

17. RENTAL OCCUPANCY

This Chapter covers the occupancy of HOME rental projects, including the initial marketing and rent-up through the ongoing compliance requirements during the period of affordability. Requirements pertaining to the acquisition and development of rental housing projects are covered in the previous chapter – Chapter 16.

Owners and property managers should be encouraged to download and follow the HUD Guide: **Compliance in HOME Rental Projects: A Guide for Property Owners**. The current version can be accessed at:

<https://www.hudexchange.info/resource/2395/compliance-in-home-rental-projects-a-guide-for-property-owners/>.

For the Department, staff can download **Compliance in HOME Rental projects: A Guide for Participating Jurisdictions**, which is available at:

<https://www.hudexchange.info/resource/2394/compliance-in-home-rental-projects-a-guide-for-pjs/>.

17.1 Marketing & Tenant Selection

17.1.1 Affirmative Marketing Requirements

HOME rental project awardees must adopt affirmative marketing procedures and requirements for all housing with five or more HOME-assisted units. State-designated CHDOs must adopt an affirmative marketing plan and procedures for all HOME projects.

Required elements of the Plan include:

- Identification of those persons across the protected classes that are expected to be “least likely to apply”;
- Description of how the owner generally will inform potential participants about fair housing and the project’s affirmative marketing policy;
- Specific procedures or activities that will be used to inform and solicit applications "who are not likely to apply" without special outreach;
- A description of how efforts will be assessed and what corrective actions will be taken where requirements are not met, and maintenance of records that document an assessment of the effectiveness of the marketing effort; and
- Delineation of the records that will be maintained to document the affirmative efforts.

17.1.2 Tenant Selection Procedures

HUD regulations require the owner to have a written tenant selection policy that clearly specifies how households will be selected for participation in the project.

Application selection procedures must:

- Limit the HOME-assisted housing units to very low-income and low-income families;

- Clearly articulate all requirements of occupancy and any locally established preferences or priorities;
- Identify applicants who meet the selection criteria on a lottery or “first come, first served” basis (or other basis approved by the Department) in accordance with preference policies;
- Provide for the selection of households from a written waiting list in the chronological order of application;
- Provide immediate written notification to any rejected applicant of the specific grounds for rejection, provide a process for appealing such decisions, and maintain records of the rejection; and
- Provide for reasonable accommodations for persons with disabilities to ensure they have equal access.

The Tenant Selection Plan must contain all of the required elements listed above and the Department must pre-approve the procedures prior to implementation of any marketing or tenant selection.

Existing tenants of units who will remain in the unit after HOME assistance are subject to other eligibility requirements of HOME-assisted tenants, but not to the selection policies and procedures outlined in the plan.

17.1.3 Preferences

The Tenant Selection Plan must state whether or not there are any preferences in the admission of tenants, citing supporting documentation to ensure nondiscrimination in the selection of tenants. Tenant selection policies and criteria must be based on local housing needs and priorities that are consistent with the State’s consolidated plan and all preferences must be administered in a nondiscriminatory manner across all protected classes within the preference.

- **Income:** To the extent that the Department has specified or approved units for particular income groups (e.g., 30% AMI or 50% AMI), the owner may be required to limit occupancy to those units to persons with incomes at or below the approved limits.
- **Local residency:** Local residency preferences or requiring the household to currently be a resident of the local jurisdiction is permitted for some types of projects. The owner or management agent should check with the Department for information regarding local residency requirements.
- **Special populations:** Owners must treat all income-eligible persons equally in administering their projects. However, the HOME statute and regulations permit PJs to target their units in order to address the housing needs of specific populations, such as large families or persons with disabilities, as long as the preference is articulated in the State’s Consolidated Plan and pre-approved by the Department. Priorities or preferences for certain types or categories of households are only permissible to the extent that:

- o The priority or preference does not violate nondiscrimination and fair housing requirements;
- o The priority household type has been identified in the State’s Consolidated Plan as having a disproportionate need;
- o The priority household type has been identified in the application and approved by the Department; and
- o The priority or preference is fully disclosed in all program documents, advertisements and presentations.

24 CFR 92.253(d)(3)(i) and (ii) provide that any limitation or preference for HOME-assisted housing must not violate nondiscrimination requirements listed in 24 CFR 92.350, and clarify that a limitation or preference does not violate nondiscrimination requirements if:

- o The housing also receives funding from a Federal program that limits eligibility to a particular segment of the population (e.g., HUD’s Section 202 supportive housing for the elderly, Section 811 housing for persons with disabilities, etc.); OR
 - o Preferences may be given to disabled families/individuals who need services offered at a project if the disability significantly interferes with their ability to obtain and maintain housing; they are not able to obtain and maintain housing without appropriate supportive services; and the services cannot be provided in a non-segregated setting.
- Elderly housing: HOME projects that are exclusively for elderly persons must comply with the Federal Fair Housing Act guidelines for elderly housing, which prohibits adults-only housing unless the housing falls within stated exceptions for housing for older persons, including:
 - o Housing intended for and solely occupied by residents who are 62 or older;
 - o Housing intended and operated for persons 55 or older, where at least 80% of the total housing units are occupied by at least one resident who is 55 or older; or
 - o Housing financed, constructed, and operated under the Rural Housing Services Section 515 program for the elderly (i.e. where each resident is either 62 or older or is a person with a handicap or disability, regardless of age, as such terms are defined in the Rural Housing Services program).

Department pre-approval of any preferences is required, and approved preferences must be included in the Tenant Selection Plan and all marketing materials.

If such a preference is approved, the owner may advertise the project as offering services for a particular type of disability, but the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the project.

HOME funded rental projects may not exclude an applicant with a tenant-based rental assistance certificate or voucher program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable tenant-based assistance.

17.1.4 Application Intake & Waiting Lists

Applications must be taken in a manner that ensures fair access, including reasonable time periods and methods of submission. Assistance must be offered to any household requesting assistance in completing the application.

The method for establishing the queue and waiting lists must be approved by the Department and clearly stated in application materials and briefings.

