

Chapter 3: Regulatory Agreements

In This Chapter:

-  Summary of HOME Program Requirements.
-  Tools and samples for managing multiple regulatory requirements including: loans, grants and tax credits.
-  Clear guidance on setting up systems for managing multiple regulatory requirements including a property compliance book/filing system and property compliance calendar.

As money to build or acquire affordable housing grows harder to find, developers have become very creative in putting together financing packages which may include bank loans, tax credit syndication, HOME loans, “soft second” mortgages, grants and other sources of money to complete the project. Each of these sources of funds usually has a regulatory agreement or loan document that explains what the borrower/recipient owes the funder/lender in return for the money. It is important to know what requirements the funder has concerning the setting of rents, income restrictions, reserve funding, insurance, reporting and prior approval. Properties can have layered financing requiring varying rent structures and reporting requirements.

This Section includes an Exhibit covering basic HOME Program compliance requirements. For further information on compliance requirements under the HOME Program, HUD’s Office of Community Planning and Development provides a number of publications helpful to managers of HOME funded properties. Two of the most useful publications for the property manager are, “Asset Management: Strategies for the Successful Operation of Affordable Rental Housing” and “Technical Guide for Determining Income and Allowances for the HOME Program.” Both are available through HUD’s Community Connections Information Center. See the Resources Section for ordering information.

To understand your obligations to the providers of funds, it is useful to prepare a summary of the requirements of each funder and a calendar of annual compliance requirements. In this Section, you will find a model for preparing Loan Summaries from the LISC publication, “A Guide to the Roles and Responsibilities of Asset Management,” available from the LISC Organizational Development Initiative Office, 733 3rd Avenue, 8th Floor, New York, NY 10017, (212) 455-9325. (Order form in Resources Section.)

The following Section also includes examples of Compliance Calendars for tracking compliance requirements for Individual and Multiple Properties. In addition to the annual compliance needs, someone within the housing organization will need to track major financial events effecting the property, such as loan refinancing or payoffs, loss or changes in subsidies, or the dissolution of tax credit partnerships. Long-range tracking is sometimes forgotten. If an organization depends on third party property management agents, this type of financial planning is not usually included in a boilerplate management contract.

It is important to gather together all the documents that govern a property and prepare a summary of pertinent information in the documents with a key to where information is located. This can best be done when regulatory documents are first reviewed. This is sometimes overlooked when a property moves from the development phase to occupancy stages. Final documents should be culled from prior versions and copies included in asset or property management files. These files should be maintained during the life of a property. A listing of the types of documents that would be included is shown in the Sample Contents of a Property Compliance Book.

If your property has a complicated mix of multiple funding sources, you will find it useful to maintain a compliance map. A compliance map will help you identify how many units are designated as necessary for each funding sources and track those designations as people move in and out of the property or have substantial changes in income. A sample compliance Map is included in this Section.

EXHIBIT 3-1

HOME PROGRAM REQUIREMENTS

<p>Income Eligibility</p>	<p>Program Rule 90% of the initial resident households throughout the Participating Jurisdiction (PJ) must have household incomes below 60% AMI.</p> <p>Project Rule All households in HOME-financed units must have gross incomes at or below 80% AMI <u>and</u> At properties with 5 or more HOME assisted units, at least 20% of households must have gross incomes at or below 50% AMI</p> <p>PJ's may set income limits more stringent than HOME program requirements.</p>
<p>Annual Income Calculation</p>	<p>PJs set the definition of annual income and may choose from three definitions: HUD Section 8, Census Long Form or IRS adjusted gross income. Review of source documents are required for initial income certifications.</p> <p>Gross incomes are used to determine eligibility for the HOME program. See "Technical Guide for Determining Income and Allowances for the HOME Program" or www.Hud.gov/offices/cpd for calculation guidance.</p>
<p>Annual Income Recertification</p>	<p>Household incomes must be re-determined annually. The PJ determines the level of diligence required in completing a recertification. PJs may require: review of source documents, a Resident Statement and Certification or a written statement from a government agency providing benefits. If either of the latter two methods are allowed, income certification with source documents is required at least every 6 years.</p>
<p>Over Income Households</p>	<p>Over Income Households If a household's annual income at recertification exceeds 80% AMI, they are considered over income. Maximum rents for HOME-assisted units under the Low Income Housing Tax Credit program are governed by the Tax Credit Program.</p>

