

OHCS

2009

OREGON HOUSING & COMMUNITY SERVICES

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HOME Program Guidance

HOME Program Compliance Manual

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September 2009

**Table of Contents is separate document.**





## INTRODUCTION

*Introduction* **T**he HOME Investment Partnerships Program, or HOME Program, is designed to provide affordable housing to lower-income households, expand the capacity of non-profit housing providers, and strengthen the ability of state and local governments to develop and implement affordable housing strategies tailored to local needs and priorities. One of the principal uses of HOME funds is for acquisition, construction, and rehabilitation of rental housing.

All rental housing units acquired, built, or rehabilitated with HOME funding must meet affordability and income-targeting requirements specified in the HOME Final Rule (24 CFR Part 92).

### THE COMPLIANCE MANUAL

The Housing Resources Section will provide a hard copy of this manual to each new project prior to the beginning of project lease-up. Additional copies can be downloaded from our website, [www.ohcs.oregon.gov](http://www.ohcs.oregon.gov).

This manual describes the Program Compliance Section (PCS) compliance monitoring procedures. Periodically, as changes to the law and/or procedures occur, updates will be provided by OHCS on our website.

### PURPOSE OF THE MANUAL

*Purpose of the Manual* This manual is a guide to understanding HOME compliance monitoring, as practiced in Oregon. It was developed, pursuant to Federal Regulations, for use by owners, management agents, on-site management personnel and others involved with PCS procedures for monitoring compliance of HOME projects.

Although it is the role of PCS to assist owners and managing agents to stay in compliance with HUD regulations, it is ultimately the owner and managing agent's responsibility to maintain compliance with HOME program regulations.

### COMPLIANCE PERIOD

*Period of Affordability* The HOME restrictive covenants (Grant or Loan Agreements) are recorded as a lien against the property and outline the restricted rental charges and income limits of the tenants that will be required for a specific term of affordability.

The Recipient must record the restrictive covenants within 30 days after receipt. OHCS will not allow HOME recipients to "buy out" of the affordability requirements.

The minimum HOME program term of affordability is 5 years. HOME recipients opting for a longer period of affordability in the Consolidated Funding Cycle application will have a deed restriction which reflects the extended period.


If the project has additional funding sources, the compliance period for those additional funding sources may be extended beyond the HOME program minimum requirements.

*Responsibilities*    RESPONSIBILITIES

For the purposes of clarification, the responsibilities of the various parties and monitoring process are outlined below.

OREGON HOUSING AND COMMUNITY SERVICES

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

- Providing a HOME Compliance Manual and related materials;
- Offering continuing education on compliance to the owner, management agent, and on-site personnel, primarily through periodic compliance training workshops, as scheduling permits, and updates to the Compliance Manual;
-  • Reviewing the annual OHCS HOME Monitoring Report required to be submitted with the annual owner certification (**Exhibit E.1**);
- Reviewing each HOME project a minimum of once every other year. The review will consist of an on-site inspection of 20% of the HOME tenant certifications, supporting documentation, and HOME tenant records. The review will include a physical inspection of 20% of the HOME units and all of the property grounds. PCS reserves the right to inspect a higher percentage of units when deemed necessary or practical;
- Notifying the owner when the project is found to be out of compliance with HUD or OHCS requirements, including reports and any other requested information not received by OHCS when due;
- Establishing schedules with the project owner for correcting any noncompliance;
- Performing follow-up reviews of any building within a project or the entire project, if deemed necessary. A follow-up review may include a physical inspection of the building(s) and/or a review of project tenant records; and
- Retaining records of noncompliance or failure to report for the most recent five-year period and until five years after the term of affordability expires.

- The following schedule outlines time frames for certain monitoring events:

PCS notification, pre-audit:	PCS will give a minimum of 14 days notice of the audit
PCS notification, post-audit:	PCS will notify an owner or agent of any noncompliance within 30 days of the determination
PCS correction timeframe:	PCS will allow a minimum of 30 days to correct any noncompliance

## THE OWNER/RECIPIENT

*Owner/Recipient Responsibilities* In accordance with the HOME program regulations, the owner of a project receiving a HOME allocation is required, by acceptance of the allocation, to:

1. Manage the project in accordance with the HOME Regulations and all additional requirements agreed to during the allocation process for the duration of the compliance period. This includes continued compliance with regard to income and rent levels detailed in the initial application.
2. Certify that the property is being managed in accordance with all applicable federal, state and local fair housing laws.
3. Retain records/project files documenting eligibility for the HOME final allocation for at least five years after the last year of the compliance period.
4. Retain records documenting the designation of HOME units, HOME-like units, and non-HOME units using a method that clearly shows the status of all units at any point in time.
5. Assume liability for any instances of noncompliance and the correction of such deficiencies.

Each owner has chosen to participate in the HOME Program to take advantage of available funds. In exchange for accepting HOME funds, certain requirements must be met by the owner that will benefit qualified low-income tenants. The requirements include owners placing qualified tenants in at least the minimum number of Low HOME and High HOME units as detailed in the restrictive covenants, charging appropriate rental rates for each qualified unit and maintaining accessible documentation and verification of qualified low-income tenants.

The owner must further meet all requirements agreed to in the Home Grant Agreement (**Exhibit E.10**) and HOME Declaration (**Exhibit E.11**) regarding additional restrictions on rent levels and income restrictions. The owner must certify annually on the Certification of Continuing Program Compliance (CCPC) (**Exhibit E.6**) that all Program requirements have been met. If the recipient fails to perform any of the provisions of the agreements, and does not correct such failure within the time frame that PCS may authorize, OHCS may provide written notice of default to the Recipient and terminate the agreement. Should the Agreement be terminated, the Recipient is liable to repay all of the HOME funds disbursed to the project.

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

### Conflict of Interest - Applicability

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

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

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

### Proper Administration and Record Keeping

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

#### **Inspections:**

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

### **HOME Monitoring Report: (Exhibit E.1)**

- Record containing the unit and tenant characteristics necessary to document unit restrictions and property standards requirements are being met (OHCS required form)

### **Individual Tenant Files:**

- Contents:
  - ◆ Rental Application form
  - ◆ Tenant Income Certification form(s) (OHCS required form)
  - ◆ Third-party verifications (OHCS required and recommended forms)
  - ◆ The social security number for all household members age six or over and verification of the number; or a certification that he/she has never been issued a number.
  - ◆ Declaration/verification from all family members of citizenship or eligible immigration status.
  - ◆ Lease
  - ◆ Tenant acknowledgement of provision of lead based paint information pamphlet and other notifications (as applicable)
  - ◆ Other records (relevant to the tenant's residence in the project)

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

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

[http://frwebgate.access.gpo.gov/cgi-in/getdoc.cgi?dbname=104\\_cong\\_public\\_laws&docid=f:publ193.104](http://frwebgate.access.gpo.gov/cgi-in/getdoc.cgi?dbname=104_cong_public_laws&docid=f:publ193.104)

**Project information files: (Recommended to be kept on-site)**

- Contents:
  - ◆ Applicable yearly income limits
  - ◆ Applicable yearly minimum and maximum rent limits (HUD established)
  - ◆ Deed restriction documents associated with the project
  - ◆ Minimum and Maximum Rent Limits in Effect at Initial Grant or Loan Agreement
  - ◆ Total number of units
  - ◆ Total number and/or percentage of units restricted and the type of restrictions
  - ◆ Proposed rental and utility rates for the following year.
  - ◆ Current Marketing and Management Plan (**Exhibit E.2**)
  - ◆ Current Affirmative Fair Housing Marketing Plan (**Exhibit E.16**), and records showing any review of the plan on a periodic basis
  - ◆ Waiting List(s) with dates of application for all families accepted/rejected
  - ◆ Documentation of the actions taken to affirmatively further fair housing in accordance with the Affirmative Fair Housing Marketing Plan

**Utility Allowance Documentation:**

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

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

**It is the responsibility of the owner and/or management agent to obtain updated utility allowance information on an annual basis.**

RD and HUD regulated projects must use RD and HUD utility allowances, respectively. In projects (or buildings within a project) with neither RD nor HUD programs in place, the utility allowance used will be:

- The applicable PHA allowance for those units occupied by Section 8 certificate or voucher holders;
- For all other units, the applicable PHA allowance or a utility allowance calculation, in accordance with OHCS guidelines (**Exhibits E.8 and E.9**) based upon data obtained from the appropriate utility company.

**Record Retention:**

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

For rental housing projects, general rental records must be retained for five years after the project completion date; except that records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five-year period, until five years after the affordability period terminates.

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

All records must be available upon request for PCS monitoring staff review. If the project has Low Income Housing Tax Credits, refer to the LIHTC Compliance Manual for further record retention requirements.