While priority or preference households may be placed on a separate waiting list, and processed according to the state priority, applications must be accepted from any household.

Waiting lists must be maintained and available for inspection by the Department.

Income eligibility need not be verified to place an applicant in the queue or on a waiting list. Placement on the list can be based upon the applicant's representation of income, with disclosure that income will be verified prior to the offering of a rental unit.

17.1.5 Initial Occupancy Deadlines

The HOME Rule imposes deadlines by which HOME-assisted rental housing must be occupied by low-income households:

- Within six months from the date of project completion, if a rental unit remains unoccupied, the awardee must provide to HUD (DED) information about current marketing efforts and, if appropriate, an enhanced plan for marketing the unit so that it is leased as quickly as possible.
- Within 18 months from the date of project completion, if efforts to market the unit are unsuccessful and the unit has not been initially occupied by an eligible tenant, HUD (DED) will require repayment of all HOME funds invested in the unit. A unit that has not served a low- or very low-income household has not met the purposes of the HOME program. Therefore, the costs associated with the unit are ineligible.

17.1.6 Occupancy Process

Although each owner may create the process for approving occupants of HOME-assisted units in a given project, the initial eligibility certification procedures should include the following:

1. Prospective tenant households complete a rental application. The head of household and every adult member of the household (i.e. any person age 18 and over) must disclose all income sources and assets held by the tenant or prospective resident.
2. Each adult household member must sign a "Consent to Release Information" form.

3. Verifications must be obtained by the owner/management for every income and asset item that the applicant identifies.
4. The owner/management agent must determine household income in accordance with the guidelines outlined in this manual and HUD 4350.3.
5. Once all the income and asset verifications have been obtained, management must prepare a Tenant Income Certification form for each household.
6. In addition to being income-qualified, a tenant/household must meet all applicable household composition and demographic requirements (such as student eligibility, age restrictions for elderly projects, etc.) in order to reside in a HOME-assisted unit.
7. A lease agreement must be executed.
8. The owner/management agent must maintain a tenant/unit file containing all information received and used for determination of eligibility.

17.2 Occupancy Requirements

17.2.1 Unit Mix

The HOME Program rule specifies income limits for projects, and often two levels of income limits.

Low Income / “High HOME” Assisted Units

The Department, to meet HOME requirements, requires all initial tenants of HOME-assisted units to have incomes **at or below 60% of the area median income**. These units are referred to as Low Income (LI) or High HOME units. Subsequent tenants are restricted to the income as specified in the HOME Contract for the project. The maximum income allowed under the HOME program for rental projects is 80% of the area median income; however, the Department may further restrict the income level for a project.

The rents collected by the owner on High HOME-assisted units are restricted to the High HOME rent limits less tenant paid utilities per an approved utility allowance.

Very Low Income / “Low HOME” Assisted Units

HOME requirements impose deeper targeting for rental projects. The rule requires all projects with **five or more HOME-assisted units** to designate **at least 20 percent** of the HOME-assisted units for tenants with incomes **at or below 50% of the area median income**. These units are referred to as Very Low Income (VLI) or Low HOME units.

The Department via the HOME Contract may require more Low HOME-assisted units for a project than the HOME rules require.

The rents collected by the owner on Low HOME-assisted units are restricted to the Low HOME rent limits less tenant paid utilities per an approved utility allowance. The only exception is for Low HOME units in a project that receives federal or state project-based rental subsidies and the tenant pays no more than 30% of their adjusted income for rent. The maximum rent may then be the rent allowable under the project-based subsidy program.

Initial Designation of Assisted Units

Owners are required to designate the HOME-assisted units not later than the time of initial unit occupancy (§92.252(j)) to ensure that units will be held to meet the unit mix requirements.

17.2.2 Income Eligibility Requirements

A household must be certified as income eligible to reside in a HOME-assisted unit. Household income must be within program limits using the method described below. Documentation of household income and composition is mandatory.

Income Limits

The maximum amount of annual gross income that a household may earn to qualify for a HOME-assisted unit is called the Income Limit. HUD establishes HOME Income Limits for different localities and adjusts them for household size, from one to eight persons. These limits establish the specific maximum annual dollar amount that a low-income (LI, 80% AMI), 60% AMI and very low-income household (VLI, 50% AMI) can earn in order to qualify to reside in a HOME-assisted unit.

Income limits are published annually by HUD, at varying times of the year depending on when the appropriation is made by the Congress. For this reason, HOME limits may be published at different times than other HUD programs, and owner may only use the income limits as published on the HUD Exchange for their HOME-assisted units.

The current (and past) HOME income limits can be found at:
<https://www.hudexchange.info/programs/home/home-income-limits/>.

Income Definition

The Department requires awardees to use the Annual (Gross) Income definition found at 24 CFR Part 5.609 (also referred to as the Section 8 method) to determine applicant income eligibility. Eligibility is based on anticipated income during the next 12 months.

The Part 5 definition of annual income “inclusions” – types of income to be counted and “exclusions” – types of income that are not considered (income of minors, etc.) comes directly from §5.609.

Detailed explanation of the Annual (Gross) Income definition can also be found in:

- CPD Income Calculator. <https://www.hudexchange.info/incomecalculator/>
- “Technical Guide for Determining Income and Allowances for the HOME Program”, see pages 11-31.

<https://www.hudexchange.info/resources/documents/HOMEGuideForIncomeAndAllowances.pdf>

- HUD Handbook 4350.3 Chapter 5.
https://www.hud.gov/sites/documents/DOC_35649.PDF

Note that 4350.5 is safe harbor guidance on income but doesn't overrule the HOME rule where different.

Income from Assets

The Part 5 definition used for HOME requires the inclusion of income from assets expected to be received in the 12-month period.

- If the total cash value of assets is **less than \$5,000**, then the actual income the family receives from the assets is the amount that is included in annual income.
- If the total cash value of assets is **more than \$5,000**, then the owner must (1) compute the Actual income from the assets, (2) multiply the total cash value of the assets by passbook rate (use .06%) to “impute” income, and (3) use **WHICHEVER IS HIGHER** as income from assets.

