOME Rents for these units cannot exceed either: 1. The HUD-published Low HOME rent limit for a 0-bedroom (efficiency) unit; or 2. 30 percent of the monthly adjusted family income of the very low-income tenant. (Section 3.3 discusses optional rent limits for Low HOME Rent units.) In projects with five or more HOME-assisted units, at least 20 percent of the units must be occupied by very low-income tenants.
A Low HOME Rent unit that receives state or Federal *project-based* rental assistance and is occupied by a very low-income tenant	The rent can be the applicable state or Federal project-based rent, as long as it is occupied by a very low-income tenant who does not pay more than 30 percent of the family's monthly adjusted income for rent. Section 3.4A discusses how to determine rents for HOME-assisted units receiving state or Federal project-based rental assistance.

3. How Does an Owner/Manager Get the FMR and High HOME Rent and Low HOME Rent Limits?

HUD generally updates and publishes the FMRs in February or March, along with the High HOME Rents and the Low HOME Rents. The FMR limits are adjusted for different localities and bedroom sizes. See Exhibit 3-2 in Section 3.3 of this chapter for an example of HUD's published HOME Rent limits and FMR limits.

The PJ must provide owners/managers with the applicable FMR and HOME rent limits and utility allowances before an SRO rental property starts to lease-up. The PJ must also provide updated FMR and HOME rent limits on an annual basis until the end of the property's affordability period.

4. Must 20 Percent of the Units in SRO Housing Be Occupied by Very Low-Income Residents?

Yes. In SRO housing with five or more HOME-assisted rental units at least 20 percent of the units must be occupied by very low-income tenants (at or below 50 percent of area median income). This is true regardless of whether the units have food preparation and/or sanitary facilities.

5. How Do SRO Rent Limits Account for Utility Costs?

Section 3.3.D discusses utility allowances and Attachment 3-3, *Illustration of How to Determine Rents for Units with Tenant-Paid Utilities*, provides an example of how to use one. This attachment is located at the end of this chapter.

Utility costs *are* included in the maximum HOME SRO rents. This means that if SRO tenants pay directly for utilities, the owner/manager must subtract the PJ's utility allowance from the HUD-published HOME rent limit or FMR limit in order to determine the maximum rent that can be charged for an SRO unit.

6. Can Food and Service Costs Be Included in the Rent in SRO Housing?

Section 3.3.D discusses charges for additional fees and services.

No. SRO unit rents may not include food costs or the costs of any supportive services. Costs for food and services must be billed as separate charges. For SRO units that are developed for persons with disabilities, disability-related services must be *non-mandatory*.

Mandatory fees must be approved by the PJ. Each SRO tenant's lease must clearly state whether any fee-based services are optional or required. The lease must also identify the amount of the additional fees or surcharges separately from the basic HOME rent for each tenant.

3.5. Maintaining Unit Mix When the Property Has Fixed HOME Units

This section explains how owners/managers meet HOME occupancy and unit mix requirements for properties with *fixed HOME-assisted units*.

Owners/Managers of properties with *floating* HOME-assisted units should refer to Section 3.6.

This section provides guidance on how to maintain the required number of High HOME Rent units and Low HOME Rent units in a property with fixed HOME units when:

1. A tenant's income becomes over-income;
2. A unit is vacated; and
3. All units are occupied.

Summary of HOME Requirements:
Maintaining Unit Mix in a Property with Fixed HOME-Assisted Units

Properties with **fixed HOME-assisted units** have specific units that are designated as HOME-assisted for the duration of the affordability period. Owners/Managers must maintain these specific units as the HOME-assisted units throughout the affordability period. In a property with fixed HOME units, the designation of the HOME-assisted units as High HOME Rent units and Low HOME Rent units may need to change in order to maintain the required unit mix, although the unit designation as HOME-assisted or non-assisted does not change. Maintaining the required number of HOME-assisted units, as well as High HOME Rent units and Low HOME Rent units is called complying with the **unit mix requirements.**

When an owner/manager recertifies a tenant's income, he or she may find that the tenant's income has increased. A tenant is considered "**over-income**" in the HOME Program when:

- The tenant occupies a High or Low HOME rent unit and the household income increases over the current HOME low-income limit for that family size, or
- The tenant occupies a Low HOME Rent unit, and the household's income increases above the current very low-income limit, but does not increase above the low-income limit; that is, the household income is above 50 and below 80 percent of area median income.

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. When the tenant's income is over the low-income limit, its rent must also be adjusted. Note, however, that owners/managers may not terminate the tenancy of a household based on income.

A. Overview of the Unit Mix Requirements in Properties with Fixed HOME Units

1. What Is a Fixed HOME Unit?

A property with fixed HOME-assisted units has *specific units* (e.g., Units 101 and 102) that are designated as HOME-assisted at project completion. These specific units (Units 101 and 102) remain the same, or are fixed, throughout the affordability period.

2. What Is a Floating HOME Unit?

Section 3.6 discusses how maintain the unit mix when a tenant's income goes over-income in properties with floating HOME units.

A property with floating HOME-assisted units has units that are initially designated as HOME-assisted, but the designations for the specific units may change, or float, during the affordability period. Instead, the owner/manager must maintain the *total number* of HOME-assisted units. Using this float ensures that the required number of HOME-assisted units (by bedroom size) is maintained throughout the affordability period, even when a tenant in a HOME-assisted unit becomes over-income.

3. How Does an Owner Know If His/Her Property Has Fixed or Floating HOME Units?

The written agreement between the PJ and the owner should specify whether the units in a property are fixed or floating, and how many units are HOME-assisted. PJs have the discretion to designate projects as fixed or floating on a property-by-property basis. However, only properties that have comparable units can be designated floating; that is, the units in the assisted and non-assisted inventory of a property must be comparable in terms of size, amenities, and number of bedrooms.

Owners/Managers who do not know if their property has fixed or floating HOME-assisted units should contact the PJ.

4. If a PJ Designates All the Units in a Property as HOME-Assisted, Are the Units Fixed or Floating?

When a PJ designates 100 percent of the units in a property as HOME-assisted, the units are fixed.

5. Do High HOME Rent Unit and Low HOME Rent Unit Designations Remain the Same in Fixed Unit Properties during the Affordability Period?

No. In a property with fixed HOME units, the designation of a specific unit as either a High HOME Rent unit or a Low HOME Rent unit *can* change (or "float") between the HOME-assisted units in a fixed unit property. The owner/manager must maintain the *total number* of Low and High HOME Rent units by various bedroom sizes during the affordability period. This float ensures that the required number of Low HOME Rent units (by bedroom size) is maintained throughout the affordability period, even when a tenant becomes over-income.

In a property with fixed HOME units, the *HOME-assisted* designation never changes.

6. If a Property Is Out of Compliance and a Non-Assisted Unit is Vacated, What Does the Owner/Manager Do?

Non-assisted units in properties with fixed units are *never* subject to HOME requirements.

In a property with fixed HOME units, when a non-assisted unit is vacated, that unit continues to be non-assisted regardless of whether or not the property is in compliance with the occupancy and unit mix rules. The non-assisted unit can be rented without HOME rent restrictions.

B. Over-Income Tenants in a Property with Fixed HOME Units

1. What Happens When a Tenant in a Fixed HOME-Assisted Unit Becomes Over-Income?

When an owner/manager conducts the annual income recertification and finds that a tenant household's income has increased above the HOME income limits, the steps that it 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 in items a, b, and c, below and are illustrated in Exhibit 3-7. Several examples of how these steps apply are provided in Exhibit 3-8.

a. The over-income household occupies a High HOME Rent unit.

The property is temporarily out of compliance until the unit is vacated and can be rented to another low-income tenant household.

The owner/manager *must* raise the over-income household's rent as soon as the lease permits, 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; or
- 30 percent of the tenant's monthly adjusted family income.
- If the unit is a LIHTC unit, the tenant must pay the rent dictated by the tax credit program.

This new rent is set irrespective of market rents in the neighborhood.

The owner/manager cannot terminate the lease based on the household's increased income.

Refer to Attachment 3-4, *Calculating Adjusted Household Income for the Purpose of Establishing Rent*, for guidance on adjusting family income for purposes of determining rent. This attachment is located at the end of this chapter.

See Section 3.4 for a discussion on managing HOME/LIHTC properties.

b. The household occupies a Low HOME Rent unit and its income increases over the very low-income limit, but not over the low-income limit.

The property is temporarily out of compliance until either: (1) a High HOME Rent unit can be redesignated as a Low HOME Rent unit, or (2) the unit 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 redesignated 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/manager 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 redesignated 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 Low HOME Rent unit that is occupied by the over-income tenant must be redesignated as a High HOME Rent unit. At this time, the owner/manager can increase the tenant's rent up to the High HOME Rent, subject to terms of the lease.

c. The household occupies a Low HOME Rent unit and its income increases above the low-income limit.

The property is temporarily out of compliance and will continue to be out of compliance until the over-income tenant moves out and another income-eligible tenant household moves in.

The owner/manager *must* adjust the over-income household's rent as soon as the lease permits. The over-income tenant must pay the lesser of:

Refer to Attachment 3-4, *Calculating Adjusted Household Income for the Purpose of Establishing Rent*, for guidance on adjusting family income for purposes of determining rent.

See Section 3.4 for a discussion on managing HOME/LIHTC properties.

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

This new rent is set irrespective of market rents in the neighborhood.

The owner/manager cannot terminate the lease based on the household's income.

When a High HOME Rent unit becomes available, regardless of bedroom size, it must be redesignated 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 tenant must be redesignated as a High HOME Rent unit. Even though the unit is redesignated a High HOME Rent unit, the tenant is over the low-income limit, so the property continues to be temporarily out of compliance

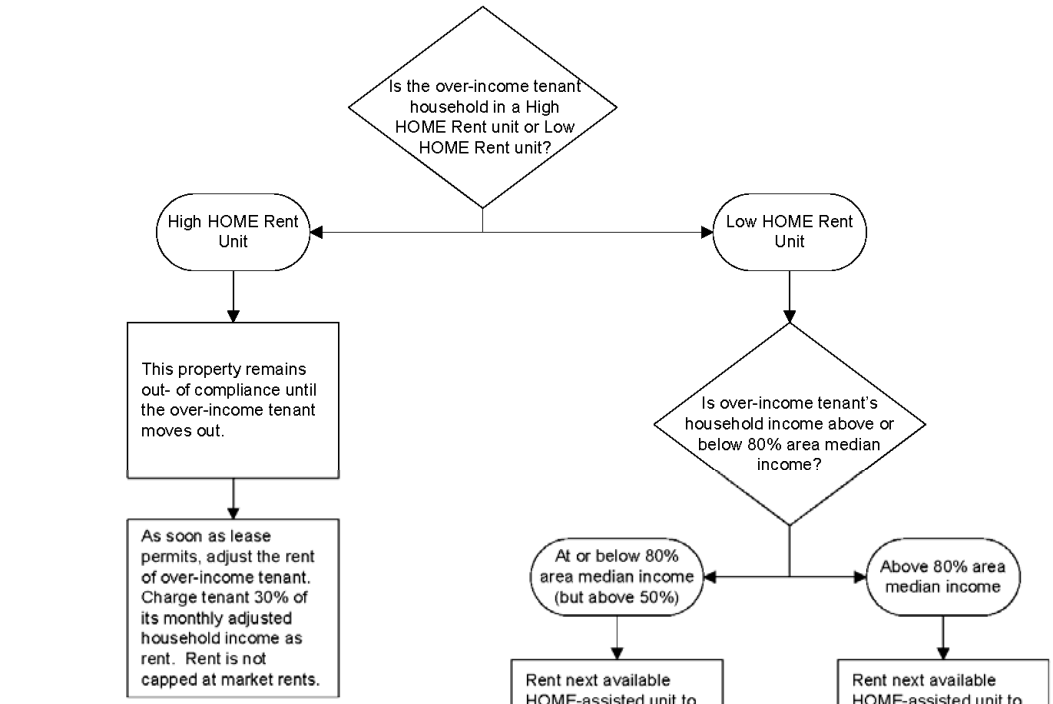
2. What Happens If There Is More than One Over-Income Tenant in the Property?

If there is more than one over-income tenant in the property and both a Low HOME Rent unit and High HOME Rent unit are needed to restore unit mix compliance, the owner/manager should restore compliance with the Low HOME Rent unit first, following the steps outlined in Question 1 above.

3. What Happens If There Is an Over-Income Tenant in a HOME-Assisted Unit and a Non-Assisted Unit Becomes Available?

In a property with *fixed* HOME-assisted units, non-assisted units are not redesignated as HOME-assisted units at any time during the affordability period. Non-assisted units are never subject to HOME income or rent restrictions.

Exhibit 3-7: Maintaining Unit Mix in Fixed HOME Units When a Tenant Goes Over Income



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 area median income, **or** (2) an annual gross income over 50% of area median income that occupies a Low HOME Rent unit.

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

C. Vacated Fixed HOME Units

1. What Happens When a Fixed HOME-Assisted Unit Is Vacated?

When a fixed HOME-assisted unit is vacated, before renting the unit, the owner/manager should determine whether or not the property has an over-income tenant occupying a HOME-assisted unit, based on the most recent tenant recertifications. New income recertifications are not required.

a. Steps when no over-income tenants occupy a HOME-assisted unit in the property.

The property is in compliance with the HOME occupancy and unit mix rules.

The unit designation of the vacated unit remains unchanged: a High HOME Rent unit remains a High HOME Rent unit, and a Low HOME Rent unit remains a Low HOME Rent unit.

- The vacated unit is rented to a new income-eligible tenant. A vacant High HOME Rent unit is rented to a tenant household that qualifies as low-income; a vacant Low HOME Rent unit is rented to a tenant household that qualifies as very low-income.
- The rent that is charged to the new tenant may not exceed the High HOME rent limit or the Low HOME rent limit, respectively, depending on the fixed unit designation.

b. Steps when an over-income tenant occupies a fixed HOME-assisted unit in the property.

The owner/manager must follow the steps outlined above in the Section 3.5B, *Over-Income Tenants in a Property with Fixed HOME Units*.

D. Redesignating Occupied Units

1. Can the Owner/Manager Redesignate Occupied Units in Order to Maintain Unit Mix?

Yes. The owner can redesignate occupied units within the property in order to maintain the required unit mix. This might happen in a property that has a very low-income tenant living in a High HOME Rent unit. If a tenant of a Low HOME Rent unit becomes over-income, the owner/manager could redesignate the two units at any time, in order to restore compliance with the unit mix requirements. Once the units are redesignated, the owner should adjust rents accordingly.

Exhibit 3-8: Example of Maintaining Unit Mix in a Property with Fixed HOME Units

Consider a property that has 20 comparable 1- and 2-bedroom apartments with fixed HOME units. The property has ten 1-bedroom and ten 2-bedroom apartments, with five units of each unit size designated as HOME-assisted. Two units (one of each bedroom size) are designated as Low HOME Rent units. Throughout the affordability period, the owner must strive to have income-eligible tenants in each of the HOME-assisted units, as originally designated:

1BR	1BR	2BR	2BR
101 HOME-assisted High	201 Non-assisted	301 HOME-assisted High	401 Non-assisted
102 HOME-assisted High	202 Non-assisted	302 HOME-assisted High	402 Non-assisted
103 HOME-assisted High	203 Non-assisted	303 HOME-assisted High	403 Non-assisted
104 HOME-assisted High	204 Non-assisted	304 HOME-assisted High	404 Non-assisted
105 HOME-assisted: Low	205 Non-assisted	305 HOME-assisted: Low	405 Non-assisted

Scenario 1: Unit 303, a 2-bedroom High HOME Rent unit, becomes vacant. All the other HOME-assisted units are occupied by income-eligible tenants.

- Unit 303 retains its designation as a High HOME Rent unit. It must be rented to another low-income tenant, at no more than the High HOME Rent.

Scenario 2: The tenant in Unit 105, a one-bedroom Low HOME Rent unit, goes over-income when the owner/manager recertifies his/her income. The tenant no longer qualifies as very low-income, but qualifies as low-income. The property is temporarily out of compliance. A month later, unit 201 is vacated.