**Ongoing Administration and Notification:**

*Ongoing Administration & Notification* All Oregon HOME recipients and/or their agents must demonstrate a level of skill and professional competence required to administer, manage, coordinate and evaluate all components of the HOME program as they relate to local projects and in accordance with Federal and State requirements. Generally, administrative performance is demonstrated by:

1. Familiarity and compliance with State and Federal requirements, and proper and complete documentation of the same;
2. Ability to administer proper budgeting and bookkeeping procedures;
3. Understanding of contractual relationships and HOME project responsibilities;
4. Ability to monitor project regularly and keep files current;
5. Ability to submit timely and complete reports.

## Project Management

*Management Plan* All HOME projects will be required to submit a Management Plan. The plan must be reviewed and approved by PCS prior to lease-up activities and project completion. From time to time, OHCS will issue notices to explain, augment, or interpret these requirements. The owner or management agent must amend the Management Plan to include any changes in program requirements or management policies.

### *Management Agent Approval - PCS* **Management Agent Qualifications**

The selection of the management agent is the responsibility of the owner; however, the agent is subject to approval by the Program Compliance Section. Owners must submit requests for changes in Management Agent at least 60 days prior to implementation. Depending on the Department's experience with the proposed agent, a complete Management Plan and Qualifications packet may be requested by the CO. PCS does not give blanket approval for any management company. Proposed management must be reviewed and approved on a project-by-project basis, regardless of the number of HOME projects currently managed by the management company. Copies of the Management Agent Plan and Qualifications forms are exhibits to this Manual. **(Exhibit E.3.)**

### *Management Agreement* **Management Agreement**

The Management Agreement between the owner and management agent stipulates the contractual requirements for project operations. The Agreement will continue in force until canceled by either party. A provision for this must be included in a section of the Agreement titled EXPIRATION AND TERMINATION.

A change in management agents requires the submission and PCS approval of the Management Agent Qualifications and Plan, and the execution of a new Management Agreement. It is not required that HOME projects utilize the Department's Management Agreement form, however this form/format is recommended.

The owner is responsible for keeping PCS informed of any event that might affect the project's compliance with 24 CFR, Part 92, for certifying annually the project's continued compliance, and responding to PCS's inquiries. This includes written notification of changes in ownership, management, management agent, address and telephone changes.

### **Reporting and Certification**

*Owner Reporting Requirements* Annually, the owner is responsible for reporting to PCS by submitting the *HOME Monitoring Report (Exhibit E.1)*, which is an attachment to the annual owner certification **(Exhibit E.6)**. A separate, updated HOME Monitoring Report will be requested prior to any scheduled audit, and must be submitted to the Compliance Officer for use at the audit. The owner is also responsible for submitting to PCS upon request tenant file documentation for those units PCS specifies. Additionally, PCS may request project operating income and expense statements, and operating budgets.

Annually, the owner of a project with HOME units must certify compliance as to the following provisions:

*Annual Owner Certification*

- If the project has five or more HOME units, at least 20% of the HOME units must be designated as Low HOME – i.e., rented to households with gross incomes not exceeding 50% of area median income adjusted for family size; and
- The remaining HOME units must be designated as High HOME - rented to households with gross incomes not exceeding 60% of area median income adjusted for family size;
- The owner has received an annual low-income Tenant Income Certification (TIC) (Form F.1 or F.2) from each low-income tenant and required documentation to support each certification;
- That each low-income unit is rent-restricted as defined in HOME regulations. **Note:** *Some owners may have agreed through the Grant Agreement and/or other program funding documents to reduce rents lower than the requirements; if so, the lower (more restrictive) rents must be followed;*
- That all units in the project are for use by the general public, and used on a non-transient basis;
- That each building in the project is suitable for occupancy; and,
- The owner has not refused to rent a HOME unit to a Section 8 voucher holder, on the basis of their status as a voucher holder.

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

## Noncompliance

*Consequences of Non-Compliance* **Failure to submit a completed annual Owner's Certification of Continuing Program Compliance and HOME Monitoring Report is considered to be noncompliance.** The Certification and Monitoring Report are to be signed by the owner or a managing agent with signature authority.

The owner (Recipient) is responsible to correct any incidents of noncompliance within the required time frame. Failure to correct within the time specified by PCS may result in termination of the HOME Grant or Loan Agreement. If the Agreement terminates, the Recipient is liable to repay all of the HOME funds disbursed to the project.

## MANAGEMENT AGENT AND ON-SITE PERSONNEL

\_\_\_\_\_ The management agent and on-site personnel are responsible to the owner for  
MANAGEMENT implementing the HOME Program requirements and the provisions of the  
AGENT project Management Plan. Anyone who is authorized to lease apartment units  
\_\_\_\_\_ to tenants should be thoroughly familiar with and follow all federal and state  
laws, rules, and regulations governing certification and leasing procedures.

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

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

## REGULATIONS AND REQUIREMENTS

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

### *Income Limits*

#### MAXIMUM INCOME LIMITS

Updated HOME Income Limits are calculated annually, by HUD's Office of Policy Development and Research (PDR), once Section 8 income limits have been issued. These income limits are calculated for each Oregon county or metropolitan statistical area (MSA)

*Owners **may not anticipate** increases in income limits. Limits remain in effect until new annual limits are officially published by HUD.*

#### **Limit Availability:**

Home Income Limits are usually available in January and distributed in February to each HUD Field Office. Income limits are also posted on the HOME web site.

- HUD Field Offices are responsible for distributing the new Income Limits to PJs
- PJs are responsible for distributing the new Income Limits to projects

#### **Basic Limit Restrictions:**

To be income eligible for a HOME-assisted unit, an applicant family (household) may earn no more than 60% of the area median income as adjusted for family size. In projects with 5 or more HOME units, a minimum of 20% of HOME-assisted units must be occupied by or reserved for applicant households earning no more than 50% of area median income.

**Note:** At the time of application, many sponsors elected to dedicate more than the minimum 20% of units to tenants who earn no more than 50% of area median income. Please refer to your HOME Grant or Loan Agreement to confirm how many units must be reserved for housing tenants at the 50% of area median income level. The project must maintain this percentage throughout the term of affordability.



The most current Income and Rent Limits are provided in the Exhibits Section (E.4 and E.5) of this document, or may be accessed on OHCS' internet Website at: [www.ohcs.oregon.gov](http://www.ohcs.oregon.gov).

### *Rent Limits*

#### MAXIMUM RENT LIMITS

The HOME program places limits on the rent that can be charged for assisted units. ***Because the HOME rents cannot exceed a figure (limit) that is based on actual area rents, some areas may have the same High and Low Home Rents, even though the qualifying incomes are different.*** Each project may have two HOME rent levels, as explained in the following:

## Low HOME Rents

*Low HOME Rents* Unless the HOME Grant Agreement provides for a higher percentage, if a project includes Low HOME designated units, a **minimum** of 20% of the units must not exceed the Low HOME rent limits. These units must have rents that do not exceed the **lesser of:** Low HOME rent as calculated by HUD, with adjustments for the number of bedrooms in the unit, **or:** the Fair Market Rent (FMR) for the unit bedroom size, calculated annually by HUD. Should the FMR be lower than the Low HOME rent calculation, the FMR is then considered the Low HOME rent.

## High HOME Rents

*High HOME Rents* The remaining units must not exceed the High HOME rent limits. These units must have rents that do not exceed the **lesser of:** High HOME rent as calculated by HUD, with adjustments for the number of bedrooms in the unit, **or:** the Fair Market Rent (FMR) established annually by HUD. If the FMR is lower than the High HOME rent calculation but greater than the Low HOME rent calculation, the FMR is then considered the High HOME rent.

Following are some hypothetical and real examples of rents and FMRs published.

High HOME Rent maximum = **lesser of:**

HUD calculated High HOME Rent (Gross figure, includes utilities)

Section 8 FMR (Gross figure, includes utilities)

Low HOME Rent maximum = **lesser of:**

HUD calculated Low HOME rent (Gross figure, includes utilities)

Section 8 FMR (Gross figure, includes utilities)

### Hypothetical Example:

#### Hypothetical County

##### High HOME

\$533 FMR

~~\$592 High HOME rent~~

~~-\$50 Utility Allowance~~

\$483 maximum HOME rent paid  
by tenant

#### Hypothetical County

##### Low HOME

~~\$533 FMR~~

\$482 Low HOME rent

~~-\$50 Utility Allowance~~

\$432 Maximum HOME rent paid  
by tenant

High HOME Rent maximum= *lesser of:*  
 HUD calculated High HOME Rent (Gross figure, includes utilities)  
 Section 8 FMR (Gross figure, includes utilities)

Low HOME Rent maximum= *lesser of:*  
 HUD calculated Low HOME rent (Gross figure, includes utilities)  
 Section 8 FMR (Gross figure, includes utilities)

**Actual Examples (2 bdrm):**

<p><b>Lake Co. 2006 High HOME rent:</b>          \$540 FMR          \$540 High HOME rent  <u>-\$50 Utility Allowance</u>          \$490 maximum HOME rent paid          by tenant</p>	<p><b>Lake Co. 2006 Low HOME rent</b>          \$540 FMR          \$540 Low HOME rent  <u>-\$50 Utility Allowance</u>          \$490 Maximum HOME rent paid          by tenant</p>
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<p><b>Lane Co. 2006 High HOME rent:</b>          \$710 FMR          \$710 High HOME rent  <u>-\$50 Utility Allowance</u>          \$660 maximum HOME rent paid          by tenant</p>	<p><b>Lane Co. 2006 Low HOME rent</b>  <del>\$710 FMR</del>          \$615 Low HOME rent  <u>-\$50 Utility Allowance</u>          \$565 Maximum HOME rent paid          by tenant</p>
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**FIXED OR FLOATING UNITS**

*Fixed or Floating Units* Owners may, on a project by project basis, choose to use either a “**fixed**” or “**floating**” designation for HOME-assisted or HOME-like rental units. This designation is made at the underwriting stage, prior to the file being transferred to PCS.