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<p>Over Income Households (continued)</p>	<p>Fixed Units An over income household's rent may be increased to the lesser of the amount payable under state or local law or 30% of the household's adjusted income.</p> <p>Floating Units An over income household must pay 30% of their adjusted income for rent and utilities but the rent may not exceed market rent for comparable, unassisted units in the neighborhood. The unit is no longer considered HOME-assisted and the next available unit must be rented to a HOME-assisted household.</p>
<p>Changes from Low to High income or High to Low income</p>	<p>Low to High If a Low HOME rent household's income increases but does not exceed 80% AMI, the unit becomes a High HOME rent unit. The next available unit must be designated a Low HOME rent unit.</p> <p>High to Low If a High HOME rent household's income decreases to 50% AMI, the unit may be counted as a Low HOME rent unit.</p> <p>Neither process should increase the number of HOME-assisted units.</p>
<p>Rent Requirements</p>	<p>High HOME Rents Are the lesser of HUD Section 8 Fair Market Rents (FMRs) for the local market <u>or</u> 30% of 65% AMI.</p> <p>Low HOME Rents No greater than 30% of 50% AMI <u>or</u> 30% of the household's adjusted monthly income <u>or</u> if project-based subsidies are in effect, the rent allowable under the subsidy program.</p> <p>PJ's may set rent limits lower than HOME program requirements.</p>
<p>Utility Allowances</p>	<p>Maximum rents must include a deduction for a utility allowance as determined by the PJ, the local public housing authority <u>or</u> proposed by the owner and approved by the PJ.</p>
<p>Fixed and Floating Units</p>	<p>The Program Administrator or Property Owner must select "fixed" or "floating" units at the time of project commitment.</p> <p>Fixed Units The specific units that are HOME-assisted are designated and never change.</p>

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	<p>Floating Units The units that are designated as HOME-assisted may change over time, as long as the total number of HOME-assisted units remains constant.</p>
Miscellaneous Provisions	<p>Owners of HOME-assisted rental units may not refuse to lease to any household solely based on their receipt of Voucher subsidy assistance.</p> <p>Affirmative marketing is required for all properties of 5 or more units.</p> <p>Income and rent limits are adjusted annually. New limits can be obtained at www.Hud.gov/offices/cpd or from your local PJ.</p> <p>There are many useful HOME forms and checklists available to assist HOME grantees and subrecipients to meet the regulatory requirements of the program. These forms are available at http://www.hud.gov/offices/cpd/affordablehousing/library/forms/index.cfm#ren</p> <p>There are also sample HOME Monitoring Tools available at: http://www.hud.gov/offices/cpd/affordablehousing/training/checkup/performance/monitoringtools.cfm</p>

Adapted from material in “Asset Management: Strategies for the Successful Operation of Affordable Rental Housing,” a publication of the U.S. Department of Housing and Urban Development, Community Planning and Development, Office of Affordable Housing Programs. Prepared by ICF Consulting and The Compass Group.

**EXHIBIT 3-2
SUMMARY OF LOAN, GRANT, SUBSIDY, OR EQUITY
TERMS AND REQUIREMENTS**

Project: _____

Type: Loan Grant Subsidy Equity

TERMS

Source	
Original Amount	\$ _____
Initial Funding Date	_____
Term (if applicable)	_____
Maturity or End Date (if applicable).	_____
Interest Rate (if applicable)	_____
Variable Rate?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Applicable
<i>If yes:</i>	
index	
margin	
change date	
Life cap	
Monthly Payment (if applicable).	
Due date	_____
Grace period	_____
Late fee amount	_____
Deferred Payment Loan:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Applicable
<i>If yes: terms:</i>	
Balloon Date & Amount (if applicable)	
Extension Option	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Applicable
<i>If yes: what?:</i>	

Other Comments:

CONDITIONS & REGULATORY REQUIREMENTS

Source

Maximum Entry Income Eligibility

Maximum Recertification Income Levels
(if applicable)

Maximum Rent Levels

Maximum Rent Increases

Minimum Lease Term

Operating Reserves

Replacement Reserves

Special Socio-Econ Conditions for Applicants

Insurance Coverage

Reports

Quarterly Occupancy

Quarterly Financial

Annual Occupancy

Annual Financial

Annual Audit

Annual Certification

Eviction Conditions

Management Agent Approval

Site Review / Inspections

Security Deposit Limit

Other Comments:

**EXHIBIT 3-3
PREVAILING LOAN, GRANT, SUBSIDY OR EQUITY
CONDITIONS & REGULATORY REQUIREMENTS**

Project: _____

Type of Requirement	Controlling Program or Source	Requirement
Maximum Entry Income Eligibility Limits (% of median)		
Maximum Recertification Income Levels (if applicable)		
Maximum Rent Levels		
Maximum Rent Increases		
Minimum Lease Term		
Operating Reserves		
Replacement Reserves		
Special Socio-Economic Conditions for Residents		
Insurance Coverage		
Eviction Conditions		
Management Agent Approval		
Security Deposit Limits		