- Since Unit 201 is non-assisted, the owner/manager can rent it without regard to HOME restrictions, even though the tenant of Unit 105 is over-income. The property continues to be temporarily out of compliance.

Two months later, unit 103 is vacated.

- The owner/manager must redesignate Unit 103 as a Low HOME Rent unit, and must rent it to a very low-income tenant at no more than the Low HOME Rent.
- Once Unit 103 is redesignated as a Low HOME Rent unit, the owner must redesignate Unit 105 as a High HOME Rent unit and increase the tenant's rent to no more than the High HOME Rent.

Scenario 3: When the owner/manager recertifies the income of the household in Unit 105, he finds that the tenant is over-income. The tenant still qualifies as low-income. Two weeks later, Unit 301 is vacated.

- Since Unit 301 is a HOME-assisted 2-bedroom unit, it is "greater" than Unit 105. Nonetheless, because this property has fixed units, the owner must redesignate Unit 301 as a Low HOME Rent unit in order to restore compliance to the property.
- Unit 105 is redesignated as a High HOME Rent unit. Once this is done, the tenant's rent can be adjusted to up to the High HOME Rent.

Scenario 4: The owner recertifies the tenant incomes and finds that the tenant in Unit 105, a 1-bedroom High HOME Rent unit, has gone over-income.

- The property is temporarily out of compliance. Compliance can only be restored when this unit is vacated and rented to another low-income tenant.

3.6. Maintaining Unit Mix in Properties with Floating HOME-Assisted Units

This section explains HOME occupancy and unit mix requirements for owners/managers of properties with *floating HOME-assisted units*.

Owners/Managers of properties with fixed HOME-assisted units should refer to the guidance provided in Section 3.5.

This section provides guidance on how to maintain the required number of High HOME Rent units and Low HOME Rent units in a property with floating HOME units when:

1. A tenant's income becomes over-income;
2. A unit is vacated; and
3. When all units are occupied.

Summary of HOME Requirements: Maintaining Unit Mix in a Property with Floating HOME-Assisted Units

Properties with **floating HOME-assisted units** do not have specific units that are designated HOME-assisted for the duration of the affordability period. Instead, the total number of HOME-assisted and non-assisted units that are designated at the time of project commitment must stay the same throughout the affordability period. The specific units that carry the HOME-assisted designations may change, or float, among comparable assisted and non-assisted units during this time. In a property with floating HOME units, unit mix is maintained by changing the unit designations when the next unit becomes available. For example, if a property has an over-income tenant in a HOME-assisted unit, when the next non-assisted unit becomes available, it is designated as HOME-assisted and rented to an income-eligible tenant. The unit occupied by the over-income tenant is redesignated as a non-assisted unit.

In addition, the total number of High HOME Rent units and Low HOME Rent units that are designated at the time of project commitment must also be maintained. Maintaining the required number of HOME-assisted units, as well as High HOME Rent units and Low HOME Rent units is called complying with the **unit mix requirements**.

When recertifying a tenant's income, an owner/manager may find that the tenant's income has increased. A tenant is considered "**over-income**" when:

- The tenant occupies a HOME-assisted unit and the household income increases over the current HOME low-income limit for that family size, or
- The tenant occupies a Low HOME Rent unit, and the household's income increases above the current very low-income limit, but is still below the low-income limit.

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 required unit mix in the property. The rents of the over-income tenants can be adjusted. However, owners/managers may not evict or refuse to renew the lease of a household because its income increases.

A. Overview of the Unit Mix Requirements in Properties with Floating HOME-Assisted Units

1. What Is a Fixed HOME Unit?

Section 3.5 discusses how maintain the unit mix when a tenant's income goes over-income in properties with fixed HOME units.

A property with fixed HOME-assisted units has *specific units* (e.g., Units 101 and 102) that are designated as HOME-assisted or non-assisted at project completion. This designation remains the same, or is fixed, throughout the affordability period.

2. What Is a Floating HOME Unit?

A property with floating HOME-assisted units has units that are initially designated as HOME-assisted, but the designations for the specific units may change, or float, during the affordability period. The owner/manager must maintain the *total number* of HOME-assisted units. Using this float ensures that the required number of HOME-assisted units (by bedroom size) is maintained throughout the affordability period, even when a tenant in a HOME-assisted unit becomes over-income.

3. How Does an Owner Know If a Property Has Fixed or Floating HOME Units?

The written agreement between the PJ and the owner should specify how many units in the property are HOME-assisted and whether these units are fixed or floating. The PJ has the discretion to establish the fixed or floating designation on a property-by-property basis. Only properties that have comparable units can be designated floating; that is, the units in the assisted and non-assisted inventory of a property must be comparable in terms of size, amenities, and number of bedrooms.

Owners/Managers who do not know if their property has fixed or floating HOME-assisted units should contact the PJ.

4. Do High HOME Rent Unit and Low HOME Rent Unit Designations Remain the Same in Properties with Floating Units During the Affordability Period?

No. In order to maintain compliance with the occupancy and unit mix requirements, owners/managers of properties with floating HOME units can draw on *all* the units in the property to designate High and Low HOME Rent units— including those that are initially designated as HOME-assisted and those that are not. For the owner/manager, this facilitates the job of ensuring that the number of High HOME Rent units and Low HOME Rent units is maintained during the affordability period.

5. When Redesignating Units, Can an Owner/Manager Use Any Unit as a "Substitute?"

When redesignating units in a property with floating HOME-assisted units, owners/managers can choose to substitute a unit that is equal or "greater" than the original HOME-assisted unit, but generally they cannot substitute one that is "lesser." A lesser unit can be substituted only when doing so preserves the original unit mix. A greater unit is one that might be considered more preferable because of larger size, additional bedrooms, or amenities. The goal is to maintain the same number and type of HOME-assisted units as were originally designated by the PJ. Therefore, if an owner makes a substitution that is "greater," it can later substitute an available unit that is "lesser," in order to restore the original unit mix.

B. Over-Income Tenants in a Property with Floating Units

1. What Happens When a Tenant Household in a Floating HOME Rent Unit Is Over-Income?

When the owner/manager conducts the annual income recertification and finds that a tenant household's income has increased above the HOME income limits, the steps that it 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 in items a, b, and c below and are illustrated in Exhibit 3-9.

Several examples of how to apply these steps are provided in Exhibit 3-10.

Attachment 3-4, *Calculating Adjusted Household Income for the Purpose of Establishing Rent*, describes the process for adjusting income for the purposes of determining rent.

a. Steps when an over-income household occupies a floating High HOME Rent unit.

- The owner/manager must adjust the rent of the over-income tenant household so that it pays 30 percent of its 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 is *not* required to pay more than the market rent for a 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 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 tenant is redesignated as a non-assisted unit. At this point, the owner/manager may adjust the tenant's rent without regard to the HOME rent requirements (although requirements from other funding sources may still apply). Rent increases are subject to the terms of the tenant's lease.

b. Steps when a tenant is low-income, but is not very low-income, and 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 redesignated as a Low HOME Rent unit 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.
- Once the new Low HOME Rent unit is designated, the unit with the over-income tenant is redesignated as a High HOME Rent unit. The tenant's rent may be adjusted to no more than the High HOME rent limit.

Exhibit 3-9: Maintaining Unit Mix in Floating HOME Units When a Tenant Goes Over Income

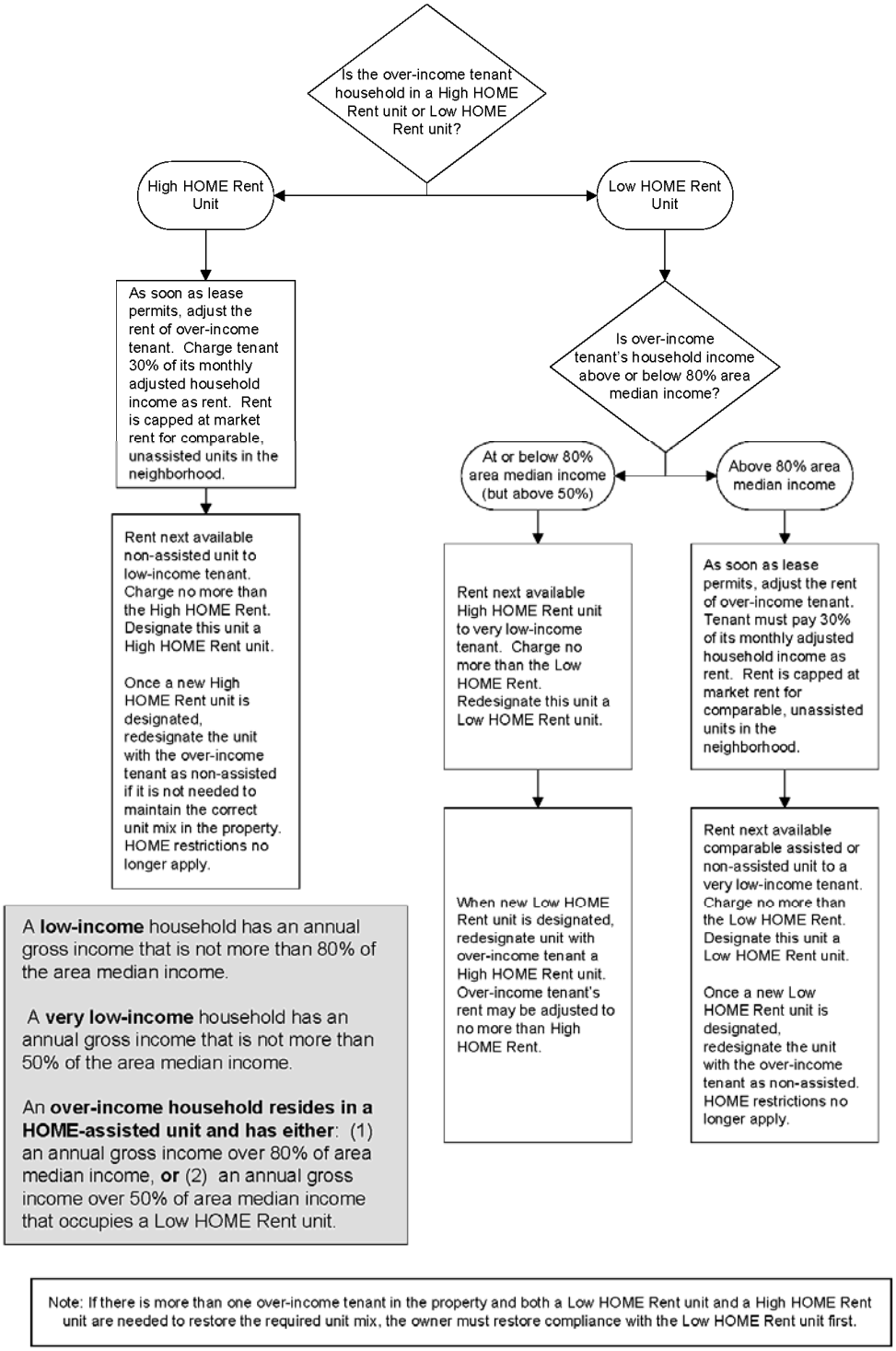


Exhibit 3-10: Example of Maintaining Unit Mix in a Property with Floating HOME Units

Consider a property that has 20 comparable 1- and 2-bedroom apartments with floating HOME units. The property has ten 1-bedroom apartments, and ten 2-bedroom apartments, with five units of each unit size designated as HOME-assisted. Two units (one of each bedroom size) are designated as Low HOME Rent units. Throughout the affordability period, the owner must strive to maintain this original unit mix: at least one 1-bedroom unit and one 2-bedroom unit rented as Low HOME Rent units, and four 1-bedroom units and four 2-bedroom units rented as High HOME Rent units. The specific unit designations may change.

1BR	1BR	2BR	2BR
101 Low HOME Rent	201 Non-Assisted	106 Low HOME Rent	206 Non-Assisted
102 High HOME Rent	202 Non-Assisted	107 High HOME Rent	207 Non-Assisted
103 High HOME Rent	203 Non-Assisted	108 High HOME Rent	208 Non-Assisted
104 High HOME Rent	204 Non-Assisted	109 High HOME Rent	209 Non-Assisted
105 High HOME Rent	205 Non-Assisted	110 High HOME Rent	210 Non-Assisted

Original Unit Mix

- 4 1-bedroom High HOME Rent units, 1 1-bedroom Low HOME Rent unit
- 4 2-bedroom High HOME Rent units, 1 2-bedroom Low HOME Rent unit
- 5 1-bedroom non-assisted units5 2-bedroom non-assisted units

Scenario 1:

Unit 304 vacates. All other HOME-assisted units are occupied by income-eligible tenants. This property is in compliance with the unit mix requirements.

- Unit 304 retains its designation as a High HOME Rent unit. It must be rented to another low-income tenant at no more than the High HOME Rent.

Scenario 2:

The owner recertifies tenant incomes and finds that the income of the tenant in Unit 104 (a 1-bedroom, High HOME Rent unit) is over-income.

- As soon as the lease permits, the owner must adjust the rent to 30% of the household income, but no greater than market rate for a comparable unit in the neighborhood.

Three months later, Unit 204 (a 2-bedroom, non-assisted unit) vacates.

- The owner must designate Unit 204 as a High HOME Rent unit and rent it to a low-income household at no more than the High HOME Rent.

Exhibit 3-10: Example of Maintaining Unit Mix in a Property with Floating HOME Units *(continued)*

Scenario 3:

The owner recertifies tenant incomes and finds that the tenant in Unit 106 (1 2-bedroom Low HOME Rent unit) is over-income. The tenant's household income now exceeds the low-income limit.

- As soon as the lease permits, the owner must adjust the tenant's rent to 30% of the household income, but no more than the market rate for a comparable unit in the neighborhood.

The following month, Unit 205 is vacated, a 1-bedroom non-assisted unit. As a 1-bedroom unit, it is "lesser" than Unit 106, a 2-bedroom unit.

- Because it is lesser, the owner cannot redesignate it as a Low HOME Rent unit. Unit 205 retains its non-assisted designation and can be rented to another tenant without HOME restrictions.

Two months later, Unit 110, a 2-bedroom, High HOME Rent unit, is vacated.

- The owner must redesignate Unit 110 as a Low HOME Rent unit and rent it to a very low-income tenant at no more than the Low HOME Rent.
- The owner then redesignates Unit 106 as a High HOME Rent unit.
- Note, the property continues to be out of compliance because the household's income exceeds the low-income limit.

Three months later, unit 210, a 2-bedroom, non-assisted unit, is vacated.

- The owner designates it as a High HOME Rent unit and rents it to a low-income household at no more than the High HOME Rent.
- The owner then redesignates Unit 106 as a non-assisted unit.

Scenario 4:

It is Year 7 of the affordability period. There has been substantial turnover at the property, but the property is in compliance with the HOME unit mix requirements. On several previous occasions, in order to maintain compliance in the property, the owner chose to substitute a "greater" 2-bedroom unit for a 1-bedroom unit where the tenant was over-income. As a result, the current unit mix is as follows:

- 1 BR units – 3 High HOME Rent units, 7 non-assisted
- 2 BR units—3 Low HOME Rent units, 4 High HOME Rent units, 3 non-assisted

Exhibit 3-10: Example of Maintaining Unit Mix in a Property with Floating HOME Units *(continued)*

1BR	1BR	2BR	2BR
101 High HOME Rent	201 Non-Assisted	106 Low HOME Rent	206 High HOME Rent
102 Non-Assisted	202 Non-Assisted	107 High HOME Rent	207 Non-Assisted
103 High HOME Rent	203 Non-Assisted	108 High HOME Rent	208 High HOME Rent
104 Non-Assisted	204 Non-Assisted	109 low HOME Rent	209 Non-Assisted
105 High HOME Rent	205 Non-Assisted	110 Low HOME Rent	210 Non-Assisted

The owner recertifies tenant incomes and finds that the tenant in Unit 106 (a 2-bedroom Low HOME Rent unit) is over-income, but is still low-income. Shortly thereafter, Unit 202 (a 1-bedroom, non-assisted unit) is vacated. Unit 202 is a 1-bedroom unit, and is therefore "lesser" than Unit 106.