A **fixed designation** means that the owner determines from the outset which units in a mixed-use project are HOME units. For instance, in a 10-unit HOME/LIHTC rental project, with 5 HOME units, if the owner designates units A, B, C, D and E as the HOME units, these specific units (A through E) remain the HOME units throughout the period of affordability. Because of changes in tenant income, although the number of HOME-assisted units is constant, there may be periods of time where the balance of High and Low HOME units is skewed.

A **floating designation** provides the owner the flexibility to maintain a certain number of HOME units at required Low and High HOME restrictions throughout the affordability period, although the specific unit(s) so designated may vary with availability. In the previous

example, the sponsor would designate five units as HOME units, and at any given point in time throughout the period of affordability, five units must have the required HOME designation, and have targeted occupancy for HOME income-eligible tenants. Units that replace previously designated HOME units must be at least comparable in terms of size, features and number of bedrooms to the originally designated units.

**Sponsors must elect either fixed or floating and may not switch status after this election.**

**Increases in Tenant Income - Fixed and Floating HOME Units:**

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

When, at recertification, households in HOME units have income that exceeds certain program limits, the rents must be adjusted according to HOME regulations. HOME regulations differ in the manner that rents are adjusted, depending on whether units are designated as fixed or floating.

*The following examples assume no LIHTC funding.*

**Maintaining the HOME Set-Aside:**

The project must maintain the correct number of High and Low HOME units:

- Floating Units - Income between 50% & 80%*
- Floating Units:
- If the income of a tenant in a floating low HOME rent unit increases to above 50% of AMI, but **does not exceed 80% of AMI**, that unit becomes a High HOME rent unit, and the rent adjusted to the High HOME level. To replace the Low HOME rent unit, the project **must rent** the next available **comparable** unit in the project to a 50% qualified household. This can be either through a vacancy that occurs, or by substituting a currently occupied unit housing an eligible household. How the floating status is administered must be documented in the project tenant selection policy.

•  
*Floating Units –  
Income exceeds  
80%*

- If the income of a tenant occupying a floating rent unit **exceeds 80% of AMI** at recertification, the household's rent must be adjusted to the lesser of: 30% of their adjusted income, or, market rent for comparable (unassisted) units in the neighborhood. The next available unit in the project of comparable size or larger must be rented to a household satisfying the set-aside requirements for the replaced HOME unit. When this occurs, the unit occupied by the over-income tenant is no longer considered HOME-assisted, and the rent of that unit can be adjusted as appropriate.

Fixed Units:

*Fixed Units –  
Income between  
50% & 80%*

- Subject to the terms of the lease, the rent of the initial household designated as Low HOME, may be increased to the High HOME rent when the unit is re-designated as such, after the annual recertification reflects an income that exceeds 50% (but is under 80%) of AMI. The HOME regulations say the next available comparable HOME-assisted unit must be rented to a Low-HOME eligible household.

*Fixed Units*

- If a household's income at annual recertification, **increases above 80%** of the area median income, in a fixed unit, the unit this household occupies is still considered to be a HOME unit, but their rent must be adjusted to 30% of the household's adjusted gross income. There is no "cap" (i.e., market rent) for fixed units. The next available HOME-assisted unit must be rented to a household matching the income designation of the original unit that went over-income.

*Subsidy Programs*

### Subsidy Programs/Effect on HOME Rents

The HOME Program prohibits projects from collecting more than the maximum HOME rents, **unless**:

*Project-based  
Subsidy*

The project is underwritten with a project-based subsidy program in place, **and**,

- Units are initially occupied by households making no more than 50% of AMI
- Households are paying no more than 30% of adjusted income for rent (which could exceed the maximum HOME rent)

*Tenant-Based  
Subsidy*

If households are receiving **tenant-based** assistance, the project may **never** collect more than the maximum HOME rent, even if the tenant-based program will pay more.

### **New: Project-based Vouchers:**

*Project-based  
Vouchers*

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

## Subsidy Programs/Effect on Income Calculations

When a subsidy program is in place, projects must determine eligibility income using current circumstances, in order to charge rent based on the tenant income. The HOME program requires that eligibility be calculated using an anticipated method for the forthcoming year, if the income varies. Depending on the circumstances, the 2 methods may result in different calculations and income levels. The file should contain documentation of both calculations to be in compliance with HOME requirements.

## Transfers of Existing Tenants to Another HOME Unit

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

## Adding a New Household Member

*Addition of Household Members*     OHCS recommends owners/managing agents include language in the lease prohibiting the addition of a new household member during the first six months of occupancy, with the obvious exception of children born to or adopted by a member of the original household.

## OHCS Policy on Mandatory Renter's Insurance

*Renter's Insurance*     If the owner's purpose in requiring tenant-paid renter's insurance is not to protect the personal property of the household itself, but rather to assure that the household has liability coverage for damages to the property or other residents, then the monthly cost of this insurance must be included in any gross rent calculation. In this case, if projects are charging rents at the **program** maximum, the rent charge to the tenant must be reduced by any monthly insurance payment. This policy applies to rent calculations affected by **any** program funding source.

The exception to this policy is when the project has mandatory renter's insurance contingent upon the resident's option to have household items that may have specific insurance coverage policies (i.e., waterbeds, large aquariums).

## COMPLIANCE MONITORING

### GENERAL

*PCS Compliance Monitoring* Monitoring by OHCS is an ongoing process involving continuous communication and evaluation. The process begins with the Housing Resource Section of OHCS until the project is completed. The monitoring responsibilities are then transferred to Program Compliance Section (PCS). It is then the assigned PCS Compliance Officer's responsibility to:

1. Perform file reviews and on-site visits as scheduled to ensure the owner and property management agent are operating the project in compliance with applicable rules, regulations, and policies.

The areas to be reviewed for compliance may include, but are not limited to:

- a. Tenant qualifications, income calculations, and appropriate supporting documentation;
  - b. The gross rent (rent plus tenant-paid utility allowance);
  - c. The vacancy history of both low-income and market-rate units and the marketing strategies used to fill vacancies;
  - d. Provisions memorialized in the HOME Grant Agreement, HOME Land Use Declaration of Restrictive Covenants and other applicable documentation; and
  - e. Project characteristics attested to in the initial application for which ranking points were awarded.
2. Provide technical assistance to the sponsors, owners, and management agents when indicated or requested to ensure compliance with program requirements.
  3. Report instances of noncompliance, when appropriate, to HUD or the OHCS Finance Committee after giving the owner reasonable time to correct the issues of noncompliance.
  4. Maintain the information used to complete the compliance review for five years after the calendar year in which it was received.

OHCS has the right to perform on-site inspections of all HOME projects through the end of the period of affordability. If there are any additional funding sources for which OHCS is responsible to monitoring compliance, the time frame for inspections and reviews may be extended accordingly. These on-site inspections may be separate from any Housing Quality Standards (HQS) or Uniform Physical Conditions Standards (UPCS) inspections (see **Exhibit E.18**), review of tenant certifications, supporting documents and rent records. Additionally, if other programs are through OHCS, such as Low-Income Housing Tax Credit (LIHTC), Oregon Affordable Housing Tax Credit (OAHTC), HELP, Tax-Exempt Bond financing, or Trust Fund, a review of all requirements may be conducted along with the HOME review.

The Compliance Monitoring Process is based upon the following components:

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

## COMPLIANCE TRAINING

*State-Sponsored HOME Compliance Training* PCS will conduct periodic Compliance Trainings, as scheduling permits. The purpose of the state-sponsored training is to provide owners/agents with the tools to maintain project compliance. Trainings will cover:

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

Compliance training workshops are not intended to be the only training resource or a substitute for more formal certification or other technical recordkeeping training.