Verification

The HOME Program allows awardees to use two forms of verification for the Annual (Gross) Income basis of determining income eligibility. These forms are third party verification and review of source documents.

- **Third Party Verification** is the preferred method of verification in most instances, because a review of documents often does not provide needed information. (For example, an employed applicant's pay stubs may not provide sufficient information about the average number of hours worked, overtime, tips, bonuses and anticipated raises.) Under third party verification, a third party (e.g. employer, Social Security Administration, or public assistance agency) is contacted to provide information. Written requests and responses are preferred. However, to clarify or complete missing information on a written response, conversations with a third party are acceptable if documented through a memorandum to the file that documents the contact person, information conveyed and date of call.

To conduct third party verifications, an awardee must obtain a written release from the household that authorizes the third party to release required information. Some third-party providers may, however, be unwilling, unable or charge a fee to provide the needed information in a timely manner. In such cases, the awardee should attempt to find suitable source documentation without the third-party verification – for example, bank statements.

- **Review of Documents** provided by the applicant may be more appropriate for certain types of income such as persons that are self-employed and can be used as an alternative to the third-party verification method. Source documents, such as wage statements,

interest statements, unemployment compensation statements and income tax returns, etc. are reviewed to determine annual (gross) income.

Timing of Income Determinations

Income determinations must be completed before a tenant occupies a HOME-assisted unit. If the income determination was completed more than six months before the tenant occupies a HOME-assisted unit, the determination will need to be redone.

17.2.3 Other Occupancy Requirements/Restrictions

HOME has a few other restrictions that affect occupancy.

Student Households

The HOME Final Rule specifically excludes students who do not qualify as a low-income family on their own, or are not part of a low-income family, from participating independently in the HOME program.

The HOME program adopts the Section 8 Housing Choice Voucher (HCV) program restrictions on student participation found at 24 CFR 5.612. This rule excludes any student who:

- Is enrolled in a higher education institution, as defined under Section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002);
- Is under 24 years of age;
- Is not a veteran of the United States military;
- Is not married;
- Does not have a dependent child;
- Is not a person with disabilities, as such term is defined in section 3(b)(3)(C) of the 1937 Act and was not receiving assistance under Section 8 of the 1937 Act as of November 30, 2005; and
- Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive assistance under Section 8 of the 1937 Act.

Note that this definition of student household and list of exceptions is different than the student requirements of the Low Income Housing Tax Credits program.

Excluded students are prohibited from receiving any type of HOME assistance independent of their low- or very low-income families. If a HOME-assisted unit includes one ineligible student, the entire household is disqualified to occupy the assisted unit.

To be otherwise eligible a student must be income eligible and either:

- his/her parents are, individually or jointly, income eligible (see Parents Income Test)
- be an independent student (see Criteria for Determining an Independent Student)

To be considered an independent student, all of the following criteria must be

- The student must be of legal contract age under state law;
- The individual must have established a household separate from parent(s) or legal guardians for at least one year prior to application for occupancy OR the individual must meet the U.S. Department of Education’s definition of an independent student (see April 10, 2006 Federal Register – Appendix A for the definition);
- The individual must not be claimed as a dependent by parents or legal guardians pursuant to IRS regulations: and
- The individual must obtain a certification of the amount of financial assistance that will be provided by parents, signed by the individual providing the support.

To verify a student’s independence from his or her parent(s) and to determine if the student’s parent(s)’ income is not relevant for determining the student’s eligibility for assistance, all of the following must be done:

- Review and verify previous address information to determine evidence of a separate household, or verify the student meets the U.S. Department of Education’s definition of “independent student”;
- Review prior year income tax returns to verify if a parent or guardian has claimed the student as a dependent (except if the student meets the Department of Education definition of “independent student”); and
- Verify income provided by a parent by requiring a written certification from the individual providing the support. Certification is also required if the parent is providing no support to the student. Financial assistance that is provided by persons not living in the unit is part of annual income.

If a tenant currently living in a HOME unit is an excluded student (see below) who is not part of a low-income family, or does not qualify individually as a low-income family, the owner must correct this noncompliance by treating the tenant as an over-income tenant on the next recertification.

Prohibition Against Refusal to Lease to Tenant-Based Assistance Households

Owners may not refuse to lease HOME-assisted units to a certificate or voucher holder under the Section 8 Program, or to a holder of a comparable document evidencing participation in a HOME tenant-based rental assistance (TBRA) program, because of the status of the prospective tenant as a holder of such certificate, voucher or comparable HOME TBRA document.

17.2.4 VAWA Occupancy Protections

The Violence Against Women Reauthorization Act of 2013 (VAWA) added certain protections to persons/households that are victims of domestic violence, dating violence, sexual assault, or stalking.

HUD issued 24 CFR 5.2001 - .2011 on 11/11/16, which added 92.359 (and 92.253 – lease addendum) to the HOME rule. The VAWA requirements apply to HOME rental units where the HOME commitment was made after Dec. 15, 2016

The rule prohibits termination/eviction based on the victim status of the tenant or incident(s) of violence against the tenant or an affiliated individual. It also provides certain options for a tenant that is a victim – a tenant may:

- Terminate the lease (at the tenant's option), and the owner must waive any early termination fees;
- Request to stay with the offending household member removed and the lease bifurcated to preserve occupancy rights for the remaining household members;
- May request a transfer – either internally within the development or externally outside the development.

The Department is required to have an emergency transfer plan to assist with external transfers.

Disclosure must be provided to an applicant for a HOME unit when admitted or rejected, and to a tenant with an eviction notice, or notice of eviction or termination. HUD-5380 or the equivalent may be used.

Confidentiality must be protected. Information may only be accessed only by employees/contractors with explicit authorization and may not be maintained in any shared database or disclosed with permission, required for hearing, or required by law. However, the Department must maintain records and is required to report to HUD on transfers requested and outcomes.