- The owner can use Unit 202 as a substitute unit for Unit 106 because the current unit mix has more 2-bedroom Low HOME Rent units than the original unit mix.
- The owner redesignates Unit 202 as a Low HOME Rent unit and rents it to a very low-income household at no more than the Low HOME Rent.
- Once a Low HOME Rent unit has been substituted, the owner redesignates Unit 106 as a High HOME Rent unit and can adjust the tenant's rent to no greater than the High HOME Rent.

c. Steps when a tenant household's income is above the low-income limit and it occupies a 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 tenant is considered a Low HOME Rent unit that is temporarily out of compliance.
- The rent of the over-income tenant 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 a comparable Low HOME Rent unit is substituted, the unit with the over-income tenant is redesignated a *non-assisted* unit. The owner/manager may adjust the tenant's rent without regard to the HOME restrictions. Rent increases are subject to the tenant's lease.

Note, unlike in a fixed HOME unit, a tenant in a floating HOME unit is not required to pay more than the market rent for a comparable, unassisted unit in the neighborhood.

Attachment 3-4, *Calculating Adjusted Household Income for the Purpose of Establishing Rent*, describes the process for adjusting income for the purposes of determining rent.

2. What Happens If There Is More than One Over-Income Tenant?

If there is more than one over-income tenant in the property and both a Low HOME Rent unit and High HOME Rent unit are needed to restore unit mix compliance, then the owner/manager should restore compliance with the Low HOME Rent unit first.

C. Vacated Floating HOME Units

1. What Happens When a Floating HOME-Assisted Unit Is Vacated?

When any unit (assisted or non-assisted) in a property with floating HOME units is vacated, the owner/manager must determine whether or not the property is in compliance with the unit mix requirements.

a. Steps when a unit is vacated and the property has no over-income tenants.

- The property is in compliance with the HOME occupancy and unit mix rules.
- The unit designation of the vacant unit remains unchanged: a High HOME Rent unit remains a High HOME Rent unit, a Low HOME Rent units remains a Low HOME Rent unit, and a non-assisted unit remains a non-assisted unit.
- The unit can be rented to a tenant that meets the requirements of that unit's designation, at the applicable rent. For example, a High HOME Rent unit is rented to a low-income family at a rent that does not exceed the High HOME rent limit.

b. Steps when a unit is vacated and an over-income tenant occupies a HOME-assisted unit.

The owner/manager must follow the guidance provided in Section 3.6B, above, *Over-Income Tenants in a Property with Floating Units*.

D. Redesignating Occupied Units

1. Can the Owner/Manager Redesignate Occupied Units in Order to Maintain Unit Mix?

Yes. The owner/manager can redesignate occupied units. This might occur if a property has a Low HOME Rent unit occupied by an over-income tenant who is low-income, and a High HOME Rent unit that is occupied by a very low-income tenant. The owner/manager can "swap," or redesignate the two units as a way of restoring compliance with the unit mix requirements. Once the unit designations are changed, the owner/manager can adjust the rents accordingly.

3.7. Record-Keeping and Reporting on Rent and Occupancy

Records and reports are key tools for owners/managers to demonstrate that their properties are in compliance with all applicable HOME Program affordability requirements, property standards, lease and tenant rights requirements, and affirmative marketing requirements.

Summary of HOME Requirements:
HOME Record-Keeping and Reporting on Rent and Occupancy

Owners/Managers must **maintain records** that document how their HOME-assisted rental properties comply with the HOME affordability requirements and their written agreements with PJs. Owners must retain records for the most recent five-year period throughout the affordability period and five years after it has concluded. Records must be available for review by the PJ and HUD.

Owners/Managers also must submit reports to the PJ, as requested. At a minimum, the owner must submit a **rent and occupancy report** to the PJ on an annual basis. The report must include sufficient information about tenants, tenant income, and rents to document that the property complies with the HOME affordability requirements.

A. Record-Keeping

1. What Records Must the Owner/Manager Maintain?

Chapter 6, Section 6.2C, Question 4 addresses the owner's record-keeping requirements in more detail.

Owners/Managers must maintain records that document how their HOME-assisted rental properties comply with the HOME affordability requirements and the terms of their written agreements with their PJs. Generally, this involves administrative, unit, tenant, and property maintenance records. These records must be available for review when the PJ and/or HUD staff conduct on-site monitoring of HOME-assisted rental properties.

2. For How Long Must Owners/Managers Retain HOME Records?

PJs must maintain rental property compliance records for the most recent five-year period, up until five years after a HOME-assisted property's affordability period terminates. The PJ may require the property owner to maintain these records, or it may require the owner/manager to submit its records to the PJ.

3. Who Has Access to HOME Records?

Owners are required to provide all relevant records to the PJ and HUD, upon request. The PJ may also require that HOME records be made available to the public or other parties. The written agreement between the PJ and the owner should specify who has access to these records.

4. How Must HOME Records Be Maintained?

Owners/Managers must maintain tenant and unit records in a form that is adequate for PJ monitoring. PJs might prescribe specific records retention methods. Owners should periodically check the work of property managers to make sure that property files are adequately documented.

5. What Does the PJ Address in a Monitoring Review?

A monitoring review for compliance with the occupancy and unit mix requirements addresses these key questions:

- Does the owner/manager perform income verifications and income recertifications correctly?
- Does the owner/manager use current income limits to determine tenant income-eligibility?
- Does the owner/manager conduct tenant income recertifications annually?
- Does the owner/manager designate and track High HOME Rent units and Low HOME Rent units?
- Does the owner/manager use current rent limits for the HOME-assisted units?
- For special projects, does the owner/manager calculate the maximum rents correctly?
- Does the owner/manager take the required steps to keep the property compliant with unit mix requirements, if a tenant becomes over-income?

B. Reporting

1. What Reports Must the Owner Submit to the PJ?

Owners/Managers must submit compliance reports to their PJs on the rent and occupancy of each HOME-assisted unit. At a minimum, the rent and occupancy report must be submitted on an annual basis. The PJ specifies the format and submission deadline for these reports.

Owners/Managers may find it helpful to develop a tracking system for their HOME-assisted units.

Attachment 3-6, *Unit Summary Data*, is a sample form that summarizes relevant individual unit information. Owners can use this to collect information that must typically be reported to the PJ. It is located at the end of this chapter.

2. What Does the Rent and Occupancy Report Include?

In general, the annual rent and occupancy report includes:

- Property address;
- Property owner;
- Property manager;
- Total units;
- Total HOME-assisted units;
- For each HOME-assisted unit:
  - Fixed HOME unit or floating HOME unit designation;
  - High HOME Rent unit or Low HOME Rent unit designation;
  - Number of bedrooms;
  - Whether the unit is vacant or occupied;
  - Tenant's name;
  - Tenant's annual gross income (based on the annual income methodology required by the PJ);
  - Household size;
  - Number of people occupying the unit;
  - Whether any occupant qualifies as disabled;
  - Date of the initial income verification;
  - Date of the last income recertification;
  - Monthly rent charged;
  - Utility allowance;
  - Any mandatory fees that are charged;
  - Any non-mandatory fees that are charged;
  - Date of last unit property standards inspection; and
  - Whether the unit is in compliance with property standards, including lead-based paint removal and accessibility for persons with disabilities.

The PJ is responsible for reviewing this report and advising owners/managers of its concerns, if any.

Attachment 3-7, *Sample Rent and Occupancy Report*, is a sample form to track rents and income. It is located at the end of this chapter.

3. Can the PJ Require the Owner/Manager to Submit Additional Reports?

The PJ can impose additional reporting requirements as it deems necessary. Reports help the PJ keep track of a property's performance. Therefore, owner reporting is an important tool for a PJ to ensure that the HOME-assisted property is maintained as decent, safe, and affordable housing for the duration of the affordability period. These reports might include rental management plans, audited financial statements, rent rolls, or vacancy reports.

The PJ should specify its reporting requirements in the written agreement between the PJ and the owner.

Attachment 3-1:
Illustration of How to Calculate the Income Limit for Households with More Than Eight Members

Scenario: The property manager needs to determine the income-eligibility of a nine-person household that will occupy a High HOME Rent unit.

Step 1. Identify the starting points.

- The percentage increase allowed by HUD for each additional bedroom is 8 percent.
- The HUD-published four-person low-income limit for the area is $35,600.

Step 2. Determine by how many people in the household exceed the 4-person household.

9 persons – 4 persons = 5 persons

Step 3. Multiply 8 percent by the number of additional people over the 4-person household.

.08 x 5 = .4 (40%)
or
8% x 5 = 40%

Step 4. Add this percentage to 100 percent and convert to a decimal.

40% + 100% = 140%, or 1.4

Step 5. Multiply the decimal percentage (from Step 4) by the HUD-published four-person income limit for the area.

1.40 x $35,600 = $49,840

$49,840 is the low-income limit for a 9-person household.

Note, if the 9-person household will occupy a Low HOME Rent unit, the family's household income cannot exceed the very low-income limit. The owner/ manager follows the same steps using the HUD-published very low-income limit for a family of four.

Attachment 3-2:
Illustration of How to Calculate HOME Rents for Units with More than Six Bedrooms

Scenario: The property manager needs to determine the HOME rent limit for two seven-bedroom units. One unit is a High HOME Rent unit and one unit is a Low HOME Rent unit.

Step 1. Identify the starting points.

- The percentage increase allowed by HUD for each additional bedroom is 15 percent.
- The High HOME rent limit for a 4-bedroom unit in the area is $691.
- The Low HOME rent limit for a 4-bedroom unit in the area is $645.

Step 2. Determine by how many bedrooms the unit exceeds four bedrooms.

7 bedrooms – 4 bedrooms = 3 bedrooms

Step 3. Multiply 15 percent by the number of additional bedrooms over four bedrooms.

15% x 3 = 45%

Step 4. Add this percentage to 100 percent and convert to a decimal.

45% + 100% = 145%, or 1.45

Step 5. Multiply the decimal percentage (from Step 4) times the HUD-published 4-bedroom High HOME rent limit and Low HOME rent limit.

1.45 x $691 = $1001.95 (High HOME Rent)

1.45 x $645 = $935.25 (Low HOME Rent)

Attachment 3-3: Illustration of How to Determine Rents for Units with Tenant-Paid Utilities

To determine the maximum rent that an owner/manager can charge for a HOME-assisted unit, all tenant-paid utilities must be deducted from the applicable HUD-published HOME rent limit.

In this illustration, a tenant of a 2-bedroom High HOME Rent unit in Anywhere USA pays some of its own utilities. The unit has electric heat and cooking, and a gas hot water heater. The tenant is responsible for paying for gas, electricity, and water.

Step 1: Look up the High HOME Rent limit for a 2-bedroom unit:

Anywhere MSA	Eff.	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Low HOME Rent Limit	$827	$866	$1,063	$1,228	$1,370	$1,511	$1,653
High HOME Rent Limit	$995	$1,086	$1,286	$1,500	$1,654	$1,806	$1,959
For Information Only:							
Fair Market Rent (FMR)	$995	$1,134	$1,286	$1,659	$2,171	$2,497	$2822
50% Rent Limit	$827	$866	$1,063	$1,228	$1,370	$1,511	$1653
65% Rent Limit	$1,013	$1,086	$1,306	$1,500	$1,654	$1,806	$1,959

The High HOME Rent limit for a 2-bedroom unit is $1,286.

Step 2: Look up the utility allowance for the utilities that are paid by the tenant:

Utility	0 BR	1 BR	2 BR	3 BR	4 BR	5BR
Heating – Gas	21.31	29.83	38.36	46.88	59.67	68.19
Heating- Elec	25.10	35.14	45.18	55.22	70.28	80.32
Heating- Propane	26.64	37.30	47.96	58.62	74.61	85.26
Heating- Fuel Oil	39.02	54.63	70.24	85.85	109.26	124.87
Cooking- Gas	3.55	4.97	6.39	7.81	9.94	11.37
Cooking- Electric	4.06	5.68	7.31	8.03	11.37	12.99
Cooking- Propane	4.33	6.06	7.79	9.53	12.12	13.86
Hot Water- Gas	9.32	13.05	16.78	20.51	26.11	29.83
Hot Water- Elec	12.55	17.57	22.59	27.61	35.14	40.16
Hot Water- Propane	11.32	15.85	20.38	24.91	31.71	36.24
Hot Water- Fuel Oil	16.58	23.22	29.85	36.48	46.43	53.07
Electricity	12.00	16.79	21.59	26.39	33.59	38.39
Water	3.56	3.56	7.19	11.80	13.56	16.95
Sewer	4.53	4.53	9.15	15.01	17.26	21.57
Air Conditioning	6.64	9.30	11.96	14.62	18.60	21.26

Attachment 3-3: Illustration of How to Determine Rents for Units with Tenant-Paid Utilities *(continued)*

The tenant-paid utilities include:

Electric heat	$45.18
Cooking—Electric	7.31
Electricity	21.59
Hot water—Gas	16.78
Water	7.19
Total Tenant-Paid Utilities	**$98.05**

Step 3: Deduct the tenant-paid utilities from the High HOME Rent limit.

$1286 - $98.05 = $1187.95

The maximum amount of rent that the owner can charge for this unit is $1187.95.

Note: If this unit were to be redesignated as a Low HOME Rent unit in the future, the tenant-paid utilities would be deducted from the Low HOME Rent limit ($1,063) to determine the maximum amount that could be charged for the unit as a Low HOME Rent unit ($1,063 – $98.05 = $964.95).

Attachment 3-4: Calculating Adjusted Household Income for the Purpose of Establishing Rent

Owners/Managers must use a tenant's *adjusted* household income to determine rent when:

1. The PJ requires owners/managers to use the adjusted income option for determining the rent for very low-income tenants of Low HOME Rent units; or.

Section 3.3 discusses this option

2. The income of a tenant occupying a HOME-assisted unit exceeds the low-income limit.

Sections 3.5 and 3.6 discuss over-income tenants occupying HOME-assisted units for properties with fixed and floating HOME units, respectively.

The adjusted income method is used *only* for the purposes of determining rent. It is *never* used for verifying a tenant's annual income for purposes of establishing income-eligibility.

Section 3.2 explains how to determine tenant income-eligibility.

Adjusted household income is determined by subtracting specific deductions, or allowances, from a household's annual gross income.

24 CFR Part 5, Subpart F, establishes the requirements for determining adjusted income.

Adjusted family income is derived by subtracting from a household's annual gross income any of the following five deductions that apply to the household. These deductions are also called allowances.

- **Dependent Deduction.** $480 for each dependent. This includes any of the following family members who are not the head of household or spouse: persons under 18, disabled family members, or full-time students;
- **Child Care Expenses Deduction.** Reasonable child care expenses for children 12 and under during the period for which annual income is computed that enable a family member to work or go to school, if no adult is available in the household to provide child care;
- **Medical Expenses Deduction.** For elderly households only, medical expenses, including medical insurance premiums, in excess of three percent of annual income that are anticipated during the period for which annual income is computed and that are not covered by insurance;
- **Disability Assistance Expenses Deduction.** Reasonable expenses in excess of three percent of annual income for the apparatus and care of a disabled family member that enable that person or another person to work that are anticipated during the period for which annual income is computed; and
- **Elderly or Disabled Household Deduction.** $400 for any elderly family. An elderly family is one where the head of household or spouse is 62 or older or disabled.

Chapter Four of HUD's *Technical Guide for Determining Income and Allowances for the HOME Program Third Edition (HUD-1780-CPD January 2005*), provides detailed guidance on each of these deductions, and how to calculate adjusted income. This guide is available at no cost from Community Connections, at 800-998-9999 as well as online at: http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/1780.cfm

For up-to-date rules and requirements for determining adjusted income, consult 24 CFR Part 5 Subpart F.