## HOME COMPLIANCE FORMS

*Required HOME Forms* OHCS requires the use of certain forms. No other forms will be considered acceptable. The following are the required forms:

- Owner's Certification of Continuing Program Compliance (Required Form E.6)
- HOME Monitoring Report (Required Form E.1)
- Tenant Income Certification (Required Form F.1 (F.1A) or F.2.)
- Employment Verification (Required Form F.3)
- Certification of Zero Income (Required Form F.4)
- Under \$5,000 Asset Certification (Required Form F.5)

*Recommended HOME Forms* In addition to the required forms, the following sample forms are also available. Any format the owner or managing agent chooses that provides, at a minimum, the information requested on these forms is acceptable to PCS:

- Compliance Checklist (Form F.6)
- Applicant/Tenant Questionnaire (Form F.7)
- Income Verification (for self-employed person) (Form F.8)
- Public Assistance Verification (Form F.9)
- Periodic Monetary Assistance Verification (Form F.10)
- Asset Verification (Form F.11)
- Public Housing Authority Statement (Form F.12)
- Child Support/Alimony Statement (Form F.13)
- Unemployed Applicant/Resident Affidavit (Form F.15)
- Social Security Benefits Verification (Form F.16)

The following administrative form is available as well:

- Project Summary Form (**Exhibit E.19**)

## PCS TENANT FILE REVIEW AND ON-SITE PROJECT INSPECTIONS

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

- Tenant File Reviews*
- Lease
  - Tenant Income Certification
  - All Related Verification Forms
  - Certification of Assets

**Note: The Applicant Questionnaire and Checklist are not required but *recommended*. However, if other forms are used, they must include at a minimum, all the information requested on these forms.**

OHCS has the right to review tenant files on-site and/or to perform physical inspections of HOME projects as deemed necessary throughout the applicable compliance period for each project. **Exhibit E.7** provides the form used by PCS for conducting file reviews.

The assigned PCS Compliance Officer will conduct a physical inspection a minimum of once a year for projects consisting of more than 25 total units (including non-HOME units), and once every other year for projects with 1-25 total units, or more frequently at the CO's discretion. When a project is scheduled for inspection, the CO will:

- Notify the owner and managing agent in writing of the date and approximate time of inspection;
- Perform the on-site file, property, and unit inspections;
- Inform the owner and managing agent of any findings of noncompliance with regard to the review.

## INSPECTION STANDARDS:

*Inspection Standards* OHCS conducts inspections of selected units using the Uniform Physical Conditions Standards (UPCS) (**Exhibit E.18**) established by HUD. Project ownership/management may utilize UPCS for their own inspections if so desired, or use HUD's Housing Quality Standards (HQS).

## RECORD KEEPING AND RECORD RETENTION

*Owner Records and Retention* Owners are required to keep records for each qualified low-income building in the project. Please refer to **Owner Responsibilities** for detailed information on this subject.

## NONCOMPLIANCE - Owner Notification

OHCS is required to provide written notice of noncompliance to the owner if:

- OHCS Notification of Noncompliance*
- An annual Owner's Certification of Continuing Program Compliance and HOME Monitoring Report is not received by the due date;
  - Tenant Income Certifications, supporting documentation, and rent records are not submitted when requested by OHCS;
  - The project is found to be out of compliance through inspection, review, or other means with the provisions of the HOME Grant Agreement and HOME Declaration or representations made in the project application for HOME funds;
  - An owner has not given notice to the agency of the sale or transfer of property.

## CORRECTION PERIODS

### Annual HOME Monitoring Report Submission

Owners will have 30 days from the date of written notice to supply any missing information, annual financial statements, or annual HOME Monitoring Report.

### Other Noncompliance

Owners will have 30 days from the date of notification by OHCS to correct findings of noncompliance with any other HOME regulations or requirements. In some circumstances, extensions will be granted upon receipt of a written request for extension from the owner or managing agent.

## QUALIFYING TENANTS

### GENERAL

*Tenant Eligibility - General* Applicants for low-income, rent-restricted units should be advised early in their initial visit to the project that there are maximum income limits that apply to the units. Management should explain to potential tenants that the anticipated income of *all* adult persons expecting to occupy the unit must be verified and included on the Tenant Application, Applicant Questionnaire and Tenant Income Certification (TIC) *prior to occupancy and prior to the tenant's first anniversary date* for continued eligibility. In addition, all tenants living in a HOME unit must recertify every sixth year **from the projects HUD Integrated Disbursement and Information System (IDIS) closeout date.**

Initial eligibility income of individuals must be determined in a manner consistent with the HUD Handbook 4350.3 REV I "Occupancy Requirements of Subsidized Multifamily Housing Programs". A hard copy of the Handbook may be printed from HUD's website at: [www.hudclips.org](http://www.hudclips.org).

### WAITING LISTS

*Placement From Waiting Lists* After the units are initially occupied, the manager must establish waiting lists containing the names of eligible applicants. Waiting lists should be maintained in such a way that OHCS and/or HUD can easily follow the progression.

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



Applicants must be housed in the order indicated by a written Tenant Selection Policy (sample policy listed as **Exhibit E.17**). Applicants must be accepted or rejected **before** the unit is offered to the next applicant on the list.

### THE TENANT APPLICATION

*Tenant Application Processing* It is critical to obtain *complete and accurate* tenant information in order to determine eligibility and retain low-income status for program compliance. A fully completed application is critical to an accurate determination of tenant eligibility. The management agent's application should request information regarding income, assets, and income from assets.

At the time of application it is the management agent's responsibility to obtain sufficient information on all prospective tenants to completely process the application to determine tenant eligibility. OHCS strongly recommends that roommates complete separate applications.

Applicants and tenants must meet the following requirements to be eligible for occupancy or to transfer units (must be a move-in, move-out)

1. The household's gross annual income must not exceed the HOME Program limits applicable to the unit.
2. Applicants must disclose social security numbers for all family members at least 6 years of age and older, and provide proof of the numbers reported.
3. The applicants must declare their citizenship or eligible alien status. Only US citizens or eligible noncitizens may reside in a HOME assisted unit.
4. The household must agree to identify the gross amount of all income and assets into the household. All information reported by the household must be verified in consistency with HUD Handbook 4350.3 Change 3.

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

*Application  
Contents*

The application should include:

- The name and birth date of each person that will occupy the unit. The applicant's legal name, as it will appear on the lease and other documents, should be given;
- The social security number for each family member six or older or a certification that he/she does not have one.
- All sources and amounts of current and anticipated annual income expected to be earned during the twelve month certification period (this includes income values calculated from non income generating assets and other asset income);
- The signature of the applicant and the date the application was completed; and
- The signature of the management staff person who accepted the application and the date it was received.

## INCOME INCLUSIONS AND EXCLUSIONS

*Tenant Income  
Considerations*

Annual income is the total **gross** income from all sources received by each adult member of the household, including all income from assets, anticipated to be received for the 12 month period following the date of certification of income. The goal in qualifying applicants to live in HOME projects, is to use a reasonable method, (prioritizing sources of verification per Handbook 4350.3 REV 1), to determine and verify total income for the household. Third-party verification through outside sources is always the preferred method. *Verifications that are not third-party must be documented with the reason third-party methods were not used or available.*

**Annual income includes, but is not limited to:**

- (a) Interest, dividends and other income from net family assets (including income distributed from a nonrevocable trust). On deeds of trust or mortgages, only the interest portion of the monthly payments received by the applicant is included.
- (b) The gross amount (before any payroll deductions), of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adults in the household (including persons under the age of 18 who are the head, spouse or co-head). Includes salaries of adults received from a family-owned business.
- (c) Net income, salaries and other amounts distributed from a business.
- (d) The gross amount (before deductions for Medicare, etc.) of periodic social security payments. Include payments received by adults on behalf of individuals under the age of 18 or by individuals under the age of 18 for their own support. (But see “Annual Income Excludes,” for amounts that are received on behalf of someone who does not reside with the family.) Note: If the Social Security Administration is reducing the family’s benefits to adjust for a prior overpayment, use the amount of payment actually provided after the adjustment.
- (e) The full amount of payments from annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts (e.g., Black Lung Sick Benefits, Veteran’s Disability, Dependent Indemnity Compensation (widow of Killed in Action serviceman). Count the total amount of such payments received. Do not reduce the amount by any amounts the individual previously paid into the account in order to receive the pension, annuity or insurance policy.
- (f) Delayed periodic payments received because of delays in processing unemployment, welfare or other benefits. These are payments that would have been paid periodically; but were paid in lump sum because of circumstances such as processing delays. Lump-sum payments received because of delays in processing unemployment, welfare or other benefits. (Also see “Annual Income Excludes,” for the exclusion of deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.
- (g) Payments in lieu of earnings, such as unemployment and disability compensation, worker’s compensation and severance pay. Any payments that will begin during the next 12 months must be included.
- (h) The full amount of student financial assistance, **less tuition**, either paid directly to the student or to the educational institution. (This includes scholarships, grants, fellowships and any other kind of student financial assistance.) It does not matter what the assistance is actually used for. Except, do not count financial assistance as income for students 24 years or older with a dependent child or children, or full-time students 18 or older who reside in a household with their parents who are applying for, or receiving, Section 8 assistance.
- (i) Welfare assistance (TANF, AFDC-like programs, General Assistance).