Documentation of abuse/victim status is not required, but the owner or Department may require the HUD-5382 Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternative Documentation (HUD-91066), a professional statement, a court police record or other documentation.

Model documents and forms are provided by HUD at:

https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a

HUD also requires a VAWA lease addendum as discussed in Section 17.4.3.

17.3 Rent Requirements

17.3.1 HOME Rent Limits

Every HOME-assisted unit is subject to rent limits designed to help make rents affordable to low income households. These maximum rents are referred to as "HOME Rents."

There are two HOME rents used in the HOME

- High HOME Rents: The maximum amount an owner can collect per month on a “High” HOME-assisted unit.
- Low HOME Rents: The maximum amount an owner can collect per month on a “Low” HOME-assisted unit.

The HOME rent limits are kept current via the Department’s website. The limits as displayed look similar to the following:

Example

		# of bedrooms							
		Efficiency	1	2	3	4	5	6	
Logan County	LOW HOME RENT LIMIT	253	326	416	532	634	729	824	
	HIGH HOME RENT LIMIT	253	326	416	532	634	729	824	
	For Information Only:								
	FAIR MARKET RENT	253	326	416	532	634	729	824	
	50% RENT	422	452	543	628	700	773	845	
	65% RENT	530	569	684	782	853	923	993	

Note: The Low HOME rent limits and the High HOME rent limits are the limits placed upon HOME-assisted units. The fair market rent, the 50% rent limit and the 65% rent limit are used by HUD to determine the HOME rent limits.

Low HOME Units and Project-Based Rental Subsidy

The only instance when a HOME-assisted unit is not restricted to HOME rent limits is for a Low HOME unit in a project that receives federal or state project-based rental subsidies and the tenant pays no more than 30% of their adjusted income for rent. The maximum rent may then be the rent allowable under the project-based subsidy program. Note: this only applies to LOW HOME UNITS and the HOME income limits still apply. However, tenant-based rental subsidy programs do not supersede Low HOME rent requirements.

17.3.2 Initial HOME Rents

Rent restrictions are specified in the HOME regulatory agreement for the project.

In some instances, the occupancy and rents may be more restrictive than the typical HOME statutory rent limits. Owners must comply with the mix and limits as specified in the agreement.

17.3.3 HOME Rents and Utility Allowances

The Department adopts HUD published Low and High HOME rents limits. HUD’s calculation of Low and High HOME rents assumes the owner pays the utilities. If the tenant pays utilities, the maximum allowable rent that could be collected by the owner would be the applicable Low or High HOME rent minus a utility allowance.

The Department approves utility allowances on a project by project basis based upon actual utilities, the HUD Utility Schedule Model or another acceptable utility allowance schedule such

as the LIHTC program schedule. Owners/managers should work with the Department to determine the actual

Example: [These calculations are for example only and do not reflect actual rent or utility limits.] A HOME-assisted rental project in Logan County has Low HOME one and two bedroom units and High HOME one and two bedroom units. The tenants pay all utilities and the project does not have any project-based rental subsidy. The Department has approved a monthly utility allowance of \$70 for the one-bedroom units and \$90 for the two-bedroom units. The following chart shows how the maximum total rent, from the tenant or from any assistance program, that can be received by a project owner is calculated for each unit.

	1 Bedroom High HOME Unit		2 Bedroom High HOME Unit
\$326	High HOME Rent Limit	\$416	High HOME Rent Limit
-\$70	Utility Allowance	-\$90	Utility Allowance
\$256	Maximum Rent Owner May Collect	\$326	Maximum Rent Owner May Collect

	1 Bedroom Low HOME Unit		2 Bedroom Low HOME Unit
\$326	Low HOME Rent Limit	\$416	Low HOME Rent Limit
-\$70	Utility Allowance	-\$90	Utility Allowance
\$256	Maximum Rent Owner May Collect	\$326	Maximum Rent Owner May Collect

SRO Rents

The HOME rent limits start with 0 bedroom (efficiency) units. A unit that is not fully self-contained – that is, it does not contain both food preparation and sanitary facilities – is considered a SRO or Single Room Occupancy.

When a HOME unit is classified as an SRO, the rent limit is 75% of the 0 Bedroom Fair Market Rent (FMR), which can be found in the Income Limits table. This limit applies to all SRO units in a project, whether or not the project has triggered the requirement for 20% VLI/Low HOME units if 5 or more units in the project are HOME-assisted

17.3.4 Tenant Fees

The HOME regulation prohibits the charging of fees to tenants that are not customarily charged in rental housing and not uniformly applied to all tenants. It is not permissible to charge an eligible tenant a fee for the work involved in completing the additional forms or documentation required for HOME eligibility, such as the Tenant Income Certification. Residents also cannot be charged for administrative costs associated with the HOME program, such as for construction management or for inspections for compliance with property standards.

Fees and surcharges for optional services or facilities, such as washer/dryer fees and parking fees, may be allowable, but must have written authorization from the Department. The tenant must be allowed to opt out of the additional fee, or the fees will be considered as part of the overall rent for purposes of meeting HOME income limits. Service fees for services such as bus transportation or meals that are voluntary and fees are charged only for services provided.

Mandatory Supportive Services

HOME Projects are prohibited from imposing lease terms that make acceptance of supportive services mandatory, except that a tenant in transitional housing may be required to accept supportive services. This is consistent with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of disability and HUD's implementing regulations at 24 CFR part 8. While a tenant can be required to obtain services needed to live in the property and comply with the lease provisions, the provision of supportive services related to a disability can never be mandatory.

17.3.5 Annual Approval of Rents

HOME regulations require project owners to annually obtain the Department's pre-approval for any changes in rents and utility allowances for each HOME-financed development.

