CHAPTER 6: RENTAL HOUSING ACTIVITIES

HOME funds may be used for the acquisition, new construction or rehabilitation of affordable rental housing. This chapter covers the basic program requirements governing HOME-assisted rental housing, such as eligible activities and costs, income and occupancy requirements and rent levels. This chapter also discusses several program design topics, including using HOME with tax credits, subsidy layering, refinancing guidelines, lease terms and managing for ongoing compliance.

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PART I: HOME PROGRAM REQUIREMENTS

ELIGIBLE ACTIVITIES

♦ HOME funds may be used for acquisition, new construction or rehabilitation of affordable rental housing. The developers or owners of the rental housing may be small scale property owners, for-profit developers, nonprofit housing providers, CHDOs or the local government, redevelopment organizations or public housing authorities.

FORMS OF ASSISTANCE

♦ The PJ may provide assistance to rental housing in a number of different forms. See Chapter 2: General Program Rules for a list of specific types of assistance.

♦ Some types of financing that the PJ may wish to consider, and the risks involved in each, are shown in Exhibit 6-1.

♦ **Refinancing**: HOME funds may be used to refinance existing debt if the HOME funds are used to rehabilitate the property and the refinancing is necessary to permit or continue affordability. Certain restrictions apply. (See discussion entitled “Refinancing Guidelines” in Part II of this chapter.)

ELIGIBLE COSTS

Eligible expenses for rental property are the same as for other HOME activities. (See Exhibit 6-2.)

EXHIBIT 6-1

FINANCING TYPES AND CHARACTERISTICS

ASSISTANCE TYPE	CHARACTERISTICS	USES	RISK
Predevelopment loans or grants	• Available at the PJ's discretion for CHDOs only. • May not be used before completion of environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR Part 58.	• Pay for project planning and pre-construction activities. • Predevelopment expenses include staff costs of the developer, option to purchase land or a building, legal fees, architectural and engineering fees, appraisals and possibly loan application fees.	• Highest risk because money is spent before the developer can determine whether the project is feasible. • No security for loan.
Construction loans	• A short-term or interim loan to cover the cost of constructing or rehabilitating a project, with one or more long-term, permanent loans taking out (paying off) the construction loan at project completion. • Construction loans from traditional private lenders are typically of a higher interest rate than permanent loans due to the high risk involved.	• Pays for the costs of building the housing.	• PJ should verify that permanent financing is available before making such a loan (to make sure it will be repaid). • PJ may inherit a partly finished building if anything happens during construction to create a significant budget shortfall, or if developer abandons building. • In such an event, it is unlikely PJ could sell building for what has been invested.
Permanent mortgage loans	• Proceeds used to repay the construction, bridge and predevelopment loans. • If the permanent financing replaces other loans, original loans must be used for HOME-eligible costs. • PJs may choose to finance part or all of the total development costs. • HOME assistance must have been part of the original financing package.	• Provides long-term financing; repaid from the operating income from a rental or cooperative housing project	• If there is a high vacancy or unexpected increase in operating costs, or reserves are depleted, PJ may not get repaid. • If not combined with private financing, ties up large amounts of HOME funds in a few projects and, therefore, risks are concentrated.
Bridge loans	• A short-term loan, often provided by construction lender, if upon construction completion, project does not yet meet requirements of permanent financing.	• Used when the project will not be ready for permanent financing when construction is complete, such as with multi-stage projects. • May be used when permanent mortgage lender wants project to establish a track record before making loan.	• Significant changes in the project's projected income or expenses could affect the availability of permanent financing, even if a loan commitment is in place.
Credit enhancement	• Include loan guarantees and mortgage insurance.	• Used to enhance the credit-worthiness of a project to attract private lenders who would not otherwise participate.	• Default requires cash pay-off of lender.

EXHIBIT 6-2

HOME-ELIGIBLE RENTAL HOUSING COSTS

Hard Costs	**Soft Costs**
• Acquisition of land (for a specific project) and existing structures • Site preparations or improvement, including demolition • Securing of buildings • Construction materials and labor	• Financing fees • Credit reports • Title binders and insurance • Surety fees • Recordation fees, transaction taxes • Legal and accounting fees, including cost certification • Appraisals • Architectural/engineering fees, including specifications and job progress inspections • Environmental reviews • Builders' or developers' fees • Affirmative marketing, initial leasing and marketing costs • Staff and overhead costs incurred by the PJ that are ***directly related to a specific project*** • Operating deficit reserves (up to 18 months)
Relocation Costs	**Loan Guarantee Accounts**
• Payment for replacement housing, moving costs and out-of-pocket expenses • Advisory services • Staff and overhead related to relocation assistance and services	• Amount based upon 20 percent of total outstanding principal balance of guaranteed loans • A loan in default can be repaid in full