- (j) Alimony and child support awarded as part of a divorce or separation agreement ***unless the applicant certifies that the income is not being provided and makes all reasonable efforts to collect the amount due, including filing with the appropriate courts or agency responsible for enforcing payment.***
- (k) Recurring monetary contributions or gifts regularly received from persons not living in the unit. This includes the payment of monthly bills by a third party, even if the payment is made directly to the utility or other source of billing. Except, exclude from annual Income recurring monetary contributions that are paid directly to a childcare provider by persons not living in the unit. Also, exclude gifts of groceries.
- (l) Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and subsequent revisions to that Act.
- (m) Actual income distributed from trust funds that are not revocable by, or under the control of any member of the tenant family. **NOTE:** Even if the family assets exceed \$5,000, use actual income distributed from the irrevocable trust.
- (n) The full amount of cash deposited in an individual's bank account, when the individual opts to receive cash rather than a food stamp debit card

**Annual income excludes:**

- Income Exclusions*
- a) Meals on Wheels or other programs that provide food for the needy; groceries provided by persons not living in the household; and amounts received under the School Lunch Act and the Child Nutrition Act of 1966 (including reduced lunches and food under Special Supplemental Food Program for Women, Infants and Children (WIC).
  - b) Amounts paid by a State Agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home.
  - c) Grant or other amounts received specifically for:
    - Medical expenses (including Medicare premiums paid by an outside source).
    - Set aside for use under a Plan to Attain Self Sufficiency (PASS) and excluded for purposes of Supplemental Security Income (SSI) eligibility. **NOTE:** A PASS permits a person with disabilities who is receiving SSI and who is also receiving other income, to set aside a portion of the other income in order to achieve a work-related goal.
    - Out-of-pocket expenses for participation in publicly assisted programs. Such amounts must be made solely to allow participation in these programs. These expenses include special equipment, clothing, transportation, childcare, etc.
  - d) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household, co-head or spouse).
  - e) Adoption assistance payments in excess of \$480 per adopted child.
  - f) Proceeds of personal loans.

- g) Temporary, nonrecurring or sporadic gifts (e.g., gifts; census taker income from the federal Bureau of the Census).
- h) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
- i) The special pay to a family member serving in the armed forces who is exposed to hostile fire (e.g., in the past special pay included Operation Desert Storm).
- j) Amounts received under training programs funded by HUD (Comprehensive Improvement Assistance Program; training received under Section 3.)
- k) Compensation from State or local employment training programs and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for a limited time as determined in advance under the program by the state or local government.
- l) A resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the development.
- m) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.
- n) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.
- o) Payments received for the care of foster children or foster adults. (Foster adults are usually adults with disabilities, who are unrelated to the tenant family, and who are unable to live alone.)
- p) Amounts that are received on behalf of someone who does not reside with the family, as long as the amounts:
  - Are not intermingled with the family's funds; and
  - Are used solely to benefit the person who does not reside with the family.

NOTE For such amounts to be excluded, the individual must provide the owner with an affidavit stating that the amounts are received on behalf of someone who does not reside with the family and the amounts meet the conditions in the sub-paragraphs above.

- q) Recurring monetary contributions that are paid directly to a childcare provider by persons not living in the unit.

### **Income excluded by federal statutes:**

(Not inclusive, see Handbook 4350.3 REV 1 for listings of exclusions related to certain Native-American groups).

#### *Income Excluded*

#### *by Federal Statutes*

- a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (unless received as a discretionary cash deposit to a bank account).
- b) Payment received under the Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, and senior companions).
- c) Payments, rebates, or credits received under Federal Low-Income Home Energy Assistance Programs. Includes any winter differentials given to elderly (e.g., Department of Health and Senior Services' Low-Income HOME Energy Assistance Program).
- d) Payments received under programs funded in whole or in part under the Job Training Partnership Act, (employment and training programs for native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, State job training programs, career intern programs, AmeriCorps).
- e) Payments received under Title V of the Older Americans Act (Green Thumb, Senior Aides, and Older American Community Service Employment Program);
- f) Payments received after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, MDL No. 386 (EDNY).
- g) Any earned income tax credit to the extent it exceeds income tax liability (26 U.S.C. 32(j)).

Again, for more information on income inclusions and exclusions, please refer to HUD Handbook 4350.3, REV I.

### **Converting Income Information to an Annual Figure:**

#### *Income*

#### *Calculations*

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

#### **To annualize full-time employment, multiply:**

1. Hourly wages by the number of hours worked per year  
example: \$5.00 per hour x 2080 hours per year = \$10,400 annually  
\$5.00 per hour x 40 hours per week x 52 weeks = \$10,400 annually
2. Weekly wages by 52  
example: \$190 per week x 52 weeks = \$9,880 annually
3. Bi-weekly wages by 26  
example: \$500 biweekly x 26 pay periods = 13,000 annually
4. Semi-monthly wages by 24  
example: \$400 twice a month x 24 pay periods = \$9,600 annually

5. Monthly amounts by 12

example: \$1,000 paid monthly x 12 months = \$12,000 annually

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

**To annualize income from other than full-time employment, multiply:**

1. hourly wages by the anticipated number of hours to be worked;
2. average weekly amounts by the anticipated number of weeks to be worked;
3. other periodic amounts by the anticipated # of periods to be worked.

Income that cannot be anticipated for a full 12 months (such as unemployment compensation) should be calculated assuming current circumstances will last a full 12 months.

Finally, include income from assets.

**ASSET INCLUSIONS AND EXCLUSIONS**

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

If an applicant/tenant declares a combined total **net family** asset value of less than \$5,000, third-party verification is not necessary. However, any actual income the applicant/tenant receives from the asset must be added to regular income.

If an applicant declares a combined total **net family** asset value of \$5,000 or more, third-party verification of each asset must be obtained, and the greater of the actual income from assets or the imputed income of the total value of the assets must be added to regular income. (See HUD Handbook 4350.3 REV 1 for more detail on imputed income.)

**Assets include:**

- Asset Inclusions*
- Cash held in savings accounts, checking accounts, and safety deposit boxes. For savings accounts, use the current balance to determine the value. For checking accounts, use the average balance for the last six months.
  - The principal value of any trust available to the household. Do not include irrevocable trusts or trusts that no family member can control.
  - Equity in real estate, rental property, and other capital investments. Include the current market value less any unpaid balance on loans secured by the real property and less any reasonable costs that would be incurred in selling the asset (prepayment penalties, broker fees, etc.).
  - Stocks, bonds, treasury bills, certificates of deposit, money market funds, etc.
  - Individual retirement accounts (IRA) and Keogh accounts, as well as 401K accounts to which the individual has access. If the individual is withdrawing from an IRA or Keogh

account, determine the amount of the asset by using the average balance of the account for the previous six months. Do not count the withdrawals as income.

- Retirement, pension funds, and annuities;
  1. While the person is employed, include only amounts the individual can withdraw without retiring or terminating employment; and
  2. At retirement or termination of employment, if benefits will be received in a lump sum, include benefits in net family assets. If benefits are paid in periodic payments, include the benefit amount in annual income. Do not count any remaining amounts in the account as an asset.
- Lump sum receipts including inheritances, capital gains, one-time lottery winnings, insurance settlements, or other claims and the delayed receipt of Social Security or SSI benefits.
- Personal property held as an investment such as gems, antique cars, coin collections, etc.
- Cash value of life insurance policies available to the individual before death. Term life insurance is not included as an asset because it has no cash value to the individual before death.
- A mortgage or deed of trust held by an applicant/tenant. Payments are usually received as one combined figure of principal and interest. Separate the principal and interest portions (by using an amortization schedule) and include only the interest for the future 12 months as income. Determine the amount of the loan outstanding at the end of the 12-month period following certification and include that amount as the asset value.

**Note:** Assets owned by more than one person should be pro-rated according to the percentage of ownership.

**Assets do not include:**

- Asset Exclusions*
- Necessary personal property such as clothing, furniture, automobiles, personal jewelry, etc.
  - Vehicles specially equipped for the handicapped.
  - Interest in Indian Trust Land.
  - Value of term life insurance.
  - Equity in a cooperative unit in which the family lives.
  - Assets that are a part of an active business (“business” does not include rental properties that are held as investments and not a main occupation).
  - Assets held in the applicant’s/tenant’s name but are actually owned by someone else, such as;
    1. Assets and earned income that is accrued or paid to the benefit of someone else; or
    2. A situation wherein another person is responsible for income taxes incurred on income generated by the asset(s); or

3. An applicant/tenant is responsible for disbursing someone else's money, such as in the case of having Power of Attorney, but the money is not his/hers and no benefit is received.