- Annually, HUD publishes maximum monthly rents for HOME-assisted rental projects. Based on changes in area income levels and market conditions, HOME rents, as calculated by HUD and approved by the Department, may increase.
- However, HOME rents may also decrease. While project rent levels are not required to decrease below the HOME rent limits in effect at the time of project commitment, decreasing HOME rents may reflect a change in market conditions that may force owners to reduce rents in order to maintain tenants.
- With HUD's approval, the Department may permit adjustments to the rent structure if the financial feasibility of the project is threatened. This is important to lenders providing financing to HOME-assisted projects.
- Tenants must be given at least 30 days written notice before increases are implemented. Any increases are also subject to other provisions of the lease agreements. For example, rents may not increase until the tenant's lease expires.

17.4 Lease Requirements

All HOME-assisted tenants must have a written lease agreement. Owners must execute lease agreements with tenants that incorporate specific provisions that establish tenant responsibilities and avoid certain prohibited provisions.

The lease between the owner and the tenant in a HOME-assisted property must be for at least one year, unless another lease length is mutually agreed upon by the tenant and the owner.

17.4.1 Prohibited Lease Provisions

The lease between the owner and tenant in a HOME-assisted property *can not* contain any of the following provisions either explicitly stated or implied:

- Agreement to be sued
- Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.

- Treatment of property
- Agreement by the tenant that the owner may seize or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This provision does not apply to disposition of personal property left by a tenant who has vacated a property.
- Excusing owner from responsibility
- Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent.
- Waiver of notice
- Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant.
- Waiver of legal proceedings
- Agreement of the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
- Waiver of a jury trial
- Agreement by the tenant to waive any right to a trial by jury.
- Waiver of right to appeal court decision
- Agreement by the tenant to waive the tenant's right to appeal or to otherwise challenge in court a court decision in connection with the lease.
- Tenant chargeable with cost of legal actions regardless of outcome
- Agreement by the tenant to pay attorney's fees or other legal costs, even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

Owners may impose rent increases or terminate tenancy or refuse to renew a lease only upon **30 days'** written notice, and only for:

- serious or repeated violation of the terms and conditions of the lease, or other good cause defined in the lease;
- violation of applicable federal, state or local law; or
- completion of the tenancy period for transitional housing.

An owner of HOME-assisted rental housing 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 reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease.
- Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable.

- Give prompt written notification to any rejected applicant of the grounds for any rejection.

17.4.2 LBP Disclosure

If the property was originally constructed prior to January 1, 1978, the owner must provide the disclosures as required by 24 CFR Part 35 upon tenant move-in and for existing residents:

Disclosure is required when a prospective tenant is applying for a rental, before the execution of the lease; and when the lease terms change (e.g., rent increase, lease renewal) and the owner or owner's agent has gained any new knowledge about lead-based paint or lead-based paint hazards since the previous disclosure (if there previously was not a problem or a previously unknown problem was not disclosed).

Every tenant and prospective tenant must receive the following two pamphlets:

- The HUD and EPA-approved information pamphlet Protect Your Family from Lead in Your Home (<https://www.epa.gov/lead/protect-your-family-lead-your-home-real-estate-disclosure>); and
- The EPA Disclosure Statement for Lease Transactions, Lessor's Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards (https://www.epa.gov/sites/production/files/documents/lesr_eng.pdf)

The Owner/Manager must complete and sign the notice and provide it to the tenants before they become obligated under the lease. The tenants must read and sign the notice and return it. The original signed disclosure must be retained in the property files for at least three years after the tenant's occupancy is completed.

If renovation occurs, the owner must provide the EPA Renovate Right: Important Lead Hazard Information for Families, Childcare Providers, and Schools pamphlet to all occupants. (<https://www.epa.gov/lead/renovate-right-important-lead-hazard-information-families-child-care-providers-and-schools>)

17.4.3 VAWA lease addendum

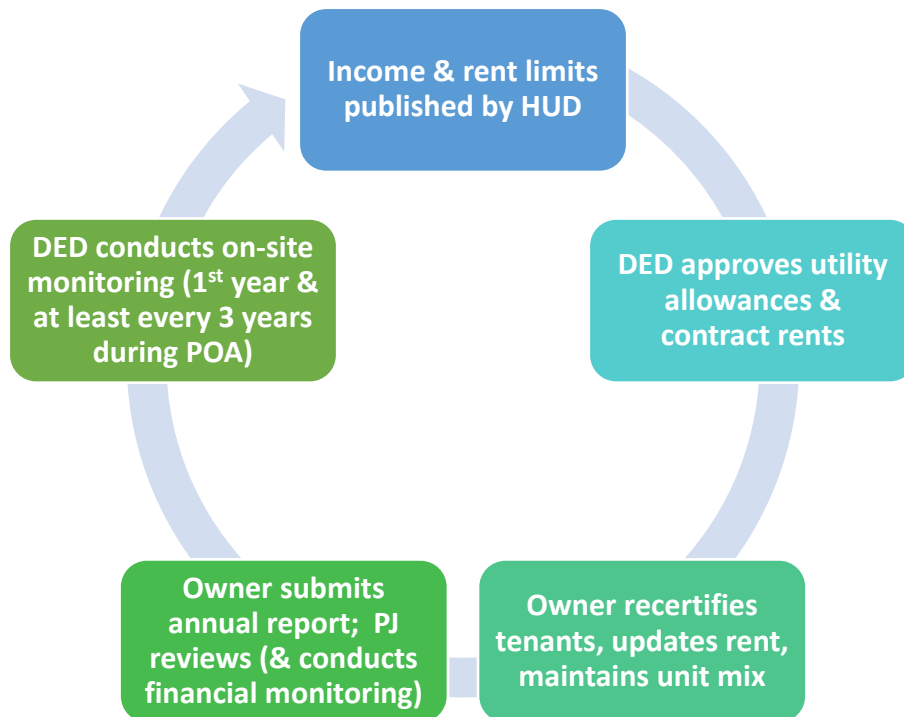
VAWA protections must be disclosed in the lease terms or a lease addendum, which addresses the prohibited bases for termination/eviction, the tenant's option to end lease without penalty if emergency transfer conditions met, and VAWA limits on construing lease terms. A sample is provided as Form HUD-91067 (drafted for project-based assistance.)

17.4.4 Lease Approval

Approval of draft leases will be submitted with special conditions items listed in the contract after approval of award.