Other Comments:

EXHIBIT 3-4
SAMPLE COMPLIANCE CALENDAR

	TO	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Monthly Rent Rolls (First Year)	BA	X	X	X	X	X	X	X	X	X	X	X	X
Monthly Rent Rolls (Second Year on)	BA	X						X					
By-Law Certification	LP	X											
Interest on Demand Promissory Note	LHC	?											
Proof of Property Tax Payments (From CH)	LHC	X				X							
Audited Partnership Financial Statements	LP			X									
Audited Partnership Financial Statements	BA					X							
Cash Distribution	all			?									
Tax Credit Claim (From Accountant)	LP			X									
Annual Monitoring Report	MO			X									
Welfare Property Tax Exemption				X									
Proof of Welfare Tax Exemption (first year only?)	BA			X									
Partnership Tax Return, K-1's	LP				X								
IRS Form 8609	LP				X								
Ground Lease Payment	CH				?								
Quarterly Operating Statements	LP				X			X			X		
Quarterly Occupancy Report	LP				X			X			X		
Quarterly Unaudited Partnership Financial Statements	LP				X			X			X		
Insurance Renewal					X								
Annual Report to the Board of LHC	LHC					X							
Interest on City of SF Promissory Note	MO					?							
General Partner's Audited Financial Statements	LP						X						
Operating Budget	LHC										X		
Operating Budget	LP											X	

CH = Sponsor LP = Limited Partner LHC = General Partner MO = Mayor's Office of Housing

EXHIBIT 3-5
MULTIPLE PROPERTY COMPLIANCE CALENDAR
Model Calendar for Tracking Multiple Properties

Property	Budget	Audit	State 1/4ly	TCAC	HUD	CEF	Tax Credit Investor	Bank	Project Boards	Other
A	Jan-Dec	Jan		X				B of W	Qtrly	
B	Jan-Dec	Jan		X					N/A	
C	Jan-Dec	Jan	X	X			X		N/A	
D	Jan-Dec	Jan	X	X				B of W	N/A	WFB Realty Corp mtg., Qtrly report to City & WFB Realty, Annual report to WFB
E	July-June	July			X			B of W	Qtrly	
F	July-June	July			X			Sumitomo	Qtrly	
G	July-June	July			X			Centennial	Qtrly	
H	July-June	July						B of W	Annual	HCD-County
I	July-June	July			X			B of W	Qtrly	
J	Jan-Dec	Jan	X	X			X	B of W	N/A	
K	Jan-Dec	Jan	X	X			X	B of W	N/A	Qtrly Report SAMCO mtg.
L	Jan-Dec	Jan		X	X			B of W	N/A	1st Nationwide Mtg.
M	Jan-Dec	Jan			X			WFB	Qtrly	236, excess income
N	Jan-Dec	Jan		X				WFB	N/A	HCD mtg.
O	Jan-Dec	Jan	X					B of W	Monthly	HCD
P	Jan-Dec	Jan			X			B of W	N/A	HFA mtg.

EXHIBIT 3-6
SAMPLE CONTENTS
PROPERTY COMPLIANCE BOOK/FILING SYSTEM

- Section 1:** Project Summary
- Section 2:** Property Compliance Calendar (regulatory and management tasks, indicating month to be done)
- Section 3:** Regulatory Agreements (important points highlighted)
- Section 4:** Loan Documents (important points highlighted)
- Section 5:** Partnership Agreement
- Section 6:** Original Pro Forma and Revisions
- Section 7:** Annual Operating Budgets: prior and current year
- Section 8:** Rent increase requests: prior two years
- Section 9:** Schedule of Maximum Rents - Current Year
- Section 10:** Schedule of Liabilities
- Section 11:** Audits: prior two years including list of who gets copies
- Section 12:** Replacement and Operating Reserve Draw Requests
- Section 13:** Completed Regulatory Reports: prior two years
- Section 14:** Blank Reporting Forms
- Section 15:** IRS Form 8609; First year and current Tax Credit Reports
- Section 16:** Written regulatory monitoring reviews (fiscal, physical and management) and management response
- Section 17:** Resident Selection Criteria (updated as median incomes and rents change)

DISCUSSION TOPICS

1. How many funding sources and lenders does your organization have?
2. Who is responsible in your organization for reading and understanding regulatory agreements and loan documents? Is this same person responsible for communicating with funders and lenders? If the task is centrally delegated, what information is shared with site level staff?
3. How does the development staff in your organization communicate important property information to property management staff? Is there a formal method of exchanging information?

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