Attachment 3-5:
Differences in LIHTC and HOME Rules for Property Management

In general, when a property has both HOME and Low-Income Housing Tax Credit (LIHTC) assistance, 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 program only.
- **Maximum Allowable Rent Determinations.** The owner/manager 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, so if the tenant pays for utilities, the owner/manager must deduct the appropriate utility allowance to determine the rent limit.
  - **Utility Allowances.** LIHTC and HOME may use different utility allowances. The owner/manager must deduct the LIHTC utility allowance from the LIHTC rent limit to determine the maximum allowable LIHTC rent. The owner/manager must deduct the PJ's utility allowance from the HOME rent limits to determine the maximum allowable High HOME Rent and Low HOME Rent. The maximum rent the owner/manager 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 $660, 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.
- **Reductions 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/managers to determine a tenant household's income-eligibility prior to leasing a unit, and both programs require owners/managers to use source documentation to do so.
  - **Definition of Income.** LIHTC requires the use of the Section 8 (Part 5) Program definition of income; the HOME Program permits the PJ to choose the definition of income from three options, including the Part 5 definition. Owners/Managers should request that the PJ permit them to use the Part 5 definition for consistency.
  - **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 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/managers must certify tenants' incomes annually to ensure they continue to be income-eligible in accordance with applicable income limits. Both programs use income 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 annual income. For projects 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 recertification is not required. Therefore, property owners/managers of HOME/LIHTC properties with both LIHTC-assisted and non-assisted units must verify tenant income using source documentation annually (i.e., cannot use the recertification methodology permitted by the HOME regulations). For projects with 100 percent LIHTC units, the PJ can adopt one of HOME's alternative recertification methods.
- **Over-Income Tenants.** During recertification, owners/managers may find that some tenants have become over-income. This means that the income of the household increases to a level above the income limit for each program for that year. For HOME/LIHTC properties, the HOME Program has adopted the LIHTC guidelines for establishing rent for over-income households. Generally, a tenant household is considered "over-income" when its income increases to 140 percent or more of the qualifying income for that unit. (There is some variation state by state in terms of how this situation is handled.) 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/manager 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. Note, the guidance in Sections 3.5 and 3.6 of this guide does not apply to any unit that is counted as both a HOME and LIHTC unit when a tenant's income goes over-income. Guidance on what steps must be taken is provided in HUD's HOME/LIHTC model program guide, expected publication 2009. The availability of this publication will be announced on the HOME Program web page at www.hud.gov/homeprogram/.

- **Affordability (Compliance) Period.** HOME affordability periods are specified in the written agreement between the owner and the PJ. LIHTC compliance periods are specified in the property's allocation agreement with the state, and are specific to each property. The property must comply with HOME rules for the duration of the HOME affordability period, and must comply with LIHTC rules for the duration of the LIHTC compliance period.
- **Property Inspections.** Both programs require the funding agency to inspect the property on a periodic basis. HOME/LIHTC units must comply with HOME's applicable property standards throughout the affordability period. PJs will notify owners of the property inspection schedule.
- **Section 8.** Both the LIHTC and HOME Programs permit the maximum rent to exceed program requirements on units with *project-based* Section 8 rental assistance. (In HOME, this exception applies only for Low HOME Rent units.) Note that the HOME rent limits apply to units occupied by tenants with tenant-based rental assistance.

Attachment 3-6:
Unit Summary Data *(for front of unit file folder)*

Property	Apartment No.

UNIT INFORMATION

Rent for unit	Type of HOME Unit	Is Rent less than or equal to HOME Rent Limit for this unit?	Lease Terms
Year 1: $ _____	High Low	Yes No	Year 1: __/___/_____ - __/___/_____
Year 2: $ _____	High Low	Yes No	Year 2: __/___/_____ - __/___/_____
Year 3: $ _____	High Low	Yes No	Year 3: __/___/_____ - __/___/_____

TENANT INFORMATION

1. Tenant Name	Day Phone
Email Address	Night Phone
Notes:	
2. Tenant Name	Day Phone
Email Address	Night Phone
Notes:	

MAINTENANCE INFORMATION

Work Order No.	Date of Request	Description of Problem	Priority Code	Assigned To	Date Resolved	Follow Up Required?

Attachment 3-7:
Sample Rent and Occupancy Report

Property: _____ Date: _____
Address: _____ Reporting Period: _____

Total Units: _____
Total HOME Units: _____
Low HOME Rent Units: _____
High HOME Rent Units: _____

A	B	C	D	E	F	G	H	I	J	K	L	M
Unit #	**No. of Bedrooms**	**Low or High HOME Rent Unit Designation**	**Tenant Name**	**Household Size**	**Annual (Gross) Income**	**Low- or Very Low-Income (L or VL)**	**Date of Last Income Re-Examination**	**Low or High HOME Rent**	**Utility Allowance**	**Maximum Actual Rent (H-I)**	**Unit in Compliance? (Y or N)**	**Comments**
Example	2	L	J. Doe	3	$14,000	VL	1/97	$450	$75	$375	Y	

Chapter 4: Finding and Keeping Tenants

4.1. Overview

Owners and managers must comply with requirements that help ensure that all households have fair and equal access to HOME-assisted housing and that tenants are treated fairly and equitably. This chapter reviews the nondiscrimination, affirmative marketing, and tenant selection requirements of the HOME Program. It identifies lease provisions and prohibited lease terms that protect tenants' rights.

4.2. Marketing

Owners/Managers of HOME-assisted rental housing must conduct marketing and advertising activities in accordance with applicable fair housing laws and HOME affirmative marketing requirements. These requirements ensure that all eligible applicants have an equal opportunity to rent HOME-assisted units; and provide maximum opportunity to persons with disabilities to rent the property's accessible units, if any.

Summary of HOME Requirements:
Marketing

Owners/Managers must comply with all **fair housing laws**, which prohibit discrimination in housing based on a person's race, color, religion, sex, familial status, national origin, age, or disability.

Owners/Managers of properties with five or more HOME-assisted units must also follow **affirmative marketing procedures** to conduct special outreach to those groups least likely to apply for the HOME-assisted housing. The PJ develops the affirmative marketing procedures.

Owners/Managers must offer **accessible units** in the property to persons with disabilities first.

A. Nondiscrimination in Housing

For more information on fair housing laws, see *HOME Cross-Cutting Federal Requirements* or the HOME model program guide *Fair Housing for HOME Program Participants*. Both resources are available on HUD's HOME Program web page at www.hud.gov/homeprogram.

1. What Are the Federal Fair Housing (Nondiscrimination) Laws?

Federal fair housing laws prohibit discrimination in housing based on a person's race, color, religion, sex, familial status, national origin, age, or disability.

2. What Actions Are Covered by the Federal Fair Housing Laws?

Federal fair housing laws prohibit discrimination in all housing, housing-related activities and transactions, and housing programs regardless of whether or not the housing receives Federal financial assistance. Owners and managers cannot discriminate in the rental of units, in establishing terms and conditions of property rentals, or in advertising the availability of rental housing units.

3. Do States and Local Governments Have Fair Housing Laws?

Yes, many states and local jurisdictions have fair housing and other civil rights laws. Owners and managers who need information about state and local fair housing laws should contact the PJ.

B. Affirmative Marketing

1. What Is a Marketing Plan?

In a marketing plan, owners and managers identify:

- Who is most likely to live in the building (target audience);
- The property's assets that are likely to attract the target audience; and
- Methods to notify the target audience of the availability of units (such as advertising or housing fairs).

2. What Is an Affirmative Marketing Plan?

An affirmative marketing plan fits into the property's overall marketing plan to ensure that the property serves a diverse cross-section of the population in the market area. The affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area that might not otherwise apply without special outreach. Affirmative marketing ensures that HOME-assisted housing is available to qualified applicants without regard race, color, national origin, sex, religion, familial status, or disability.

3. What Affirmative Marketing Steps Must the Owner/Manager Take?

For properties with five or more HOME-assisted units, the PJ must develop affirmative marketing procedures that clearly state what actions owners/managers must take to provide information to, and otherwise attract, eligible persons in the housing market who are unlikely to apply without special outreach. The extent of the affirmative marketing activities typically vary depending on the size of the property.

In general, the PJ's affirmative marketing procedures should specify where, when, and how unit availability should be marketed and advertised. In some market areas, PJs may require that outreach literature be made available in other languages as well.

4. Can the Owner/Manager of Several HOME Properties Use the Same Affirmative Marketing Procedures for All Properties?

Probably not. The PJ must identify what affirmative marketing steps apply on a project-by-project basis. It is expected that these steps will vary from neighborhood to neighborhood. If the property owner does not have a copy of the PJ's affirmative marketing procedures for a property, the owner should contact the PJ.

5. What Are the Owner's Reporting Requirements Related to Affirmative Marketing?

Although the HOME Program does not impose specific affirmative marketing reporting requirements, it does require the PJ to evaluate the success of its affirmative marketing actions every year. Therefore, the PJ may require owners and managers to retain certain records or submit certain reports so it can evaluate its results. The PJ's reporting requirements are found in the written agreement between the PJ and the owner.

6. What Happens If the Affirmative Marketing Efforts Are Not Successful?

If the PJ determines the affirmative marketing requirements are not met, or anticipated results are not achieved, the PJ may take corrective actions. These actions may result in changes in the PJ's affirmative marketing procedures. The PJ is responsible for communicating these changes to the owner.

C. Marketing Accessible Units

1. If the HOME Property Has Accessible Units, What Requirements Apply?

Owners/Managers of properties with accessible units must develop procedures so that information regarding the availability of accessible units reaches eligible persons with disabilities. Reasonable, nondiscriminatory steps must also be taken to make sure that accessible units that become available are offered first to persons with disabilities who require the accessibility features.

HOME-assisted properties are subject to the requirements of Section 504 of the Rehabilitation Act of 1973. Section 504 imposes requirements to ensure that "qualified individuals with disabilities" have access to programs and activities that receive Federal funds. The requirements outlined in this section that relate to marketing accessible units are based on this Act. See the implementing regulations at 24 CFR 8.27.

Accessible units must be maintained in accordance with the Uniform Federal Accessibility Standard (UFAS). This standard is discussed in Chapter 5, Section 5.4.

For additional information about providing housing in accordance with laws that protect persons with disabilities, see HUD's Office of Fair Housing and Equal Opportunity web page at http://www.hud.gov/offices/fheo/disabilities/sect504.cfm

2. Are There Steps an Owner Must Take to Market Accessible Units?

Owners/Managers must take the following steps when an accessible unit becomes vacant, regardless of the status of the waiting list:

- First, the unit must be offered to a current occupant of the property who might require or benefit from the accessibility feature(s) of the unit;
- Second, the unit must be offered to an eligible, qualified applicant on the waiting list who requires the accessibility feature(s) of the unit; and
- Last, the unit can be offered to a non-disabled person on the waiting list.

3. Are Accessible Units Always Designated as HOME Units?

Not necessarily. In rental properties that are comprised of both assisted and non-assisted units, the PJ determines if the accessible units are designated as HOME-assisted or not and tells the owner. This is true whether the property has fixed or floating HOME units.

If the property has floating HOME units, it is expected that the accessible units will float in and out of the HOME inventory as will the non-accessible units.

4. What Happens If the Owner/Manager Cannot Find a Qualified Applicant with a Disability to Occupy an Accessible Unit?

An accessible unit may be rented to a non-disabled tenant, after the owner/manager has made all reasonable efforts to attract a tenant with a disability, and has followed the steps outlined in Section 4.2C, Question 2 above.

HUD strongly encourages owners to include a special provision in their tenant leases when a non-disabled tenant occupies an accessible unit. This lease provision would state that if a family that requires the accessible feature(s) of the unit applies for occupancy, and is eligible for the accessible unit, the non-disabled tenant would move to a comparable non-accessible unit.

4.3. Tenant Relations

Owners and managers of HOME-assisted properties must treat applicants and tenants fairly and equitably. HOME requires that owners/managers establish and follow standard tenant selection procedures, use leases that protect tenants' rights, and have established procedures to resolve conflicts with tenants. In addition, when community housing development organizations (CHDOs) own and manage HOME-assisted properties, the CHDO must have a plan in place that ensures a certain level of tenant participation in property operations.

Summary of HOME Requirements:
Tenant Relations

Owners must develop tenant selection policies and criteria that ensure that all applicants and tenants are treated fairly and equitably.

The HOME Program protects tenant rights in a number of ways:

1. Every tenant must have a **written lease**;
2. The **lease term** must be for at least twelve (12) months, unless otherwise approved by the PJ;
3. The lease term may never be for less than 30 days;
4. Certain **lease clauses are prohibited**;
5. The PJ must approve all leases; and
6. The owner must establish **dispute resolution procedures** for settling disagreements with tenants.

For properties that are owned, developed, or sponsored by community housing development organizations (CHDOs), the property must also have a **tenant participation plan** to ensure that tenants are involved in the management and decision-making of the property and **fair lease and grievance procedures**.

A. Tenant Selection Procedures

1. What Are Tenant Selection Procedures?

Refer to 24 CFR 92.253(d) for HOME tenant selection requirements.

Tenant selection procedures describe the methods and procedures for taking applications and screening tenants at the property. A clear intake process and an applicant screening plan are essential to rental program operations.

2. Who Develops the Tenant Selection Procedures?

Owners must develop and adopt written tenant selection policies and criteria, unless otherwise specified by the PJ. If needed, owners should contact the PJ for guidance.

3. What Is Included in the Tenant Selection Procedures?

Tenant selection procedures should be consistent with the purpose of providing housing for low-income and very low-income families, and be reasonably related to HOME Program eligibility and the tenant's ability to perform the obligations of the lease.

Exhibit 4-1, below, provides guidelines for developing fair tenant selection procedures.

Exhibit 4-1: Guidelines for Fair Tenant Selection Procedures

Owners and managers can use these guidelines to develop fair tenant selection procedures:

- Tenant selection procedures should specify the criteria that will be used to select tenants.
  - Tenants should be selected based on *objective* criteria. These criteria should be related solely to program qualification and the tenant's ability to pay the rent and abide by the terms of the lease, such as household income, housing history, credit history, and/or lack of criminal record. Property owners/managers must apply selection criteria consistently to all applicants, in accordance with fair housing laws.
  - Tenant selection criteria should expressly prohibit bias in the selection process. This includes prohibiting discrimination and 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 only when the PJ has so directed. See Question 4 of this section for more information.
- Tenant selection procedures must state that owners/managers will provide a written explanation of the grounds for rejection to all rejected applicants. This notice must be made promptly.
- The tenant selection procedures should specify that there is a waiting list, and describe how it will be maintained. Owners/Managers must select tenants in the chronological order of application, to the extent practicable.
- The tenant selection procedures should describe the HOME requirements that impact 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;
  - Marketing strategy for accessible units;
  - Tenant selection records that must be maintained; and
  - CHDO tenant participation plan, if applicable.

4. Can Owners/Managers Give Preference to Tenants with Special Needs?

Yes, but owners/managers may only give preference to persons with special needs (such as the elderly, homeless, or persons with disabilities) *if* the PJ has authorized them to do so. Although HOME funds can be invested in housing for persons with disabilities, civil rights laws (which confer certain protections on persons with disabilities) in most cases prohibit owners from discriminating based upon the *nature of* a disability. Consequently, in most cases, HOME-assisted housing for persons with disabilities must be equally available to all persons with disabilities. Owners/Managers may offer and advertise non-mandatory services that may be appropriate for persons with a particular special need or disability.

If the PJ directs an owner to give preference to persons with special needs, then this *must* be included in the PJ's written agreement with the owner. The owner should explain this preference in its tenant selection procedures.

Sample Tenant Selection Strategies

Most properties use either a first-come, first-served procedure, or a lottery system for selecting among otherwise qualified applicants. These strategies ensure that tenant selection is fair and equitable.

- **First-come, first-served**. Qualified applicants are selected on a first-come, first-served basis. To ensure fairness, the date and time of application should be stamped on the application by the intake staff. The owner/manager's policy should include a definition of when an application has been "received," clarifying whether a partial application is received, or if the application must be complete to be counted as received.
- **Lottery**. Sometimes demand for a program is so great (particularly at initial lease-up) that the owner/manager may elect to select tenant applicants by lottery. To the extent that all applicants are eligible, this process is as fair and open as necessary.