17.5 Ongoing Compliance

During the affordability period, rental projects subject to ongoing occupancy mix, income and rent limits, annual income recertification and ongoing property standards. During the compliance period, owners must report on occupancy annually, and the Department is required to conduct onsite monitoring during the first year of occupancy and at least every three years during the remainder of the affordability period. The ongoing compliance cycle includes the following reoccurring activities:



17.5.1 Annual Update of HOME Rent Limits & Approval of Project Rents

HUD will issue new rent limits each year after appropriation by the Congress. The limits are effective 30 days after publication on the HUD Exchange at:

<https://www.hudexchange.info/programs/home/home-rent-limits/>.

The Department will inform awardees of updated HOME rent limits upon the Department's approval of new HUD-published limits (generally in the spring each year). Owners of HOME-assisted projects must have their rents and utility allowances pre-approved by the Department before implementing any changes. See Section 17.3.5. Note that the rent can be changed only when permitted by the terms of the lease and with a minimum of 30 days' notice.

17.5.2 Recertification of Income

The HOME Program imposes occupancy restrictions over the length of the affordability period. Owners must establish systems to recertify tenant income on an annual basis. Typically, each tenant's income will be examined on the anniversary of the original income evaluation or at lease renewal. However, the owner may adopt an annual schedule and perform all verifications at the same time.

When the Department performs on-site inspections of the project, it will verify that tenant income recertification documentation is in the tenant files.

Methods of Recertification

The final HOME rule allows two additional methods of income recertification, in addition to the method of collecting source documentation.

- One option is a written statement from the family indicating family size and annual income. This must include a certification from the family that information is complete and accurate and must indicate that source documents will be provided upon request.
- Another option is a written statement from the administrator of another government program under which the family receives benefits, and that examines the annual (gross) income (not adjusted gross income) of the family each year. The statement must also indicate the family size or provide the current income limit for the program and a statement that the family's income does not exceed that limit.

If the agency chooses to use either of the two alternative methods described above, owners are still required to collect full source documentation every sixth year of the tenant's lease period.

17.5.3 Over Income Tenants

Upon recertification, a tenant is considered over-income in the HOME program if:

- The tenant is occupying a High or Low HOME Rent unit and is determined on recertification to have a household income over the current low-income limit (80% of AMI) for its family size; or
- The tenant is occupying a Low HOME Rent unit is determined on recertification to have a household income over the current very low-income limit but below the low-income limit for its family size.

When a tenant is over-income, the unit that the tenant occupies is considered temporarily out of compliance with HOME's unit mix requirements. Temporary noncompliance due to an increase in an existing tenant's income is noted as an observation or concern rather than a finding, so long as the owner takes specific actions as described below to (1) follow requirements regarding the adjustment of rent, and (2) corrects the unit mix in the property as soon as possible as described below in Section 17.5.4.

Over 80% AMI

When a household is determined to be over 80% AMI on recertification, the owner must adjust rent as follows:

- Fixed (Low or High) HOME Rent unit – The owner/agent must adjust the over-income household's rent as soon as possible in accordance with the terms of the lease to the lesser of:

- o The rent amount payable under state or local law (if the unit is subject to rent control);
- o 30 percent of the tenant’s monthly adjusted family income; or
- o If the unit is also tax credit (LIHTC), the tenant’s rent should not exceed the maximum permitted by the Tax Credit Program.
- Floating (Low or High) HOME assisted unit – The owner/agent must adjust the rent of the over-income tenant household as soon as the lease permits to the lesser of:
 - o The rent amount payable under state or local law (if the unit is subject to rent control);
 - o 30 percent of the tenant’s monthly adjusted family income;
 - o If the unit is also tax credit (LIHTC), the tenant’s rent should not exceed the maximum permitted by the Tax Credit Program; or
 - o The market rent for comparable, unassisted units in the neighborhood.

50-80% AMI in a Low HOME Unit

When a tenant who occupies a Low HOME unit is determined to be over the VLI 50% of AMI income limit on recertification, but is still below 80% AMI, the household remains eligible for a HOME-assisted unit but is the wrong unit type. As such, it is considered being temporarily out of compliance.

The owner should look to resolve this by identifying an available LI High HOME slot to re-allocate or switch to the tenant who is now LI and is no longer VLI. The owner may (at owner’s option):

- Identify a VLI tenant in an LI High HOME unit, re-designate that unit as VLI with a Low HOME rent, and apply the now-available LI designation and LI rent to the tenant who was determined to be LI and not VLI on recertification; or
- Designate an available vacant HOME unit as a new VLI Low HOME unit and apply the now-available LI designation and LI rent to the tenant who was determined to be LI and not VLI on recertification.

If no existing tenant can be reclassified as VLI and there are no vacant units available for VLI designation in a floating unit project, then the owner must follow the “next available unit” rules to bring the project back into compliance and then re-designate the VLI unit as LI and change to the High HOME rent. In a fixed unit project, this situation can only be reconciled ultimately by waiting for a LI tenant to be eligible as VLI or a LI unit is vacated and eligible to be re-designated for a VLI tenant and Low HOME rent.

Adjustment of the rent for the over-VLI but still LI tenant should occur when the replacement VLI unit is identified.

Adjusted Income

Computing adjusted income for purposes of adjusting rent for over-income tenants is derived by subtracting any of the following deductions (also called allowances) that apply to the household from a household's annual (gross) income:

- \$480 for each dependent (includes any of the following family members who are not the head of household or spouse: persons under 18, handicapped/ disabled family members, or full-time students);
- Reasonable childcare expenses (for children 12 and under) during the period for which annual income is computed that enable a family member to work or go to school, if no adult is available in the household to provide childcare.
- For elderly households (62 and older) only, medical expenses, including medical insurance premiums, in excess of three percent of annual income that are anticipated during the period for which annual income is computed and that are not covered by insurance.
- Reasonable expenses in excess of three percent of annual income for the apparatus and care of a handicapped or disabled family member that enable that person or another person to work that are anticipated during the period for which annual income is computed.
- \$400 for any elderly family (head of household or spouse is 62 or older or handicapped or disabled).