### SALE OR DISPOSITION OF ASSETS

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

Example: Six months before move-in, an applicant sold his house to his nephew for \$155,000. The house could have been sold on the open market for \$160,000. The difference between the value and the sale price is more than \$1,000. Include \$5,000 as the disposed asset value.

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

### CALCULATING INCOME FROM ASSETS

#### Determining the Value of an Asset:

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

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

#### Determining Income from Assets:

*Determining Income from Value of Assets* When the value of net family assets is less than \$5,000, add to the total verified income to the amount of actual income from the asset(s). When assets are \$5,000 or more, add to the total verified income **the greater of**

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

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

## TENANT INCOME AND ASSET VERIFICATION

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

### Effective Term Of Verifications:

Third-party verifications of income are valid for 120 days. After this time a new verification must be obtained if the move-in or annual certification occurs after the effective verification term.

### Methods of Verification:

#### ***Written Verification:***

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

1. State the reason for the request;
2. Include a release statement signed and dated by the applicant (refer to the Forms Section for an example); and
3. Provide a section for the third-party source to disclose the requested information. The signature of the third party source, their job title (if applicable), phone number and date must be included.

#### ***Verification Transmittal:***

1. It is strongly recommended that applicants sign two (2) copies of each verification form. The second copy may be used if the first request has not been returned in a timely manner.
2. Income verification requests must be sent directly to and returned by the source, ***not through the applicant.*** It is suggested that a self-addressed, stamped envelope be included with the request for verification.
3. Verifications may be hand-carried by the applicant only if reasonable attempts to mail or fax the request(s) for verification to the third-party have failed. When using this method, the file should be documented with a phone verification indicating the name and title of the person contacted and confirmation the information received by hand-carry method is accurate.
4. The management agent should review and check verifications for accuracy and completeness. Verifications should be date stamped as they are received.

### ***Verbal Verification:***

When written verification is not possible prior to move-in, direct contact with the source will be acceptable to OHCS only as a last resort and *must be followed by written verifications*. The telephone or personal conversation should be documented in the applicant's tenant file to include all information that would be included in a written verification. Include the name and title of the contact, the name of the on-site management representative accepting the information, and the date.

### ***Sporadic/Unstable Income***

On January 27, 2009, HUD's Office of Public and Indian Housing (PIH) issued a final rule on "Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs." Effective March 30, 2009, this rule amends 24 CFR Part 5 to change the way that multi-family housing owners and management agents verify and determine the eligibility of applicants and tenants. Consequently, the January 27, 2009, final rule also makes conforming changes to the HOME regulations at 24 CFR 92.203(d)(1) "Income Determinations" to ensure consistency among HUD programs. With the exception of the changes reflected in §92.203(d)(1), the Part 5 changes do not apply to the HOME Program.

Prior to the January 27, 2009, revisions, the HOME regulations required management to determine an applicant's anticipated annual income by projecting the prevailing rate of income forward for 12 months. The January 27, 2009, final rule adds that **in certain situations**, a household's annual income may be determined using the household's actual past income. The practical effect of this change is minimal, although management will now be better equipped to deal with situations in which projecting current income forward may not produce an accurate result.

The revised regulation allows calculation of a household's income based on the actual income received by the household during the 12 months prior to move-in, and project the household's income forward for a twelve month period. **If current household income cannot be determined using current information because the family reports little to no income or because income fluctuates, the revised regulation authorizes the use the household's actual past income.** Under this method, actual income received by the household during the last 12 months is averaged, and the average monthly income is used to project annual income. For example, if it is determined that the family's total actual income for the past twelve months was \$5,800 (ranging from \$200 to \$900 per month), the PJ must divide this amount by 12 to compute the average monthly income of \$483. Then the PJ must project this average monthly income forward for a twelve month period, resulting in a determination of an annual income of \$5,800.

The household must provide documentation of current income, and if the family can provide acceptable documentation dated either within the 60-day period preceding the move-in date or the 60-day period following the request (first year annual) date, this documentation may be used to project annual income.

### ***Difference in Reported Income:***

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

## Acceptable Forms of Income Verification

*Acceptable Verification of Income* Specific information must be obtained on income verifications forms, or alternate methods must provide the same detail or information.

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

- Employment Income
  1. OHCS Employment Verification Form completed by the employer.
  2. Statement from the employer on company letterhead (which must include the anticipated income for the following 12 months);
  3. Several current check stubs from the employer showing gross income per pay period and frequency of pay; or
  4. A copy of the most recent income tax return signed by the applicant/tenant or copies of Form W-2 providing the amount of income, including income from tips and other gratuities, supported by current check stubs from the employer.
- Self Employment Income (any salary being paid as well as any net income from the business itself)
  1. Accountant's or bookkeeper's statement of net income and a statement from the business owner regarding anticipated income;
  2. Financial statement(s) of the business along with an affidavit or notarized statement from the applicant forecasting the anticipated income for the 12 months following certification; or
  3. The prior year's income tax return (Schedule C and 1069 and 1040 or K-1) along with a statement from the applicant/tenant forecasting the anticipated income for the 12 months following certification.
- Social Security, Pensions, Supplemental Security Income (SSI), Disability Income
  1. A benefit verification form completed by the agency providing the benefits;
  2. An award or benefit notification letter prepared by the authorizing agency. Copies of checks, bank statements reflecting automatic deposits, or deposit slips are not acceptable forms of verification.

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

- Unemployment Compensation
  1. A verification form completed by the unemployment compensation agency; or
  2. Records from the unemployment agency stating payment dates and amounts.
 

The weekly benefit amount should be multiplied by 52 weeks regardless of how many weeks the applicant/tenant is entitled to collect.
- Alimony or Child Support Payments
  1. A copy of a separation or settlement agreement, a divorce decree or verification from a clerk of the court stating the amount and type of support payment schedule;
  2. A printout or statement from the Support Enforcement agency (for child support verification);
  3. An affidavit from the person paying support;
  4. A copy of the most recent check and documentation regarding the frequency of payments;
  5. As a last alternative, the applicant's/tenant's statement or affidavit of the amount being received. The file should include a detailed explanation of why none of the alternatives listed above could be provided.
- Recurring Contributions and Gifts
  1. An affidavit signed by the person providing the assistance. The statement should include the purpose, dates, and value of the contributions or gifts;
  2. A letter from the bank, attorney, or trustee providing the necessary information; or
  3. A statement from the applicant/tenant providing the necessary information. The statement must include an explanation detailing why neither of the alternatives listed above could not be obtained.
- Unemployed Applicants/Tenants
  1. The income of unemployed applicants/tenants with regular income from any source, such as Social Security, pension, recurring gifts, etc., must be verified as described previously. Additionally, the applicant/tenant should complete a Non-Employment Affidavit.
  2. If the applicant/tenant is currently unemployed and claiming zero income or is unemployed but anticipates beginning work within the following 12 months, he/she should provide evidence by executing a Non-Employment Affidavit.
- Section 8 Program

For households participating in the Section 8 program owner/management may accept a copy of the 50058, 50059, or a PHA statement in place of independently obtained third-party verifications for the first year annual recertification. However, for the initial certification, source documentation is required. This is required by 92.203 (a) (1) of the Final Rule. The HOME program also requires, if the project uses the 50058, 50059, or PHA statement, that at least every 6th year from the completed IDIS date, third-party verification is completed.

## Acceptable Forms of Asset Verification

### *Acceptable Asset Verification* **Total net family assets valued at less than \$5,000:**

PCS does not require owners to obtain third-party verification of assets of a household if the **net family assets** are valued at \$5,000 or less. The owner must obtain a signed, sworn statement from the household certifying the assets and the income received from those assets. (Required Form F.5)

### **Total net family assets valued at more than \$5,000:**

Assets must be verified, using the following suggested methods:

- Account held by a bank (checking, saving, etc.)
  1. Verification of Assets completed by the bank where held;
  2. Copies of bank statements. For checking accounts, obtain the most recent six months of statements to get the average six-month balance. For savings accounts, obtain the most recent statement for the current balance.
- Trust Funds
  1. A letter from the trust administrator or representative;
  2. A copy of the most current fund statement.
- Personal Property Held as an Investment
  - A copy of a current appraisal of value.
- Real Estate
  1. Copy of the most current tax assessment or statement from a real estate broker;
  2. If under a contract of sale, a copy of the contract;
  3. For the outstanding loan balance, a payoff statement from the mortgage holder.
- Stocks, Bonds, Treasury Bills, Money Market Accounts
  1. Copy of the most current account statement from a brokerage firm;
  2. A statement from a brokerage account representative.
- Retirement and Pension Funds
  1. Copy of the most current account statement showing the ownership (vesting) percentage;
  2. Copy of the most current benefit statement.
- Whole Life or Universal Life Insurance Policy
  1. Copy of the most current statement of cash value;
  2. Statement from the insurance company as to the value of the policy.