B. Tenant Protections

1. How Are Tenant Rights Protected in the HOME Program?

Owners must execute leases that are fair and protect tenants' rights. HOME specifies certain lease terms (including length of lease) and prohibits certain lease clauses. In addition, the PJ must approve a property's lease and specific HOME rents prior to lease execution.

Attachment 4-1, *Checklist on HOME Lease Requirements*, is a checklist that owners can use to be sure that their leases conform to the HOME requirements. It is located at the end of this chapter.

2. Are Leases Required?

Yes. Tenants of HOME-assisted units must be protected by a written lease. Note that program service agreements and personal responsibility agreements are *not* leases.

3. What Is the Required Term of a HOME Lease?

Leases must be executed for at least one year, unless the owner/manager and the tenant mutually agree to a shorter period. If the tenant has agreed to a different lease term, that agreement should be noted in writing in the tenant's file. A lease may *not* be for a period less than 30 days.

4. Must HOME Rents Be Specified in the Lease?

HOME rent requirements are described in Chapter 3, Section 3.3.

Yes. Owners and managers must make sure that leases specify the initial allowable HOME rents. The lease must also clearly state that the owner/manager reserves the right to adjust tenant rents, based on changes in the HOME rent limits, or in the event a tenant's income increases above the low- or very low-income limits, for the type of unit the tenant occupies (High HOME Rent or Low HOME Rent).

5. Are There Any Other Required Provisions in the Lease?

See Chapter 5, Section 5.3A for more information on the lead-based paint requirements.

For properties that were built before 1978, the lease must include a Lead Warning Statement.

6. Does the Lease Need the PJ's Approval?

Yes. Before executing *any* lease with a tenant, the owner must get approval from the PJ for the lease and for the established rents for that unit type and bedroom size.

7. What Lease Provisions Are Prohibited for HOME Properties?

More detailed information about these prohibited clauses can be found at 24 CFR 92.253(b).

The following clauses may *not* be included in a lease for a HOME-assisted unit:

- **Agreement to be sued**. Agreement by the tenant to be sued, admit guilt, or consent to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
- **Agreement regarding seizure of property**. Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition does not apply to an agreement by the tenant concerning disposition of personal property remaining in the unit after the tenant has moved out. The owner may dispose of personal property in accordance with state law.
- **Agreement excusing the owner from responsibility**. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for actions or failure to act, whether intentional or negligent.

- **Waiver of notice**. Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant.
- **Waiver of legal proceedings**. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense or before a court decision on the rights of the parties.
- **Waiver of a jury trial**. Agreement by the tenant to waive any right to a jury trial.
- **Waiver of right to appeal a court decision**. Agreement by the tenant to waive the tenant's right to appeal or otherwise challenge in court a decision in connection with the lease.
- **Agreement to pay legal costs, regardless of outcome**. Agreement by the tenant to pay attorney fees or other legal costs even if the tenant wins the court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

8. Can an Owner/Manager Terminate Tenancy or Refuse to Renew a Lease?

Yes, but owners/managers can only terminate the tenancy or refuse to renew the lease of a tenant of a HOME-assisted unit for *good cause*. Good cause includes:

- Serious or repeated violation of the terms and conditions of the lease;
- Violation of applicable Federal, state, or local law(s);
- Completion of the tenancy period for transitional housing; or
- Other good cause. It is a good business practice for the lease to clearly state the bases for "good cause."

9. Can the Owner/Manager Refuse to Renew a Lease When a Tenant's Income Exceeds the HOME Income Limits?

Chapter 3 describes steps an owner must take when a tenant becomes over-income.

No. An increase in tenant income is *not* considered good cause and an owner/manager cannot terminate or refuse to renew a lease on these grounds.

10. What Steps Must the Owner Take When Good Cause To Terminate Tenancy Exists?

When good cause to terminate or refuse to renew tenancy exists, the owner must:

- Notify the tenant in writing, at least 30 days before the termination of tenancy. This notice must specify the grounds for the termination or refusal to renew the lease.
- Document the property files with a justification for terminating the lease and a copy of the 30-day written notice to the tenant.

11. Are There Any Other Applicable Laws the Owner/Manager Should Know About?

Yes. In addition to the HOME requirements, tenant leases must also comply with state or local tenant-landlord laws. Owners and property managers who need more guidance about laws that apply in their jurisdictions should contact the PJ, a state/local organization with this expertise, or legal counsel for more information.

C. Dispute Resolution

1. What Dispute Resolution Procedures Are Required by HOME?

Owners and managers of HOME-assisted rental properties should have written procedures in place to address:

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

In most instances, an owner/manager is not able to adjudicate matters of dispute between households. The owner/manager may, however, act as the first intermediary under limited circumstances, such as when one tenant complains about noise coming from another tenant's unit. However, owners/managers should have a practical, equitable way of dealing with tenant complaints about property management staff or property operations. Such dispute resolution procedures must be impartial and will often require the involvement of a neutral third party.

D. Tenant Relations in CHDO Projects

1. What Special Requirements Apply to Properties Developed by a CHDO?

The requirements outlined in this section can be found at 24 CFR 92.303.

Owners/Managers of housing that is owned, developed, or sponsored by a CHDO must:

- Establish and implement a plan for tenant participation in management decisions, and
- Establish a fair lease and grievance procedure that is approved by the PJ.

2. How Can Tenants Participate in Management Decisions?

Tenant participation in management decisions can be achieved in a number of ways. Two common options are:

- A tenant association that acts as a formal body to provide input for project management; or
- A tenant-elected representative who acts as a liaison with management.

4.4. Record-Keeping and Reporting

Most PJs require owners/managers to retain records that document the marketing and leasing activities, and tenant files that include copies of the tenant leases. These documents demonstrate the property's compliance with HOME's rules to protect tenant rights and ensure nondiscrimination in property management activities.

Summary of HOME Requirements:
Record-Keeping and Reporting

Owners must retain records that demonstrate compliance with the tenant rights provisions. Most PJs require owners to retain records that show the property's:

- Marketing activities;
- Tenant selection policy and criteria; and
- Leasing activities, including application process, waiting list procedures, and leasing.

A. Documenting Compliance in Tenant Relations Requirements

1. What Kind of Record-Keeping and Reporting Is Required on Tenant Relations Activities?

Owners must be able to demonstrate to the PJ that they are in compliance with the HOME affirmative marketing, tenant rights, and tenant selection requirements.

2. What Questions Will a PJ Ask of an Owner When Monitoring?

PJs monitor for compliance with the marketing and tenant protections requirements, and will address these key questions:

- Are the owner's/manager's marketing activities consistent with the PJ's affirmative marketing plan?
  - Useful records for documenting these activities include copies of media and marketing materials, and/or advertisements; and records of marketing activities.
- Does the owner/manager have written tenant selection procedures?
- Are the tenant selection procedures clear and easy to understand? Do they explain the HOME rent and occupancy requirements and affirmative marketing requirements?
- Is the owner/manager using a waiting list to select tenants in the order in which they applied? Is the property's waiting list maintained accurately and updated continuously?
  - Records to document compliance include all tenant applications, including applicants who have been rejected, and applicable correspondence related to tenant selection and rejection.
- Is the owner/manager using a lease that is for twelve months or greater? Does the lease contain any prohibited lease provisions?
  - All tenant files should contain a copy of the signed lease used by the property owner/manager for each HOME tenant.

Attachment 4-1:
Checklist of HOME Lease Requirements

Required Lease Provisions

Owners must be sure that the following provisions *are* included in a lease for a HOME-assisted unit:

Yes / No	Required Provision	Description
	Income Eligibility/Annual Income Recertification	• Owner retains right to recertify the tenant's HOME income-eligibility on an annual basis. The tenant's failure to cooperate in the income recertification process constitutes a violation of the lease. • Deliberately providing false information can result in termination of the lease.
	HOME Rent Restrictions/Rent Increases	• Rents are subject to the rent restrictions of the HOME Program. Owner retains right to adjust rents, in accordance with the HOME Rent limits. The rents for tenants whose incomes go over the HOME rent limits for the units they occupy (High or Low HOME Rent units) will be increased. • Terms for rent increases (i.e., how frequently rent can be increased; when increases can be made; how much written notice must tenant receive).
	Lease Renewal	• Owner may choose not to renew a tenant's lease for good cause, and definition of good cause. • Owner must give the tenant a written notice at least 30 days before the tenant must vacate the unit.
	Lease Term	• The lease term for a HOME-assisted unit must be for at least one year, unless the tenant and the owner mutually agree upon a shorter term.
	Annual Unit Inspection	• Owner retains the right to inspect, and to permit the PJ and HUD to inspect, HOME-assisted units during the affordability period. State or local law may establish how much notice the tenant must be given for inspections.
	Accessible Units	• Owners may choose to include a provision in the lease of a tenant that occupies, but does not have need for, an accessible unit. This provision would give the owner the right to ask the tenant to move into a comparable non-accessible unit, should the accessible unit be needed by a person with a disability.
	Lead Warning Statement, for properties built prior to 1978	• Confirm that the owner has complied with lead-based paint notification requirements.

Prohibited Lease Provisions

Owners must be sure that the following provisions *are not* included in a lease for a HOME-assisted unit. These provisions are prohibited by the HOME regulations at § 92.253:

Yes / No	Prohibited Provisions	Description
	Agreement to be sued	• Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
	Agreement regarding seizure of property	• Agreement by the tenant that the owner may seize or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This provision does not apply to disposition of personal property left by a tenant who has vacated a property.
	Excusing owner from responsibility	• Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent.
	Waiver of notice	• Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant.
	Waiver of legal proceedings	• Agreement of 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.
	Waiver of a jury trial	• Agreement by the tenant to waive any right to a trial by jury.
	Waiver of right to appeal court decision	• Agreement by the tenant to waive the tenant's right to appeal or to otherwise challenge in court a court decision in connection with the lease.
	Agreement to pay legal costs, regardless of outcome	• Agreement by the tenant to pay attorney's fees or other legal costs, even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

Chapter 5: Maintaining the Physical Asset

5.1. Overview

This chapter discusses the importance of maintaining HOME-assisted property as decent, safe, and sanitary housing. It reviews the requirements for ensuring that properties comply with property standards, including the lead-based paint rules, and the requirements for providing reasonable accommodations to persons with disabilities. It further discusses good business practices to maintain the physical asset.

5.2. HOME Property Standards

HOME-assisted rental properties must meet the HOME property standards, including the control and abatement of lead-based paint. A HOME-assisted rental property must comply with applicable standards for the entire affordability period, regardless of who manages the property, when the HOME-assistance is repaid, and/or whether the property's ownership is transferred.

Lead-based paint requirements are discussed in the following section of this chapter, Section 5.3.

Summary of HOME Requirements:
Property Standards

The HOME Program establishes **minimum property standards** by HOME activity (new construction, acquisition, or rehabilitation). These standards must be met for the duration of the affordability period.

1. What Are the HOME Program Minimum Property Standards?

The HOME minimum property standards depend on the type of HOME activity, as specified in Exhibit 5-1.

Exhibit 5-1: Minimum Property Standards by Activity Type

Activity	Minimum Property Standard to Be Met
Acquisition of existing rental housing (no rehabilitation or construction)	• Applicable state or local housing quality standards and code requirements. • If no local standards/codes apply, Section 8 Housing Quality Standards apply.
Rehabilitation of rental housing	Local written rehabilitation standards. *AND* State and local code requirements. If no local codes apply, one of the following national model codes apply: • Uniform Building Code (ICBO) • National Building Code (BOCA) • Standard Building Code (SBCCI) *OR* • Council of American Building Officials one- or two-family code (CABO) *OR* • Minimum Property Standards* at 24 CFR 200.925 or 200.926 (FHA). *AND* Uniform Federal Accessibility Standard for accessible units, as applicable.
New construction of rental housing	State and local code requirements. If no state and local codes apply, one of the following national model codes apply: • Uniform Building Code (ICBO) • National Building Code (BOCA) • Standard Building Code (SBCCI) *OR* • Council of American Building Officials one- or two-family code (CABO) *OR* • Minimum Property Standards (FHA) at 24 CFR 200.925 (for multi-family) or 200.926 (for one- and two-unit dwellings). *AND* • International Energy Conservation Code *AND* • Uniform Federal Accessibility Standard for accessible units, as applicable.

Since the promulgation of the HOME Program regulations, the code issuing agencies have merged to form the International Code Council (ICC). The model codes used for the HOME Program are no longer being updated. In their stead, the ICC has issued the International Building Code. HUD will consider whether changes to the HOME regulations incorporating the International Building Code are appropriate.

The Model Energy Code, published by CABO and cited at 24 CFR 92.251(a)(1), was renamed/replaced by the International Energy Conservation Code (IECC) issued by the ICC. HUD has adopted the use of the IECC.

The HOME Program web page provides updated information on all HOME requirements. See http://www.hud.gov/offices/homeprogram. For more information about the International Building Code, see www.iccsafe.org.

2. Can the PJ Adopt More Stringent Property Standards than Those Required by the HOME Program?

The PJ can adopt local property standards in addition to those required by HOME Program rules. The PJ is responsible for communicating those additional standards to the owner. The written agreement between the PJ and the owner should specify all applicable property standards and codes.

3. What Happens If the Property Standards Change during the Period of Affordability?

The PJ must communicate any changes in the property standard to the owner and describe if and how the new standards apply to the property.

4. When Must HOME Properties Meet the Property Standards?

HOME-assisted rental housing must meet the required property standards at the time of project completion. The property must be maintained in accordance with applicable housing quality standards throughout the period of affordability.

5. What Happens If an Owner Fails to Maintain the Property in Accordance with the Property Standards?

The PJ will require the owner to take actions to correct any property deficiencies it identifies that occur during the affordability period, to bring the property up to applicable codes or standards. If the deficiencies are serious or result from serious property management concerns, the PJ may intervene in other ways as well, such as requiring the owner to replace the property manager or repay the HOME investment.

6. Are HOME Funds Available to Pay for Maintenance and Repairs to Keep the Property Up to the Applicable Standards?

It is the owner's responsibility to budget for operating and replacement reserves so that funds are available for maintenance and major systems repairs that are needed during the affordability period. A PJ may *not* provide additional HOME funds to a HOME-assisted property during the affordability period, after the initial twelve months following project completion.

7. How Does the PJ Ensure that the Property Meets Property Standards During the Affordability Period?

PJs are required to inspect all HOME-assisted rental properties and units on a periodic basis to ensure that they meet the applicable housing quality standards and requirements.

Chapter 6 discusses property inspections in more detail. Exhibit 6-1 of that chapter specifies the PJ's minimum inspection schedule.

Owners should also conduct routine property inspections. Keeping records of these inspections will facilitate the PJ's review when the PJ inspects the property.

5.3. Ensuring Compliance with Ongoing Lead-Based Paint Requirements

Owners/Managers must incorporate lead disclosure and ongoing lead-based paint maintenance activities into regular building operations, for buildings built before 1978.

Summary of HOME Requirements: Lead-Based Paint Rules

Owners/Managers must comply with rules related to controlling or abating the hazards of lead-based paint. In properties that were constructed prior to 1978, the rules require:

- Certain **disclosures** to applicants and tenants about any known or potential lead-based paint hazards; and
- **Ongoing maintenance** to monitor controls put in place to limit the hazards associated with the presence of lead-based paint.

A. Disclosure

1. What Are the Lead-Based Paint Disclosure Requirements?

Prior to leasing a unit, owners/managers of pre-1978 rental properties must:

- Provide prospective tenants the lead hazard information pamphlet, *Protect Your Family from Lead in Your Home*.
- Disclose any known lead or lead hazards in the property, including the location of lead-based paint and/or lead hazards, and the condition of the painted surfaces.
- Provide to the prospective tenant any records and reports available to the owner on lead-based paint and/or lead-based paint hazards, including records and reports concerning common areas and other units, when such information is obtained as a result of a building-wide evaluation; and
- Attach to the lease, or insert language in the lease, that includes a Lead Warning Statement and confirms that the owner has complied with all notification requirements. If an attachment is used, owners and tenants must sign and date the attachment.