For a detailed discussion of calculating annual and adjusted income, see the HOME Model Series "Technical Guide for Determining Income and Allowances for the HOME Program." For up-to-date rules and requirements, consult the 4350.3 Handbook.

17.5.4 Restoring the Unit Mix

HOME properties must maintain the required number of High and Low HOME rent units through-out the affordability period. Owners should refer to the unit mix specified by the project's written agreements to identify:

- The total number of HOME assisted units required;
- The "unit mix" by unit type or size (e.g., 1BR, 2BR, 3BR);
- The number of VLI/Low HOME units (which is required if there are 5+ HOME units); and
- Whether the HOME units are fixed or floating.

The unit mix can be altered by two occurrences:

- Vacated units; and/or
- Tenants being over income on recertification.

The owner/manager should always check the current unit mix when a unit becomes vacant or has a change in tenant income category to determine what size and type of unit – Low or High HOME – is needed to return the project to the required unit mix.

Vacant Units

When a HOME-assisted unit is vacated, the owner can:

- Rent the vacated unit to an applicant within the appropriate income category (VLI or LI); or
- In a project with floating units, the owner may also select one of the following replacement strategies (which allows the original assisted unit’s designation to be changed):
 - o Designate and hold another vacant unit of the required size as the replacement VLI or LI unit (in a project with floating units); or
 - o Designate a current tenant in an unrestricted unit who is income-qualified for the now available HOME slot (in a project with floating units).

Generally, when a fixed or floating HOME-assisted unit is vacated and the property complies with the unit mix requirements of the project, the owner generally can rent a High HOME Rent unit that is vacated to a new qualified low-income (LI) or very-low-income (VLI) tenant at the appropriate rent.

Note that it is HUD stated policy that Low HOME/VLI units should be filled as a priority when there are multiple openings.

Over 80% Income Tenants

When a tenant is over-income, the unit that the tenant occupies is considered temporarily out of compliance with HOME’s unit mix requirements. Temporary noncompliance due to an increase in an existing tenant’s income is noted as an observation or concern rather than a finding, if the owner takes specific actions as described below to (1) follow requirements regarding the adjustment of rent as described in the previous section, and (2) corrects the unit mix in the property as soon as possible as noted below.

- Over Income Tenants in a Property with Floating Units - The next vacant, comparable, non-assisted unit must be designated as a High HOME Rent unit. A comparable unit is one that is equal or greater in terms of size, number of bedrooms, and amenities. The owner/agent may not replace the unit with one that is lesser, unless doing so restores the original unit mix required by the agreements. The next available comparable unit receives the new designation and must be rented to a tenant at or below the applicable income limit and at the applicable (Low or High HOME) rent.
- Over-Income Tenants in a Property with Fixed HOME units – The property is temporarily out of compliance until the unit with an over-income tenant is vacated and can be rented to another low-income (or very-low-income) tenant household. The

owner/agent must raise the over-income household's rent as required by Section 17.5.3 and in accordance with the terms of the lease.

VLI Tenant Becomes LI (<80% AMI)

If a tenant is occupying a Low HOME Rent unit is determined on recertification to be Low-Income (80%) but not Very-Low Income (50%), the owner must take the following actions to restore compliance:

- Fixed unit project – The owner may re-designate a High HOME Rent unit with a tenant under 50% AMI as a Low HOME Rent unit and then re-designate the over-income tenant as being an LI tenant, and make the rent adjustments to reflect the changed designations at time of the swap and as permitted by the leases.
- Floating unit project – In addition to the option listed above for fixed units, the owner of a floating unit project may elect under next available unit rules to rent a comparable unit as the replacement VLI unit. If no LI units are available, the over-income tenant' unit becomes unrestricted.

17.5.5 Termination of Tenancy

An owner may not terminate the tenancy or refuse to renew the lease of a tenant, except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; or for other good cause. Good cause does not include an increase in the tenant's income or refusal of the tenant to purchase the housing.

Failure to follow any required transitional housing supportive services plan is grounds for termination.

VAWA prohibits termination of the lease of the victim or threatened victim based on incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking, and allows for bifurcation of the lease to allow eviction or removal of the offending person while preserving the occupancy of the victim and other household members.

HUD requires that a written notice be provided to a tenant at least 30 days prior to a termination of tenancy (see 24 CFR 92.253(c).)

17.6 Ongoing Property Standards

For the period of affordability, the owner must maintain the housing as decent, safe, and sanitary housing in good repair. The property standards in 92.251(f) apply. This includes all applicable state and local housing codes or ordinances, and health and safety issues that the Department will inspect for during onsite monitoring. See Section 17.8.2.

In addition, for pre-1978 properties that are not certified as lead-based free or removed, the ongoing maintenance standards of 25.1355 apply. See Section 11.6.

17.7 Record Keeping

As for all program activities, HOME requires documentation for rental projects to show that all program regulations have been met. Because of the long-term monitoring required for rental projects, however, record-keeping responsibilities are more extensive. This section briefly describes the record-keeping responsibilities associated with rental housing for the property owner, both project and tenant records.

- Project records should include documentation to back-up rent and utility allowance calculations. If the project's HOME-assisted units are "floating," the owner should also keep records to show how HOME occupancy targets were met (for example, rental logs to show that as units were vacated or tenants became over-income, HOME-assisted units were properly replaced).
- Tenant files should include the documentation necessary to demonstrate that each HOME-assisted unit is properly occupied by an income-eligible tenant. Such documentation includes: the tenant's application, initial income verification documents, subsequent income recertification documents and the tenant's lease.

General rental housing records must be kept for five years after project completion. Tenant income, rent and inspection information must be kept for the most recent five years, until five years after the affordability period.

17.8 Monitoring

The Department monitors rental projects for compliance using on-site reviews and submitted reports. Awardees must maintain records to document compliance of all requirements including demonstrating that:

- The project is marketed to qualified applicants;
- Tenants are screened for eligibility;
- Rent and occupancy targets are observed; and
- Adequate property maintenance is conducted.