- Mortgage or Deed of Trust Held by an Individual
  1. A copy of an amortization schedule relating to the specific term and interest rate of the mortgage.

## TENANT INCOME CERTIFICATION

### Initial Certification

*Required Tenant Income Certification Forms* After all income and asset information has been obtained and computed, management personnel must prepare a Tenant Income Certification (**Required Form F.1 or F.2**) for each household placed in a set-aside unit.

The Tenant Income Certification must be executed, along with the lease, on or before the move-in date.

### Recertification

All households must be certified on or before the first anniversary of the move-in date. The first year recertification must contain third party verifications completed in the same manner as move-in. (See page 34 regarding households with Section 8 assistance.) The original move-in date must be carried over onto all subsequent recertifications. In addition, all tenants living in a HOME unit must fully (third party documentation) recertified every sixth year ***from the projects IDIS closeout date. (For example,, a property with a 20-year affordability period, must examine source documentation to verify tenant income at initial lease-up, at each new household's move-in, and in years six, twelve and eighteen, verify the income of all residents.***

***In the interim years, each household must complete a Tenant Income Self-Certification (Required Form F.1A).***

*Recertification Timing - RD/HOME Projects* Interim recertifications are not required. For projects with subsidy under Rural Development 515, when RD interim recertifications are completed prior to the anniversary of the move-in, the recertification becomes the new annual date under the RD program. If management chooses to complete a HOME Tenant Income Certification concurrently, the new RD annual date can also be used as the annual date for the purposes of recertification under the HOME program.

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

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

## LEASES

OHCS does not provide a model Lease Agreement. However, owners must execute Lease Agreements with tenants that incorporate specific provisions that establish tenant responsibilities and avoid certain prohibited provisions.

### **OHCS Requirements:**

#### *OHCS Lease Requirements*

- OHCS requires any security deposit collected must be refundable.
- Non-refundable “fees” for the purpose of covering the cost of cleaning the apartment at the end of tenancy are not permissible.
- Any other deposits or fees must be defined and reasonable, i.e., application fees are allowable to cover the cost of tenant screening.

### **Lease provisions must include:**

#### *HOME Lease Requirements*

- The legal name of the parties to the agreement and all other occupants;
- A description of the unit to be rented;
- The term of the lease;

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

[ ] one-year Lease [ ] \_\_\_-month Lease [ ] month-to-month”

- A provision that upon a 48-hour written notice to the tenant, OHCS, accompanied by the owner or agent, shall be permitted to enter the dwelling unit during reasonable hours for the purpose of performing an inspection;
- A mechanism that will allow termination of the agreement and eviction for violation;

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

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

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

- A provision that the tenant(s) must provide accurate information to determine HOME Program eligibility at move-in and required recertifications, and failure to provide such information and cooperate with the recertification process will be deemed a violation of the Lease;  
*(Note: If, at the annual recertification, a household's income reaches 80% of area median income adjusted for family size, the household shall be required to pay rent equaling 30% of their adjusted income (as defined by the HUD Handbook 4350.3 REV 1) for rent and tenant-paid utilities. While this is not a required lease provision, this information should be provided to the household prior to move-in. However, for HOME and HOME-like units coupled with LIHTC, the maximum tenant rent is the applicable LIHTC rent.)*
- A provision that the tenant must execute a release for verification of utilities on an annual basis, unless utilities are included in rent, or the project uses the PHA allowance rather than actual consumption;
- A clause that the tenant will receive a 30-day advance written notice of any increase in the monthly rent; and that the rent may not increase until the tenant's lease expires;
- And, a provision that any material misrepresentation in the tenant's application for the leased premises, whether intentional or otherwise, may be treated by the owner, at the owner's sole discretion, as an act of default under the Lease and all remedies available to the owner in the event of other defaults shall likewise be available to the owner in such case.

**The Lease must also include:**

- The rent amount;
- Utility information;
- The permitted and restricted use of the premises;
- The amount of the security deposit and/or fees charged;
- The signatures of all parties.

*Prohibited Lease Terms*     **Prohibited Lease terms include:**

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

- Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense or before a court decision on the rights of the parties.
- Agreement by the tenant to waive any right to a trial by jury.
- Agreement by the tenant to waive the right to appeal or otherwise challenge in court a court decision in connection with the Lease.
- Agreement by the tenant to pay attorney fees or other legal costs, even if the tenant wins in a court proceeding by the owner against the tenant. If the case is lost, the tenant, however, may be obligated to pay costs.

## LEAD-BASED PAINT

### EXEMPT HOUSING

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

### BASIC REQUIREMENTS

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

### NOTIFICATION REQUIREMENTS

*Owner Notification Requirements* Owners must distribute a HUD or Environmental Protection Agency (EPA) approved pamphlet to prospective buyers and renters of pre-1978 homes, and tenants of homes where renovations will take place. A widely used EPA pamphlet entitled “Protect Your Family From Lead in Your Home” is available for download in both English and Spanish on the OHCS website with the Consolidated Funding Cycle (CFC) materials. OHCS requires that owners obtain evidence of tenant receipt of any pamphlet distributed. Owners may create their own receipt of disclosure form or use **Exhibit E.11**, “*Disclosure of Information on Lead*” provided with this manual. PCS will audit for proof of receipt.



### APPLICABILITY

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

## FAIR HOUSING AND EQUAL OPPORTUNITY (FHEO)

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

The classes identified as “protected” under FHEO (Federal) are defined as follows:

### *Protected Federal Classes*

#### **FEDERAL**

- **Race:** Racial Background
- **Color:** Additional distinction within the category of race
- **Sex:** Gender
- **Religion:** A person's religion; or lack thereof
- **National Origin:** Where the person or their ancestors came from
- **Handicap:** A mental or physical impairment that substantially limits one or more of a person’s major life activities.
- **Familial Status:** Familial status means having a child in the household, whether living with a parent, a legal custodian, or their designee. It also covers a woman who is pregnant, and people in the process of adopting or gaining custody of a child.

### *Protected State Classes*

#### **STATE OF OREGON**

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

### *Protected Local Classes*

#### **CITIES OF PORTLAND, SALEM, EUGENE, CORVALLIS, ASHLAND, AND MULTNOMAH COUNTY**

- **Sexual Orientation:** Actual or perceived heterosexuality, homosexuality, or bisexuality.

### *Protected Local Classes*

#### **CITIES OF PORTLAND, SALEM, EUGENE, CORVALLIS, AND MULTNOMAH COUNTY**

- **Age**
- **Gender Identity**

## HANDICAP ACCESSIBILITY

**These requirements are not specific to the HOME Program, they cover all new construction rental housing.**

As amended, Section 804(f)(3)(C) of the Act provides that unlawful discrimination includes a failure to design and construct covered multifamily dwellings for first **occupancy after March 13, 1991** (30 months after the date of enactment) in accordance with certain accessibility requirements. The Act defines "covered multifamily dwellings" as "(a) buildings consisting of 4 or more units if such buildings have one or more elevators; and (b) ground floor units in other buildings consisting of 4 or more units".

The Act makes it unlawful to **fail to design and construct** covered multifamily dwellings so that:

- public use and common use portions of the dwellings are readily accessible to and usable by persons with handicaps;
- all doors within such dwellings which are designed to allow passage into and within the premises are sufficiently wide to allow passage by persons in wheelchairs; and
- all premises within such dwellings contain the following features of adaptive design:
  - an accessible route into and through the dwelling;
  - light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.
  - reinforcements in bathroom walls to allow later installation of grab bars; and
  - usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.



“Fair Housing Act Checklist” and “Fair Housing Act Evaluation” documents are provided as **Exhibits E.14** and **E.15** checklists for owners to use in determining whether their projects constructed for occupancy after March 13, 1991 meet the accessibility guidelines.

## SECTION 504 REQUIREMENTS

*Requirements apply to projects receiving federal funds* These requirements are enacted to ensure that "qualified persons with disabilities" have access to programs (i.e., the HOME program) and activities that receive federal funds. Project sponsors must be familiar with the ongoing self-evaluation and accessibility requirements of Section 504. Even though an evaluation and transition plan has already been completed by ownership prior to lease-up, the plan should be updated periodically to ensure compliance, especially in regards to "Program Accessibility" and "Administrative Requirements".

The reach of the Section 504 requirements is broad. Projects and project sponsors must meet the following specific Section 504 requirements:

### REMOVE PHYSICAL BARRIERS

*Accessibility: New Construction: 5% for mobility 2% for sensory*

- For **New Construction** multifamily rental projects, **5%** of the units in the project must be accessible to individuals with mobility problems, and an additional **2%** must be accessible to individuals with sensory impairments.