The applicable lead-based paint requirements are found at 24 CFR Part 35, Subpart A. This rule implements Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as "Title X."

To learn more about lead-based paint requirements, refer to the online training on HUD's web page *Lead Safe Housing Rule* at http://www.hud.gov/offices/cpd/affordablehousing/training/web/leadsafe/ or see HUD's Office of Healthy Homes and Lead Hazard Control web page at www.hud.gov/offices/lead.

The pamphlet, *Protect Your Family from Lead in Your House,* is issued by the U.S. Environmental Protection Agency and is available from the PJ, or online at http://www.hud.gov/offices/lead/healthyhomes/lead.cfm.

A sample disclosure form can be found at http://www.hud.gov/offices/lead/enforcement/disclosure.cfm.

2. Can Occupancy Be Denied to Families with Children If a Property May Have Lead-Based Paint?

No. This would be a violation of fair housing laws, which prohibit discrimination against families with children.

B. Ongoing Maintenance

1. What Are the Ongoing Maintenance Requirements Related to Lead-Based Paint?

Owners/Managers of HOME-assisted properties that were constructed prior to 1978 are required to conduct ongoing lead-based paint maintenance if interim controls were used in the property. Ongoing maintenance involves:

- **Visual Assessment** of the unit that identifies deteriorating paint or failed hazard reduction measures. Visual assessments must be conducted by people trained in visual assessment.

HUD offers a one-hour online training for visual assessment, available at: http://www.hud.gov/offices/lead/training/training_curricula.cfm.

- **Lead Hazard Reduction**. Any deteriorated paint or failed hazard reduction measures must be addressed by workers trained in lead-safe work practices.

For information on training in lead-safe work practices, see http://www.hud.gov/offices/lead/training/index.cfm.

- **Clearance** involves dust sampling to ensure that no dangerous dust hazards were created by any rehabilitation or maintenance work at the property or in the unit. After work is complete, it must pass clearance. Clearance must be conducted by a certified risk assessor, paint inspector, or lead sampling technician.
- **Notification** of tenants of any work done with a *Notice of Lead Hazard Reduction*.

For a sample notice, *Notice of Lead Hazard Reduction*, see http://www.hud.gov/offices/cpd/affordablehousing/training/web/leadsafe/keyrequirements/reducsample.pdf.

- **Record-Keeping**. Records of inspections, repairs, lead hazard reduction, clearance, and notification activities must be kept for at least three years after the activities cease. HUD recommends that the records be kept indefinitely.

5.4. Accessible Units for Persons with Disabilities

See Chapter 4, Section 4.2 for a discussion of fair housing laws.

Owners/Managers of HOME-assisted rental properties are subject to several laws that ensure nondiscrimination in housing and require accessibility for persons with disabilities.

Summary of HOME Requirements:
Accessible Units for Persons with Disabilities

Persons with disabilities must be afforded **equal access to, or enjoyment of,** HOME-assisted housing. This means owners may have to modify rules, policies, or practices in order to accommodate the needs of a tenant or applicant with disabilities.

Accessible units in a HOME-assisted property must conform to the **Uniform Federal Accessibility Standards (UFAS)** throughout the affordability period.

A. Maintaining Accessible Units

1. When Does the Fair Housing Act Require a Housing Provider to Treat Persons with Disabilities Differently than Other Applicants/ Tenants?

Chapter 4 discusses specific steps that owners/managers must take to make accessible units available to persons with disabilities first.

For more information about UFAS, refer to the Uniform Federal Accessibility Standards at http://www.access-board.gov/ufas/ufas-html/ufas.htm

For more information about fair housing requirements, see HUD's fair housing web page at http://www.hud.gov/offices/fheo/FHLaws/index.cfm.

In general, the Fair Housing Act requires applicants to be treated equally. In limited circumstances, the Act requires a housing provider to treat persons with disabilities differently-- when doing so will enable the person with a disability to have equal access to, or enjoyment of, HOME-assisted housing. Housing providers must provide "reasonable accommodations" to persons with disabilities. This means an owner may have to modify rules, policies, practices, procedures, and/or services to afford a person with a disability an equal opportunity to use and enjoy the housing.

2. Do Owners/Managers Have Special Obligations Related to Maintaining Accessible Units in Their Properties?

Generally, newly constructed and substantially rehabilitated property with five or more units that is Federally-assisted must have a certain number of units that are accessible to persons with mobility disabilities, and for persons with sensory impairments. This is determined before construction begins.

Yes. Some HOME-assisted properties have units that are designed and constructed to be accessible to persons with mobility and/or sensory impairments. These units are constructed to meet the requirements of the Uniform Federal Accessibility Standards (UFAS). Owners must maintain these units to the UFAS standard throughout the period of affordability.

5.5. Managing the Physical Aspects of the Property

Maintaining the physical condition of their properties helps owners retain the value in their investments. The owner's management plan should address issues of routine maintenance, security for tenants and the property, and long-term improvements. If the condition of the property declines, so will its value. Once a property declines, it becomes increasingly difficult to attract tenants.

HUD's model program guide, *Asset Management: Strategies for the Successful Operation of Affordable Rental Housing* (HUD-2018-CPD, May 2000) provides guidance on managing these aspects of HOME-assisted properties. This guide can be ordered at no cost from Community Connections, at 1-800-998-9999.

Summary of HOME Requirements:
Managing the Physical Asset

Owners should monitor their properties to ensure that they are maintained in accordance with applicable property standards. Although not specifically required by the HOME Program, effective property management systems include provisions for routine and preventive maintenance, property security, work order systems, and capital repairs and improvements.

A. Routine and Preventive Maintenance

1. How Can Owners/Managers Minimize Problems with Property Decline?

Owners/Managers should have a system in place for conducting routine preventive maintenance on their HOME-assisted properties. The property should have a schedule to address preventive maintenance tasks on a regular, seasonal, or annual basis. It is important that routine maintenance problems are addressed in order of priority and as expeditiously as possible. Deferred maintenance can lead to more costly repairs in the future.

2. What Are the Early Warning Signs of Property Decline?

Warning signs that property standards are not being met include:

- Increasing tenant complaints;
- High vacancy;
- Frequent tenant turnover;
- Deferred maintenance or repair items;
- Increasing crime; and
- Code violations.

B. Property Security

1. Why Is Good Security Important to the Property?

Adequate security measures protect the safety of the tenants and the property.

2. What Can the Owner/Manager Do to Enhance Security at the Property?

Security steps might include:

- Maintain doors, windows, locks, and building entry systems;
- Provide and maintain adequate lighting;
- Maintain the integrity of fences and barriers; and
- Minimize landscaping and structural attributes that block visibility to and from exterior doorways and provide hiding places for unwanted visitors.

C. Work Order Systems

1. Why Is an Effective Work Order System Important?

A work order system identifies and tracks the work requests that are brought to the property manager's attention. The system must distinguish requests that are urgent from those that are routine, and must ensure that all legitimate work requests are filled in a timely manner.

2. What Information in the Work Order System Should the Property Manager Track?

Useful forms to help property managers receive and manage work order requests are available online, at the Consortium for Housing and Asset Management's web page, www.cham.org.

The work order system should record:

- Who requested the work to be done;
- Location of the problem;
- Nature of the problem;
- Who is assigned to complete the work;
- What was done to solve the problem;
- Time it took for the problem to be resolved; and
- Cost of materials used in making the repair.

D. Capital Repairs and Improvements

1. Why Should Owners/ Managers Plan for Capital Repairs and Improvements?

Effective budgeting for capital repairs and improvements is critical to ensure that all of the property's capital needs are addressed on a timely basis. Adequate and timely attention to capital repairs ensures the property's long-term physical viability. By calculating the estimated useful life of all the property's systems and equipment, owners/managers can determine the amount of funds that must be deposited in the property's replacement reserve account.

2. What Does Capital Needs Planning Entail?

At a minimum of every three years, but more frequently if practicable, the property manager should:

- Compile or review a list of all of the property's building components/systems;
- Identify the item's or system's installation or replacement date;
- Determine the estimated useful life of the item or system;
- Estimate the cost to replace the item in today's dollars; and
- Determine the cost of replacing the item at the estimated replacement date.

3. Can HOME Funds Be Used to Fund the Capital Reserve Account?

HOME funds cannot be used to fund any project reserve account other than an initial operating deficit reserve. Unused funds from an initial operating deficit reserve account may be retained for other project reserves, however, if permitted by the PJ.

See Section 5.5E, Question 2 below for more information on initial operating deficit reserves.

E. Operating Deficit Reserves

1. Why Is an Initial Operating Deficit Reserve Important?

- An initial operating deficit reserve is used to meet any shortfall in the property during the rent-up period, when revenues are unpredictable, but costs are steady.

2. Can HOME Funds Be Used to Fund the Operating Deficit Reserve?

HOME funds can be used to cover the cost of funding a rental housing property's *initial* operating deficit reserve for new construction and rehabilitation projects during the property's rent-up period. The reserve cannot exceed 18 months and can only be used for project operating expenses, scheduled payments to replacement reserve accounts, and the property's debt service. At the end of the 18-month period, any remaining balance can be retained and converted to a replacement reserve, if permitted by the PJ.

5.6. Property Insurance

Property insurance is not required by the HOME Program, but it is often required by the lender and/or the PJ. Carrying property insurance is a good business practice.

The PJ expects the property owner to have a plan in place to minimize risks to the property, and to keep tenants safe from crime, health hazards, and injuries.

Summary of HOME Requirements:
Property Insurance

Although insurance is not required by the HOME Program, owners are encouraged to take precautions to minimize the risks to tenants residing in their properties and to the property. Insurance is one way to minimize these risks.

A. Minimizing Risk with Insurance

1. What Types of Risks Might an Owner, Lender, or PJ Be Concerned About?

Generally, there are two types of risks of concern to owners, lenders, and PJs:

- Hazards that pose a danger to the property structure; and
- Hazards that pose a danger to individuals. The property owner may be liable for certain injuries sustained by tenants and their guests.

2. How Can the Owner Protect Against Hazards to the Property or the Tenants?

The property owner and/or manager should regularly inspect the property for possible hazards. Maintenance staff should address hazards promptly.

Owners can also secure insurance to help guard against losses. The management plan should state the type and amount of insurance to be kept in effect for properties. If required, proof of property insurance should be in each file.

3. What Kinds of Insurance Are Appropriate for a Rental Property?

Owners can secure several types of insurance to protect their properties, including hazard, liability, and workers' compensation insurance:

- Hazard insurance covers property damage caused by fire, wind, storms, and other similar risks.
- Liability insurance covers property owners against claims that the owner or manager was negligent or did something inappropriate that resulted in property damage or injury to another person.
- If the property owner employs other people in the management of the property, the owner should pay workers compensation insurance. This covers the cost of work-related injuries or death.

5.7. Record-Keeping and Reporting

Owners must maintain certain records and reports to demonstrate to their PJs that they are in compliance with the HOME property standards throughout the affordability period, including lead-based paint requirements.

Summary of HOME Requirements: Record-Keeping and Reporting

Owners/Managers must maintain records to demonstrate the property's compliance with property standards and lead-based paint requirements.

A. Documenting Compliance with Property Standards Requirements

1. How Does the PJ Determine that an Owner Is in Compliance with the Property Standards Requirements?

The PJ must inspect HOME-assisted units on a periodic basis and review the property's maintenance records.

Property inspections are discussed in more detail in Chapter 6. Exhibit 6-1 specifies the PJ's minimum inspection schedule.

2. What Property Records Must the Owner Retain to Demonstrate Compliance with the Property Standards Requirements?

The owner must retain whatever records are specified by the PJ. These are generally noted in the written agreement.

At a minimum, owners/managers of properties built before 1978 must retain documentation that verifies that they have conducted the required annual visual inspections of lead-based paint. These records should reflect the date of inspection and whether or not any lead-based paint is or was disturbed. In the event the visual inspection revealed any potential lead-based paint hazards, the files should include evidence that lead hazards were abated, and the residents received required notification(s).

PJs may also find the following documentation helpful:

- The owner has an efficient system for performing routine and preventive maintenance;
- The property management system receives and responds to tenant complaints for maintenance and repairs, and how;
- The property has sufficient security;
- The owner evaluates the useful life of the property's systems and equipment, and whether there is a capital repair and improvement plan for the property;
- The property has a sufficient operating deficit account; and
- The property is insured.

Chapter 6: Monitoring for HOME Compliance and Property Performance

6.1. Overview

The PJ and the rental property owner share an interest in seeing that HOME-assisted rental properties remain financially viable, in decent and safe physical condition, and compliant with the HOME requirements. Monitoring is an important tool for both PJs and owners to assess how well their HOME-assisted rental properties perform in these areas. This chapter describes the PJ's monitoring process and identifies the owner's responsibilities for reporting, record-keeping, and monitoring property management staff or contractors. The chapter also explores what happens when a PJ or owner uncovers problems or concerns, such as regulatory noncompliance or financial problems.

6.2. PJ's Monitoring Obligations

The PJ monitors for three key things:

1. Compliance with HOME requirements;
2. Overall financial performance/viability; and
3. Physical condition of the property and units.

See 24 CFR 92.504(d) for the PJ's monitoring responsibilities; 24 CFR 92.508 for record-keeping requirements, and 24 CFR 92.252(f) for requirements related to annual information on rents, tenant income, and occupancy of HOME-assisted units.

Failure of the property to continue providing affordable units to low- and very low-income families is considered noncompliance with the HOME Program requirements and PJs must repay HOME funds to HUD when this occurs. PJs typically pass on this repayment obligation to owners as well.

There are several key HOME compliance areas that PJs monitor throughout the affordability period: HOME rent limits, property standards, tenant selection, HOME income limits, tenant income verification and recertification, affirmative marketing, tenant leases and protections, and unit mix.

Summary of HOME Requirements: PJ's Monitoring Obligations

PJs must monitor HOME-assisted properties throughout the affordability period to ensure that the properties meet HOME requirements related to tenant income-eligibility, rent restrictions, unit mix, tenant rights protections, marketing, and property maintenance.

PJ monitoring generally consists of desk reviews and on-site visits. A **desk review** is a review of reports and/or records that are submitted by the owner to the PJ. The HOME Program requires that the owner submit a **rent and occupancy report** on an annual basis. The rent and occupancy report describes the occupancy (by income) and the rents charged for the HOME-assisted units. This helps the PJ determine if the property complies with affordability requirements. The PJ can impose additional reporting requirements.

The PJ must also conduct **on-site visits** for the purpose of: (1) conducting **property and unit inspections** in order to determine if the property continues to meet property standards during the affordability period, and (2) to **review records** that substantiate submitted reports and document the property's compliance with HOME requirements. The frequency of these required on-site visits is based on the number of units in the property.

A. The Monitoring Process

1. What Is the PJ's Monitoring Process?

The PJ can establish its own monitoring process, but many PJs follow this typical approach:

- The PJ contacts the owner in advance to schedule a site visit at a mutually convenient time. The PJ confirms the date and time in writing.
- In its correspondence, the PJ indicates which records the PJ plans to review and which units it will inspect. The owner notifies all affected tenants.
- During the review, PJ staff talks to the property owner, manager, and tenants; reviews reports and records; and inspects units.
- Following the review, the PJ staff meets with the owner and the property's key staff to review any findings or concerns. Here, the owner and staff can clarify any misinformation that the PJ might have as a result of the review.
- If the PJ raises any issues of concern or findings of noncompliance, the owner and PJ identify how the problem(s) will be rectified and by when. The PJ notifies the owner of any concerns or findings in writing subsequent to the visit, and follows up to verify that deficiencies have been corrected.

2. Of What Does the PJ's Monitoring Consist?

Monitoring generally involves a combination of the following activities:

- "Desk reviews" of information submitted by owners;
- On-site reviews of records maintained by the property owner or manager; and
- On-site property and unit inspections.