In order to verify compliance with property standards and the information submitted by owners on tenants' incomes, rents and other HOME rental requirements during a project's period of affordability, HOME rules specify several components of ongoing rental monitoring. The monitoring requirements are covered in Chapter 6. This section summarizes the specific monitoring requirements for occupancy during the affordability period.

17.8.1 Owners Annual Report

92.252(f)(2) requires owners to report annually on rents and occupancy of assisted units. The format is not specified, but must contain information on the household size, household income, date of certification, contract rent, utility allowance, approved rent, and unit classification (Low HOME/High HOME).

Each year during the affordability period, owners are required to submit the Rental Housing Project Compliance Report, available in Excel format under Reporting Forms & Templates at: <https://opportunity.nebraska.gov/program/home/#forms>.

With the submission, owners must certify the information to be correct, and must now further certify that the units meet HOME property standards (§92.504(d)(1)(ii)(C)).

The Department will conduct a desk review of the report to determine if the project remains in compliance with:

- The total number of HOME-assisted units;
- The number of units with Low HOME units that are occupied by household with income 50% or less of median income for the household size (if five or more HOME units, at least 20%);
- The rents for each assisted unit for compliance with the approved rent schedule and HOME rent limits in effect at the time of lease execution/renewal;
- If any over-income cases occurred, recalculation of the rent per HOME requirements (subject to the Tax Credit rent limit if applicable); and
- If units have turned over, the next available unit rule was followed, and the replacement household and new rent were in compliance.

The Department will contact the owner as needed to identify errors and correct non-compliance.

17.8.2 Onsite Monitoring

The HOME Final Rule now requires every rental property to have onsite monitoring during the first year of occupancy and at least every three years during the affordability period, or more frequently as determined through risk analysis. (§92.504(d)(1)(ii)(A)). The Department will use:

- The Initial Rental Monitoring Checklist, which focuses more heavily on marketing and rent-up; and
- The Ongoing Rental Checklist for ongoing compliance reviews.

The Checklists can be found under Performance of HOME Contract Forms & Templates at: <https://opportunity.nebraska.gov/program/home/#forms>.

Inspections

The HOME regulations at §92.251(f)(1) require a PJ to establish ongoing property standards for rental housing, including manufactured housing, that apply throughout the affordability period. A PJ's ongoing property standards must ensure that owners maintain the housing as decent, safe, and sanitary housing in good repair and must be in sufficient detail to establish the basis for a uniform inspection of projects.

For ongoing property inspections, the Department will rely on:

- Any applicable state or local codes or standards that apply; or
- A UPCS inspection.

Inspections must be based on a statistically valid sample of units appropriate for the size of the HOME-assisted project, as set forth by HUD. The rule requires inspection of all HOME-assisted units in projects with one-to-four HOME-assisted units.

The rule also requires inspection of the site, building exterior, building systems, and common areas) for each building that contains HOME-assisted units.

File Reviews

File reviews will be conducted to ensure that all occupancy requirements are met, including:

- **Tenant Selection** – review of tenant selection files and waiting lists to determine that appropriate tenant selection policies were followed.
- **Affirmative Marketing** – If required (for a HOME project with 5 or more HOME-assisted units), a review of the project’s affirmative marketing plan and documentation of affirmative marketing efforts.
- **Low Income Occupancy & Unit Mix** – Files will be reviewed to determine that the indicated HOME units have eligible occupants or remain available for occupancy by the appropriate income level.
- **Verification of Income** – Files will be reviewed to determine that the appropriate verification of income was completed at the time of the initial rent up and source documentation exists.
- **Rents.** Leases will be reviewed to determine that the approved rent (or lower) was charged.
- **Lease.** Leases will be examined to verify that it is the approved form and meets HOME requirements.
- **Progress toward Occupancy Deadline.** Status of occupancy will be reviewed to determine compliance with the HOME requirement for initial occupancy of all HOME-assisted units within 18 months of project completion

17.8.3 Financial Review

92.504(d)(2) requires PJs to conduct financial oversight of assisted rental projects with 10 or more assisted units. HUD added this as a best practice for PJs to minimize risk of repayment from rental defaults.

To meet this requirement, the Department will review:

- The annual proposed budget & rent roll submitted for rent approval; and
- Year-end project income and expense statements and year-end balances of all property accounts, including operating reserve, replacement reserve, and any other reserve accounts (e.g., debt service reserve if required by the lender).

The analysis will consider current status as well as trends year over year.

If audited statements are required of the project, audit-specific red flags include:

- Delays in the audit report – Sometimes the delay may be the result of the auditor and staff not agreeing on certain items, and accounting staff may delay response rather than be embarrassed by the results. If the audit falls behind schedule, investigate for what is causing the delay.
- Significant discrepancies found in internal financial statements – If the auditor finds substantial discrepancies in the internal statements and records, you need to know exactly what and why.
- Auditor can't give unqualified opinion – As noted, an unqualified opinion means the statements reflect the true financial conditions of the organization and the organization accounting complies with GAAP. The inability to give an unqualified opinion can be serious, but it may also just reflect that the organization has decided not to comply with GAAP principles for some legitimate reason. Be sure to investigate exactly why the unqualified opinion cannot be given.
- Management letter concerns about procedures & internal controls – The management letter is written too broad to comment on any procedures or internal control issues that the auditor believes it must bring to the attention of the board based on the audit review. Each issue should be addressed, or a deliberate decision made by the board not to address it. For example, there may be limitations to on the ability to achieve full internal controls in an organization with limited staffing.
- Compliance letter finds compliance issues – Where an A-133 audit is required, a compliance review is also conducted, and any compliance issues identified in the compliance letter or attachment must be addressed.

If the financial review produces concerns about the ongoing viability of the project or the ownership entity, the Department will contact and work with the owner to address these problems and, if necessary, begin a workout process that could include the options now permitted in §92.210.