- Section 504 has a different definition of **Substantial Rehabilitation** than the HOME program. For Section 504, a project with 15 or more units for which the rehabilitation costs will equal at least 75% of the replacement cost, **5%** of the units in the project must be accessible to individuals with mobility problems, and an additional **2%** must be accessible to individuals with sensory impairments.

*Rehabilitation: less extensive*

- When **less extensive rehabilitation** is undertaken, every alteration to every unit must make the unit accessible to the maximum extent feasible until **5%** of the units in the project are fully accessible to people with mobility impairments. Alterations to common spaces must always make the project accessible to the maximum extent feasible.

- Structures not undergoing alteration do not have to be made accessible if the program as a whole can be made accessible through other means.
- Accessible units must be, to the maximum extent feasible, distributed throughout the projects and sites and must be available in a sufficient range of sizes and amenities so as not to limit choice.
- Owners and managers of projects with accessible units must adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps. They must also take reasonable non-discriminatory steps to maximize use of such units by eligible individuals.
- When an accessible unit becomes vacant, before offering the unit to a non-handicapped individual, the owner/manager should offer the unit: first, to a current occupant of the project requiring the accessibility feature; and second, to an eligible qualified applicant on the waiting list requiring the accessibility features.

- The usual standards for ensuring compliance with Section 504 are the Uniform Federal Accessibility Standards (UFAS), although deviations are permitted in specific circumstances.

### **Which Buildings Must Be Accessible?**

- Standards for Accessibility*      *The construction standards for accessibility apply to:*
- Buildings with four or more units,
  - All multifamily units in new buildings with elevators, and
  - All ground floor units in buildings without elevators, except 2-story dwelling units. (Note: lofts are not considered to be a second story.)

### PROVIDE PROGRAM ACCESSIBILITY

- Persons with disabilities must be able to find out about, apply for and participate in federally assisted programs or activities.
- 504 Program Accessibility*      • Special communication systems may be needed for outreach and ongoing communication (for example, a TDD telephone line, materials in Braille etc.).
- All policies and procedures must be non-discriminatory.

### MEET ADMINISTRATIVE REQUIREMENTS:

1. If owners have 15 or more employees, must have a Section 504 Coordinator
2. Must notify program participants & employees of non-discrimination policies
3. All grantees must conduct self-evaluations of Section 504 compliance

### PROVIDE REASONABLE ACCOMMODATIONS:

*Reasonable Accommodations*      “It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.” A reasonable accommodation is defined as an adjustment in a **federally assisted or conducted** program or activity in order to accommodate the known physical or mental limitations of an otherwise qualified individual with a handicap. If a handicapped individual requests a reasonable accommodation, in the HOME program it must be provided, unless:

- It imposes an undue financial or administrative burden, (must prove) or,
- It alters the fundamental nature of the program.

## AFFIRMATIVE FAIR HOUSING MARKETING

### PURPOSE

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

### BASIC REQUIREMENTS FOR AFFIRMATIVE MARKETING

- Required for projects with 5 or more units*
- Affirmative marketing procedures and requirements **must** be adopted for rental projects containing 5 or more HOME-assisted housing units. ***Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability.*** The affirmative marketing procedures do not apply to families with Section 8 tenant-based rental housing assistance or families with tenant based rental assistance provided with HOME funds.



- All projects with five or more HOME assisted units **must** have an approved Affirmative Marketing Plan (AMP) before the project is transferred to PCS. This document (**Exhibit E.16**) outlines the strategies that will be addressed to market the project. More specifically, it outlines the strategies necessary to attract to the project those applicants who are considered least likely to apply. It also specifies racial and ethnic targets, not quotas, and the marketing strategies to attract this mix.
- Owners of projects **must** maintain records documenting outreach efforts in accordance with the AMP. ***Owners of projects must retain race and ethnicity of the head of household for all applicants that are accepted or rejected for HOME units.***
- The Equal Housing Opportunity Slogan, logo, or statement **must** be used in all advertisement, public service announcements, press releases, and information mailings.
- The HUD Fair Housing poster **must** be displayed in offices where rental activity takes place for all projects with five or more units.

A copy of the AMP and Management Plan, with all attachments, should be retained on site for reference.

In addition, owners are required to submit, within 30 days of receipt, a copy to PCS of any formal housing discrimination complaint filed against the owner or agent.

## ADVERTISEMENT

It is unlawful to make, print or publish any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin.

All written or oral notices or statements by a person engaged in the sale or rental of a dwelling are subject to this provision.

## TENANT SELECTION CRITERIA

*Requirements for Written Tenant Selection Policy/Procedure* An owner of rental housing assisted with HOME funds must adopt written tenant selection policies and criteria that:

- ***Are consistent with the purpose of providing housing for very low-income and low-income families;***
- ***Are reasonable related to program eligibility and the applicant's ability to perform the obligations of the lease.*** Federal regulations prohibit: "using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of race, color, religion, sex, handicap, familial status, or national origin.
- ***Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and***
- ***Give prompt written notification to any rejected applicant of the grounds for any rejection.*** An owner, management firm, or manager can be held liable for the actions of those involved in the tenant screening process.
- How questions are asked may cause a discriminatory answer.
- Retain records of verification questions and answers for a minimum of five (5) years. Document name and capacity of verification personnel.
- HUD recommends that **all** records be retained by the owner including notes of conversations and "hard copies" of credit checks.

It Is Acceptable To:

1. Set reasonable eligibility criteria as long as they are consistent for all applicants;
2. Require sufficient income to meet rent and utility payments;
3. Require certain terms and conditions such as security deposits or fees, provided that the conditions are the same for all applicants;
4. Inquire whether an applicant for a dwelling is a current illegal abuser of or addicted to a controlled substance.
5. Inquire whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.
6. Restrict the number of occupants according to policy standards.
7. A housing provider may choose to offer some or all of its units to persons with handicaps on a priority basis and may inquire whether applicants qualify for such a priority.

**Note:** Section 8 voucher holders **may not** be refused based upon status as a voucher holder, but must be otherwise eligible.

Exemptions:

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

**“62 and Over”**

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

**“55 and Over”**

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

**Other Exemptions:**

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

*HOME Definition of “Elderly” Project* Note: The HOME program **does not** use the HUD “elderly” definition for the purposes of designating “Housing for Older Persons”. The HUD definition of elderly includes younger disabled.

## TENANT HANDBOOK

It is recommended that projects develop a Tenant Handbook. This handbook provides management with the assurance that tenants have written reference and access to a more comprehensive explanation of general project residency requirements and rules that may be outlined in the Lease and House Rules.

### *Suggested Components:*

1. Letter of Welcome and an introduction to the project. The introduction should help to establish the necessary rapport between the manager and each tenant.
2. Emergency phone numbers should be listed prominently. Some important numbers to include are: police station, fire department, rescue squad, ambulance, hospitals, electric, gas, water, telephone company, and the resident manager.
3. A section should describe the neighborhood. Information offered might include information on; community recreation facilities; nearby schools with addresses and telephone numbers; a map with an index, etc;
4. Project information should pertain to the following categories:
  - a.) A summary of information about paying rent, including the date it is due, the name to whom checks are payable, and the address where checks are to be sent or delivered.
  - b.) List all charges to be assessed for damages, delinquent rents, and returned checks.
  - c.) Describe the visitor policy.
  - d.) Explain the lead-based paint notice procedure and acknowledgment requirements.
  - e.) All community facilities should be listed along with the hours they are open and rules for their use. Describe recreational programs sponsored by management or tenants.
  - f.) The cost of using utilities should be emphasized in terms of the relationship between waste and rent increases. Tips should be given concerning how to conserve energy.
  - g.) The tenant should be informed of regulations regarding garbage disposal, parking, noise, guests, windows, balconies, appliances, storage rooms, pets, televisions antennas, flammable materials, solicitors, waterbeds, etc.
  - h.) How to report maintenance problems; who will be responsible for maintenance.
  - i.) Outline both tenant and landlord responsibilities.
  - j.) Clearly define process and reasons for eviction along with cause for grievances and procedure to follow in reporting these.
  - k.) A section of the Handbook should describe the owner's policy regarding:
    - Methods for payment.
    - Delinquencies and follow up.
    - The procedures that are to be followed in evicting a tenant.
    - Security deposits.
    - Transfer Policy (Must be treated as new move-in)

## COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS (CHDOS)

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

CHDOs who receive assistance must adhere to lease provisions and grievance procedures approved by OHCS. They must also plan for and follow a program for tenant participation in management decisions.

All of these provisions, procedures, and programs must be outlined in the application for HOME funding and will be monitored by PCS staff for ongoing compliance.

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