PJs have the discretion to develop their own monitoring activities, provided they meet the minimum HOME Program requirements. PJs specify what is required of owners in terms of:

- Reports and other documents that owners/managers must submit;
- Specific records, documents, or other sources of information the PJ will review on-site; and
- How often the PJ will conduct on-site monitoring and physical inspections of the units (within minimum parameters established by HUD).

For more information about monitoring, owners should contact the PJ or refer to:

Managing HOME course manual, available from the PJ or the PJ's HUD field office. Information about this course is available at http://www.cpdtraininginstitute.com.

Monitoring HOME Program Performance (HUD 2030-CPD, Oct. 2000). This guide includes a checklist entitled "Ongoing Monitoring Rental Housing Project" that owners can use to organize records and prepare for a site visit. It is available at no cost from Community Connections at 1-800-998-9999.

See Section 6.2C, *On-Site Visits*, below, for a discussion of site inspections.

B. Desk Reviews: Reporting

1. What Is a Desk Review?

A desk review is a review of reports or other documents that the owner or property manager submits to the PJ. It is conducted in the PJ's office.

2. What Reports Does a PJ Review in a Desk Review?

The PJ reviews all the reports the owner submits. These are usually related to the property's compliance with all of the HOME requirements, the property's overall performance and financial health, and the physical condition of the property. The PJ specifies what reports are required and how frequently they must be submitted. At a minimum, the owner must submit an annual rent and occupancy report.

As most reports offer only a snapshot of a situation, PJ monitors may contact owners/managers for clarification of information or seek additional information when they conduct a desk review.

3. What Is the Rent and Occupancy Report?

See Chapter 3, Section 3.7B Question 2 for a discussion of the rent and occupancy requirements, and Attachment 3-7, *Sample Rent and Occupancy Report*, found at the end Chapter 3.

The Rent and Occupancy Report is the key report the PJ uses to assess whether or not all HOME-assisted units are occupied by income-eligible households, in accordance with current HOME income limits; whether or not rents are charged in accordance with current High HOME rent and Low HOME rent unit limits for the type of unit; and if rent limits are calculated correctly for special projects or when the tenant pays utilities.

4. What Type of Financial Information Might a PJ Require?

Many PJs require owners to submit periodic reports that have detailed financial information about the performance of the property, although the HOME Program does not require this documentation. The financial reports might include a financial audit or another financial statement in a form prescribed by the PJ. The PJ uses these reports to monitor and track the property's financial health.

Generally, the PJ is interested in the following information:

- The property's gross rent potential;
- Actual rent collections;
- Tenant accounts receivable;
- Accounts payable;
- Beginning and ending cash balance;
- Number of, and reasons for, vacancies; and
- Units off-line.

The PJ analyzes these reports to evaluate the financial stability of the property. It may contact the owner if it identifies any signs that indicate the property may be having financial difficulties, such as a high amount of accounts payable or tenant accounts receivable, excessive debt on the property, and cash flow problems.

Section 6.4 of this chapter discusses the signs of distress that a PJ should be concerned about.

5. What Types of Property Information Might a PJ Require?

HOME-assisted properties must be maintained to meet applicable codes and property standards during the affordability period. The PJ conducts physical inspections of HOME properties, but it may also require owners to submit reports that provide a picture of the property's condition in between inspections.

Chapter 5 explains the HOME property standards requirements, including the lead-based paint requirements.

Property inspections are discussed in Questions 7-10 of Section 6.2.C.

These reports might include:

- List of findings from the property's last physical inspection, including any outstanding code violations, and a status update;
- Results of the annual visual inspection for lead-based paint hazards, if the building was constructed prior to 1978.

C. On-Site Visits

1. Why Does the PJ Conduct On-Site Visits?

PJs are required to conduct on-site inspections of HOME-assisted properties throughout the property's affordability period to do two things:

1. Review records and files retained on-site that document the owner's compliance with HOME requirements and to verify the accuracy of information submitted on the owner's rent and occupancy reports.

2. Conduct a physical inspection of a sample of units at the property to be sure the property is maintained in standard condition.

2. How Frequently Must a PJ Conduct On-Site Visits?

The PJ must conduct on-site inspections on the *minimum* schedule identified in Exhibit 6-1. The PJ can inspect more frequently if it chooses.

Exhibit 6-1: Minimum Property Inspection Schedule

Total Number of Units in the Property	Minimum Frequency of On-site Inspections
1–4 units	Every three years
5–25 units	Every two years
26 or more units	Every year

Note: This schedule is based on the **total** number of units in the property, not on the number of HOME-assisted units.

3. Must the PJ Conduct the Records Review and the Property Inspection in the Same Visit?

Not necessarily. The on-site review of records may be conducted at the same time as the property and unit inspections, or separately. They are often conducted separately and by different staff.

4. What Does the PJ's Records Review Entail?

While on site, the PJ looks at all records that document the owner's compliance with HOME requirements, particularly those related to tenant income-eligibility and rent restrictions, affirmative marketing, tenant selection, and property maintenance. The PJ may also review records related to the property's finances, capital expenditures, security, or other factors that may impact on the sustainability of the property in the future.

Unless imposed by the PJ, HOME does not require a specific filing system, although most owners organize their filing system based on tenants. If an owner organizes the files on a unit basis, he or she should also have sub-files for each tenant. The owner should also have files that pertain to the property and its administration as a whole.

The documentation that owners retain falls into these general categories:

- **General administrative files** that are generated in the administration of the property as a whole, including marketing activities, and policies and procedures.
- **Tenant files** that are related to the tenant and the unit he or she ultimately occupies.
- **Unit files** that reflect which units are HOME-assisted units at any given point in time.
- **Maintenance files** that document all physical improvements made to the property.

5. How Long Must Owners Retain HOME Records?

Owners must keep all required project development records for five years after project completion and property lease-up. Individual tenant income, rent, and inspection information must be kept for the most recent five years throughout the period of affordability, until five years after the end of the affordability period.

If there is any litigation, claim, negotiation, audit, monitoring, inspection or other action started before the expiration of the required retention period, the owner must retain the records until these issues have been resolved.

6. Who Has Access to HOME Records?

The PJ, HUD, the Comptroller General of the United States, and any of their representatives have the right to access all pertinent books, documents, papers, and other records in order to make audits, examinations, excerpts, and transcripts. The PJ may identify additional parties who have the right to access HOME-related records.

See Exhibit 5-1 in Chapter 5 for a discussion of applicable codes and property standards.

On-site inspections must occur on the minimum schedule for on-site visits described in Exhibit 6-1, above.

7. What Happens at the Property Inspection?

The inspection is an examination of the physical condition of the property. The PJ must inspect the property's exterior, common spaces, and a reasonable sample of HOME-assisted units to verify that the properties are maintained in standard condition, based on applicable codes and property standards. In addition, the PJ must verify that the owner has conducted visual assessments for deteriorating paint and failed lead-based paint hazard controls.

8. Can PJs Charge Owners for Property Inspections?

If a PJ conducts an initial inspection and has found any deficiencies, it can charge an owner for any re-inspection(s) that may be necessary to ensure that the deficiencies are corrected and the property brought back into compliance with applicable property standards. The PJ cannot charge the owner for the *initial* inspection, however.

9. How Can Owners/Managers Ensure that Their Properties Comply with Property Standards?

The best way for owners to make sure their properties and units comply with property standards is to inspect the units themselves. Owner inspections are particularly important when the owner has a third party conduct rental management. PJ inspections do not substitute for the owner's own inspections.

Drive-By Inspections

Drive-by inspections help owners and PJs make quick assessments of a property's condition and management. Regardless of when the on-site visit is scheduled, a prudent owner should conduct periodic drive-by inspections to look for the following warning signs:

- Lack of or unattended landscaping;
- Outdoor lighting that is not maintained;
- Graffiti;
- Structural damage; and

Other signs of neglect.

10. How Many Units Does the PJ Inspect?

The PJ determines how many units to inspect. HUD requires that PJs inspect a "reasonable sample" of units. This means the PJ should:

- Inspect 15 to 20 percent of the HOME-assisted units in a property, or for properties with more than 20 total units, 10 to 15 percent of the HOME-assisted units; and
- Inspect at least one unit in each building in multi-building properties.

6.3. Owner's Monitoring Obligations

Every owner must ensure that its HOME-assisted property complies with all HOME requirements.

As discussed in Chapter 2, owners often hire professional property managers (as staff or contractors) to operate their HOME rental properties for them. Even with property management staff or contractors, the *owner* is accountable to the PJ for compliance with the HOME requirements. Therefore, owners must be sure that their staff and/or contractor(s) understand the HOME requirements, manage the property in accordance with the requirements, compile accurate and timely reports, and maintain relevant records and documentation of their compliance efforts. The tools available to the owner to hold the property manager accountable for compliance are the same tools that the PJ uses to hold the owner accountable for compliance—written agreements, reporting, and monitoring.

Summary of HOME Requirements: Owner's Monitoring Obligations

The HOME Program does not impose specific monitoring requirements on the owner. However, the PJ holds the owner accountable for HOME compliance and may impose financial penalties or repayment of HOME funds in the event of noncompliance or project failure. This is true even when a third party provides property management. It is prudent, therefore, for the owner to monitor the performance of its properties.

When a third party is hired for property management, the owner must execute a **written agreement with the property manager** to convey the HOME requirements and set the terms for enforcement to hold the property manager accountable for compliance with the HOME requirements.

In that written agreement, the owner should specify what **reports and records** it requires the property manager to submit. These reports and records should reflect the requirements that are imposed on the owner by the PJ.

A. Written Agreements

1. What Written Agreements Are Required by the HOME Program?

Written agreements between the PJ and the owner are described in Chapter 1.

The HOME Program requires the PJ to enter into a written agreement before disbursing any HOME funds to another entity.

When HOME funds are disbursed to another party, there must be a means of enforcing the HOME requirements. Therefore, if the owner hires a property manager, there must be a written agreement between the owner and the property manager. This written agreement must provide specific guidance on the HOME requirements that the property manager must implement. The elements of the written agreement between the PJ and the owner should form the basis of the written agreement between the owner and the property manager.

2. Can the PJ Hold the Property Manager Accountable for Noncompliance?

No. The PJ holds only the *owner* accountable for noncompliance, even if it is the property manager that fails to carry out its responsibilities. This is because the PJ has a legally binding written agreement with the owner only. The owner, however, can hold the property manager accountable for its noncompliance, by executing a sound written agreement with the property manager.

What Should the Owner Monitor?

At a minimum, the owner should review the performance of the property manager in the following key areas:

- Adherence to income limits, rent limits, and occupancy standards;
- Financial management, including rent collections and cash controls;
- Physical management, including routine maintenance, capital planning, and property standards;
- Adherence to lease and tenant rights requirements; and
- Affirmative marketing.

B. Reporting

1. What Reports Must the Owner Require of the Property Manager?

The owner's reporting requirements should mirror the PJ's. The property manager should submit reports to the owner that are required by the PJ to demonstrate compliance with the HOME requirements. Owners should review these reports to identify any potential compliance issues.

The owner should specify in the written agreement with the property manager the requirements for the content, format, and frequency of the reports the property manager must submit.

C. Record-Keeping and Monitoring

1. What Record-Keeping Requirements Should the Owner Impose on the Property Manager?

The owner's record-keeping requirements should mirror the PJ's, and the property manager should retain the records the PJ requires.

See Section 6.2C for a more detailed discussion on record-keeping requirements.

2. How Can Owners Be Sure that Property Managers Comply with HOME Requirements?

The owner should periodically monitor and check the work of the property manager. The owner's monitoring activities should help the owner assess whether or not the property is in compliance with HOME rules, if the property is maintained in sound physical condition, and if the property is financially viable. In addition, the owner should assess if the property manager is maintaining required records.

3. What Types of Information Should the Owner Track to Ensure Property Financial Viability?

The owner should routinely review the property manager's adherence to the budgets that have been established, and the property's cash flow.

Operational issues to consider in undertaking a cash flow analysis are:

- Gross potential rent income for HOME-assisted and non-assisted units;
- Rent loss;
- Vacancy loss;
- Concession loss;
- Bad debt loss;
- Other income;
- Marketing expenses;
- Payroll expenses;
- Property management fee;
- Other administrative expenses;
- Utility costs;
- Non-housing services costs;
- Security costs;
- Normal repair costs;
- Real estate taxes;
- Property insurance;
- Liability insurance;
- Capital expenditures;
- Net operating income;
- Debt service; and
- Asset management costs.

Based on the results of the cash flow analysis, the owner should make necessary adjustments to the property's operating, maintenance, and capital expense budgets.

The owner should also review other indicators of the property's overall health such as vacancy rates, tenant complaints, vandalism incidents, and reported crime records. These areas can be early warning indicators of serious asset management issues.

6.4. When Problems Arise

When there are problems or concerns at a property, they are often identified as a result of monitoring. Whenever a PJ or an owner has reason for concern about a property, the owner should take steps to gather accurate information about the problem and take corrective action as needed. Corrective action will vary, depending on the seriousness of the problem or violation.

Summary of HOME Requirements: When Problems Arise

The PJ must hold owners accountable for compliance with the HOME Program requirements. When **instances of noncompliance** occur, the PJ must make sure that they are corrected. The **corrective actions** may vary, depending on the seriousness or type of violation that occurs.

When HOME-assisted properties fail to provide affordable housing to low- and very low-income households before the end of the affordability period, PJs are required to repay HOME funds to HUD. Many PJs pass on this obligation to the property owner as well. Therefore, although it is not specifically required by HUD, it is important for both the PJ and the owner to monitor properties to ensure that they remain financially viable during the affordability period. Owners and PJs should look for early warning signs of financial trouble, and should intervene as early in the process as possible, in order to address the problems.

A. Range of HOME Violations and Corrective Actions

1. What Constitutes Noncompliance with HOME?

The severity and extent of the noncompliance with HOME requirements varies. In general, these violations fall into three categories:

- One-time instances of noncompliance that are relatively small and easy to remedy;
- More severe instances of noncompliance that occur on multiple occasions; and
- Instances of gross negligence, fraud, discrimination or physical conditions that pose an imminent threat to the health or safety of the tenants.

The PJ's actions to address HOME noncompliance should reflect the severity and extent of the noncompliance. Exhibit 6-2 describes and provides examples of each of these levels of violations and suggests what steps are appropriate at each level.

PJs and Owners Should Collaborate to Solve Problems

Many problems that arise in HOME-assisted properties are best resolved when owners and PJs work collaboratively. Owners should keep PJs informed when they identify problems. Generally, PJs are highly motivated to help owners keep the property financially viable and in good physical condition. This maintains the supply of affordable rental housing units in the jurisdiction and minimizes the risk of repayment of HOME funds to HUD.

Exhibit 6-2: Sample HOME Compliance Problems

	Examples of Violations	Steps the PJ Can Take
Level 1 **One-time instance of noncompliance**	• Single instance of property maintenance issues, such as broken windows; • Single instance of an incorrect rent calculation; • Single instance of failure to raise the rent of an over-income tenant; or • Untimely reports.	• Document the violation(s) in a letter to owner with a schedule to correct the violation(s). Specify consequences if owner fails to correct them. • Follow up and verify that problem is corrected; and/or • Monitor more frequently to ensure that the problem does not recur.
Level 2 **Serious and recurring instances of noncompliance**	• Incorrect, or absence of, income-eligibility determinations for tenant applicants; • Incorrect, or absence of, annual tenant income-eligibility recertifications; • Failure to adopt or follow tenant selection procedures; • Failure to charge correct rents.	• Convene meeting and direct owner to correct the deficiency, within specified timeframe. • Document meeting and directives with follow-up letter; and • Follow up to verify violations have been corrected. • Optional steps: Monitor the property more frequently; provide technical assistance, if staff lacks knowledge about HOME requirements; impose a one-time or short-term financial penalty, to reinforce the serious nature of the violations.
Level 3 **Instances of gross negligence, fraud, discrimination, or conditions that impose imminent threat to tenants' health or safety**	• Failure to address major systems repairs (such as heating systems); • Chronic misrepresentation of availability of units to qualified applicants in order to show favoritism to relatives; or • Purposefully overcharging rents and "skimming" the difference.	• Convene meeting with the owner to identify the violation(s) and establish a timeframe to correct it/them. • Optional steps: Execute a written agreement to specify terms and conditions to address the violation; impose a permanent or long-term financial penalty on the owner; direct the owner to replace the staff or management entity involved; and/or take legal action. • Follow up closely to determine that violations are corrected. • Monitor the property more frequently; and/or increase frequency of reporting by owner.

2. What Types of Corrective Actions Can a PJ Impose?

When there are noncompliance issues at a property or if there are signs that the property might be in financial trouble, there are a wide range of financial and non-financial corrective actions a PJ might take.

Some examples include:

- Require the owner to make property improvements and pay for re-inspection of the units;
- Require owner to reimburse tenants who overpaid rent;
- Accelerate the repayment of some portion or all of the HOME loan;
- Require the owner to submit additional reports or to report on a more frequent basis;
- Increase monitoring visits;
- Restrict the owner's decision-making powers;
- Extend or re-start the affordability period;
- Require a new management agent;
- Foreclose the property;
- Restrict the owner from participating in future HOME-funded programs;
- Refer the issue to the HUD field office; and
- Add the owner/manager to HUD's debarred list.

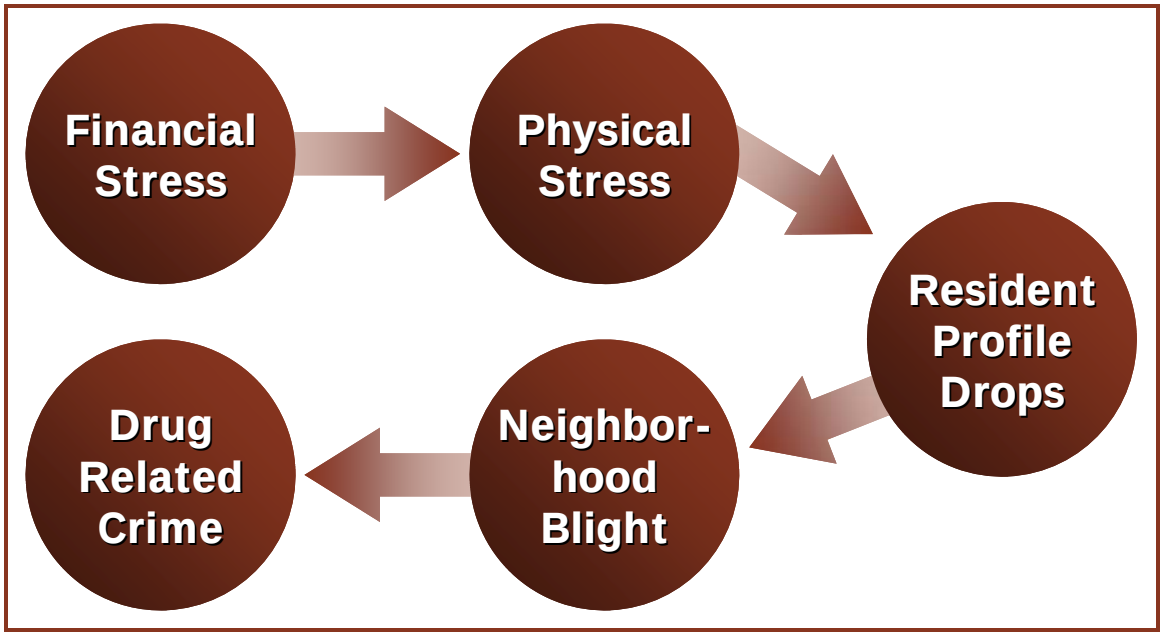
The corrective remedies a PJ might use should be specified in the written agreement between the PJ and the owner.

B. Early Warning Signs of Property Distress

1. What Is the Property Distress Cycle?

Typically, the first signs of problems are financial. Financial distress leads to physical distress because cash is insufficient to perform ongoing maintenance or address capital needs. Once a property fails to be maintained, it becomes harder for a property to retain and attract good tenants. This results in increasing tenant and possibly staff turnover. Exhibit 6-3 illustrates this cycle.

Exhibit 6-3: Property Distress Cycle



2. What "Red Flags" Should the Owner Monitor?

"Red flags" are the early warning signs that indicate that something may be wrong with the financial or physical health of a HOME-assisted property. Warning signs can be financial or non-financial. Owners and PJs can identify warning signs by routinely reviewing property management reports, inspecting the property, and obtaining information from tenants or neighbors.

Exhibit 6-4 provides examples of early warning signs and the types of problems they indicate. By identifying problems early, owners and PJs can take swift corrective action before a property fails.

Exhibit 6-4: Early Warning Signs to Identify Failing Property Performance

Performance Indicator	Performance Standard (typical)	Early Warning Signs
Tenant receivables	Owners should collect 95 percent of the property's gross potential rent.	Tenant receivables above this level suggest that the property is not receiving all available income, and may quickly make it difficult for property managers to pay bills on time, or make required reserves deposits. *Possible causes:* Lax management/rent collection efforts; or tenants' inability to pay due to unemployment/ problems in the local economy.
Unit turnaround	Vacant units should be re-rented in three to fourteen days.	Slow unit turnaround results in a loss of income for the property. *Possible causes:* Management issues (such as poor communication between maintenance and office management) or marketing difficulties (e.g., finding qualified tenants).
Vacancy rate	Properties should be 95 percent occupied, as indicated on occupancy reports and rent rolls.	Higher vacancy rates result in a loss of income for the property. *Possible causes:* Management problems, marketing issues, neighborhood decline.
Accounts payable	Majority of accounts are paid in a timely manner; 30-day or more delinquent accounts are pursued by management promptly.	Increasing or high accounts payable and numerous past due accounts because the property is not paying its bills on time. *Possible causes:* Property manager is not collecting all available sources of revenue, or rents do not adequately cover the property's expenses.
Capital needs expenditures	Capital needs are addressed in a timely manner and based on a capital needs assessment / useful life analysis and schedule.	Increasing or unexpected capital needs, or capital needs that are out of line with the budget and/or the planned timing of capital improvements. *Possible causes:* Poor initial planning; routine maintenance is not being performed. Note, the former will impact cash flow; the latter will result in premature systems and equipment failures.
Cash balance	Cash balance should be sufficient to cover anticipated monthly operating expenses.	Decreasing or low cash balances mean that a property will have difficulty covering expenses in the near future. *Possible causes:* Either decreasing income to the property or increasing expenses. The cause(s) should be evident from the property's monthly financial statement.
Property condition	Property should receive routine maintenance and remain in standard condition.	Deteriorating property condition or increase in code violations. *Possible causes:* Property does not have enough cash reserves to pay for needed maintenance or repairs, or poor management (i.e., the property manager is not addressing the property's maintenance needs). Poor physical condition of the property may result in violations of relevant local codes, which in turn violates HOME property standards requirements and may cause health and safety concerns for tenants. Ongoing neglect of the property's physical maintenance will lead to difficulties marketing the property to tenants.
Local economy and crime		Decline in the local economy that results in higher numbers of unemployed tenants and impacts rent collection; or increase in neighborhood crime that impacts the property's ability to attract good tenants, and also leads to problems collecting sufficient rent to cover expenses. Note, while the decline of the neighborhood can contribute to the decline if the property, so too can the decline of the property contribute to the stress or decline of a neighborhood.
Property management staff turnover		High or frequent staff turnover. *Possible causes:* Difficulties with managing the property.

C. Intervention Strategies

1. What Happens When an Owner Identifies (Potential) Problems?

Owners that identify an early warning sign should take steps to understand why it occurred. If the problem is a first-time occurrence, the owner should monitor the issue in the future. If the problem is more serious and is not easily remedied, the owner should notify the PJ of the problem. The PJ may be able to help resolve the problem.

2. What Kind of Corrective Actions Address Problems that Arise?

Appropriate corrective actions depend on the type of problem. In general, for early financial problems, the owner can:

- **Improve property management practices**. Many problems are the result of inadequate rental management practices. Owners must monitor their rental manager's performance, and see that the property manager is:
  - Collecting all available rent and fees, paying bills on time, and arranging for routine maintenance and capital improvements as needed;
  - Using effective marketing techniques and changing techniques to fill vacancies as quickly as possible or reduce the turn-around time of vacant units; and
  - Trained in the HOME requirements and property management functions. Owners should train property managers or other property staff, particularly where it appears lack of training is the cause of nonperformance.

  When needed, owners should replace the property manager, maintenance, or other staff.
- **Seek to lower costs**. These actions might involve renegotiating service contracts; reducing payroll costs; or, where appropriate, making an initial capital investment to install energy efficient appliances or equipment to lower utility costs.
- **Seek new sources of revenue**. Be sure the property manager is collecting all possible sources of revenue. If so, owners may need to identify new sources of revenue. In some situations, property managers may be able to help eligible tenants qualify for tenant-based rental assistance from the PJ. In limited circumstances, the owner might use funds from the replacement reserve accounts to cover short-term expenses. However, this should *only* be done only when the funds can be repaid.

3. How Can the PJ Help When a Property Faces Difficulty?

Owners should notify and involve the PJ when initial efforts to address problems in the property are not effective. It is in the PJ's interest to work with owners to keep HOME-assisted properties viable and operational, in order to maintain affordable housing stock in the jurisdiction and avoid repayment of HOME funds to HUD.

The owner and PJ may consider a number of options:

- **Invest additional funds in the property**. The owner should invest additional funds in the property, to the extent feasible, before the PJ considers investing additional public funds. PJs are not permitted to reinvest additional HOME funds in a property during the period of affordability, after the initial 12 months after project completion. PJs may request a waiver of this requirement from HUD once all other options have been pursued.
- **Charge higher rents, if possible**. If the property is not charging rents up to the maximum High and Low HOME Rents, the owner and PJ should evaluate whether increasing rents is a viable option, given the neighborhood market rents and targeted tenant population. If the owner is able to demonstrate to the PJ that the HOME rents are not sufficient to cover operating costs, the PJ may request an exception to the rent limits from HUD. Exception rents are approved in very limited circumstances, when HUD determines that all other options have been exhausted. HUD cannot waive income targeting requirements, as they are statutory.
- **Redesignate assisted units as non-assisted and increase rents accordingly**. This option is available only in properties where the PJ initially designated a *higher* number of HOME-assisted units than the minimum number required by HUD. This change requires an amendment to the written agreement between the owner and the PJ. The PJ must notify HUD.

See Chapter 1, Section 1.3 for an explanation of unit designations.

4. Can the PJ Impose More Intrusive Corrective Actions?

Yes. The PJ may need to take more drastic steps to intervene when all other options have failed.

The PJ might require the owner to:

- **Financially restructure** through refinancing the property or reamortizing the loan(s) on the property to lower mortgage payments.
- **Repay any outstanding HOME loan or grant** if the property fails to meet requirements of the written agreement during the full affordability period.
- **Sell or transfer the property, or foreclose on the property** if the PJ is a lender and the owner defaults on loan payments. If there are other lien holders, the PJ will need to negotiate the terms of the foreclosure and develop an appropriate workout plan.
  - The PJ's rights to take action before the property goes into foreclosure or is transferred in lieu of foreclosure should be specified in the PJ's written agreement with the owner.
  - In the event of foreclosure, the PJ is responsible for ensuring that the property remains HOME-compliant. If it is not, the PJ must repay to HUD the outstanding HOME loan balance or grant amount.
  - If the property is transferred to a new owner, and the new owner enters into a written agreement subjecting the property to the remaining HOME affordability requirements, HUD considers the affordability requirements satisfied. However, this may not absolve the original owner of the obligation to repay the HOME assistance to the PJ. This decision is at the PJ's discretion.

However, regardless of the interventions taken, if the owner is in default of its agreement with the PJ or if the property is out of compliance with the HOME requirements, the PJ may require the owner to repay all or a portion of the HOME assistance, in accordance with the written agreement. The PJ may also prohibit the owner from obtaining HOME funds for other rental housing developments in the future.

5. When a Property Fails Due to Extreme Circumstances, Is Repayment of HOME Funds Required?

When a property fails due to an extreme circumstance (e.g., a natural disaster or fire occurs, and the insurance is insufficient to repay the HOME funds), or where the owner and the PJ demonstrate that they have made all good faith efforts to salvage the property, HUD has the authority to terminate the affordability period, in order to relieve the PJ of its repayment obligation. HUD uses this authority infrequently.

6. What Happens When the Owner and PJ Develop an Intervention Strategy?

When the owner and PJ develop an intervention strategy to bolster a distressed property, they must execute a written agreement to document each party's responsibilities in the intervention strategy. The written agreement should specify what rights the PJ has to ensure that the owner fulfills its responsibilities. Any workout plan must ensure the assisted property remains HOME-compliant for the full affordability period. The PJ must monitor the property closely and ensure that the intervention strategy is implemented.

For more information on intervention strategies, see the HUD training manual entitled, *Staying HOME*. Contact the PJ's local HUD Field Office for a copy of this manual.

Appendix A: Resources

Resources about the HOME Program

- The U.S. Department of Housing and Urban Development (HUD) web page is www.hud.gov.
- HUD's HOME Program web page is: www.hud.gov/homeprogram/. From site, owners and managers will find the following links helpful:
  - Multifamily Rental Housing Library contains case studies, guidance documents, and technical publications: www.hud.gov/offices/cpd/affordablehousing/programs/home/topical/rental
  - HOME Rent Limits are available from 1998 to the present: http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/rent/
  - HOME Income Limits are available from 1998 to the present: www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/income
  - The HOME Front (online training): http://www.hud.gov/offices/cpd/affordablehousing/training/web/index.cfm
  - The Office of Affordable Housing Programs mailing list (sign up to receive an email each time the HOME web page is updated): www.hud.gov/subscribe.

Resources about Property Management

- *Staying HOME* is a training course in HOME asset management practices sponsored by the HUD Office of Community Planning and Development. For more information or to register: www.cpdtraininginstitute.com/stayingdescription.cfm
- HUD's model program guide, *Asset Management: Strategies for the Successful Operation of Affordable Rental Housing* (HUD-2018-CPD, May 2000) provides guidance on managing HOME-assisted properties. This guide can be ordered at no cost from Community Connections, at1-800-998-9999 or www.comcon.org.
- The Consortium for Housing and Asset Management (CHAM) is a partnership between the Enterprise Foundation, the Local Initiatives Support Corporation (LISC), and the Neighborhood Reinvestment Corporation. CHAM is devoted to promoting asset and property management best practices and training. Its web page is www.cham.org. This site includes best practices, sample forms, recommended resources, training opportunities, and links to other related information.
- The Enterprise Foundation operates local neighborhood development programs, best practices research, and funding to affordable housing developers. Its web page is www.enterprisefoundation.org.
- The Institute of Real Estate Management (IREM) provides educational resources and best practices information for real estate management professionals. Membership in one of its 81 U.S. chapters may be required to access sample forms, research publications, and other resources. For more information, call (800) 837-0706 or www.irem.org.
- NeighborWorks Multifamily Initiative promotes best practices in property management. Its homepage is www.nw.org. This site provides property management forms and links to training opportunities.

- A Guide to Comprehensive Asset and Property Management: A Manual for Building Communities through Good Asset and Property Management. Published 10/01/1997 by the Local Initiatives Support Corporation (LISC), this 250-page guide describes an approach to the oversight and management of residential properties aimed at supporting the growth and development of residents. It is available for purchase by emailing odi@lisc.org. Other publications and materials can be accessed directly at www.lisc.org.
- The following organizations also provide trainings in asset management:
  - Institute of Real Estate Management (IREM), www.irem.org;
  - National Association of Housing and Redevelopment Officials (NAHRO), www.nahro.org;
  - Neighborhood Reinvestment Training Institute, www.nw.org;
  - National Center for Housing Management, www.nchm.org; and
  - Local Initiatives Support Corporation (LISC), www.lisc.org.

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HUD-2009 HOMERental PO
January 2009