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- **Operating deficit reserve**: The Final Rule clarified the use of HOME funds to cover the cost of funding an initial operating deficit reserve for new construction and rehabilitation projects.
  - This reserve is meant to meet any shortfall in project income during the project rent-up period.
  - The reserve cannot exceed 18 months.
  - The reserve can be used only for project operating expenses, scheduled payments to replacement reserves and debt service.
  - Reserves remaining at the end of 18 months may be retained for reserves at the PJ's discretion.
  - The disposition of any remaining funds at the end of the 18-month period should be determined in the agreement between the developer/owner and the PJ.

Maximum HOME Investment

- The HOME maximum per-unit subsidy limits apply to rental units. The actual subsidy provided will be subject to cost allocation and subsidy layering analysis.
  - HUD Notice CPD 98-02, which is provided in the Appendix, provides further guidance on allocating costs in projects with HOME and non-HOME units.

Designating HOME-Assisted Units

- **Fixed and floating units**: For properties with both assisted and non-assisted units, the program administrator must select "fixed" or "floating" units at the time of project commitment.
  - **Fixed**: When HOME-assisted units are "fixed," the specific units that are HOME-assisted (and, therefore, subject to HOME rent and occupancy requirements) are designated and never change.
  - **Floating**: When HOME-assisted units are "floating," the units that are designated as HOME-assisted may change over time as long as the total number of HOME-assisted units in the project remains constant.
    - ✓ The floating designation gives the owner some flexibility in assigning units, and can help avoid stigmatizing the HOME-assisted units.

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- ✓ If the floating designation is used, the owner must ensure that the HOME-assisted units remain comparable to the non-assisted units over the affordability period in terms of size, features and number of bedrooms.

Roles of Nonprofits and CHDOs

- Nonprofits and CHDOs may act as:
  - Owners;
  - Developers;
  - Sponsors;
  - Property managers; or
  - Program administrators (as subrecipients).

PROPERTY TYPE AND LOCATION

Eligible Property Types

- HOME rental projects may be one or more buildings on a single site, or multiple sites that are under common ownership, management and financing.
  - The project must be assisted with HOME funds as a single undertaking.
  - The project includes all activities associated with the site or building.
- With publication of the Final Rule, projects are no longer required to be within a four block area.
- HOME funds may be used to assist mixed-income projects (but, only HOME-eligible tenants may occupy HOME-assisted units).
- Transitional as well as permanent housing, including group homes and SROs, is allowed. (See Attachment 6-1 at the end of this chapter for additional details.)
- There are no preferences for project or unit size or style.
- HOME funds may be used for the initial purchase and initial placement costs of Elder Cottage Housing Opportunity (ECHO) units that meet the HOME requirements. ECHO units are small, free-standing, barrier-free, energy-efficient and

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removable units designed to be installed adjacent to existing single-family dwellings. (See Attachment 6-2 at the end of this chapter for additional details.)

Ineligible Property Types

- Properties previously financed with HOME during the affordability period cannot receive additional HOME assistance unless assistance is provided during the first year after project completion.

- HOME funds may not be used for development, operations or modernization of public housing financed under the 1937 Act (Public Housing Capital and Operating Funds).

- Projects assisted under 24 CFR Part 248 (Prepayment of Low-Income Housing Mortgages) may not receive HOME funds, ***unless*** assistance is provided to "priority purchasers" of such housing.

  - A priority purchaser is a resident council organized to acquire a project in accordance with a resident homeownership program, or any nonprofit organization or state or local agency that agrees to maintain low-income affordability restrictions for the remaining useful life of the project. Organizations or agencies affiliated with a for-profit entity for the purposes of purchasing a property do not qualify as priority purchasers.

Property Standards

- **Meeting the appropriate codes**: As with all HOME-assisted properties, rental properties must meet certain written standards. This section discusses these standards briefly. For a full discussion see Chapter 2: General Program Rules.

  - **Acquisition**: If no rehabilitation or construction is planned, the housing acquired must meet state and local housing quality standards and code requirements. If no such standards or codes exist, the property must meet Section 8 HQS.

  - **Construction and rehabilitation**: Housing that is being constructed or rehabilitated with HOME funds must meet all applicable state and local codes, rehabilitation standards and ordinances. If no state and local codes apply, the property must meet one of the national standards as discussed in Chapter 2: General Program Rules. If new construction, the property must also meet the International

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Energy Conservation Code. (See Exhibit 2-1 in Chapter 2 for a full listing of applicable codes.)

- **Accessibility**: All assisted housing must meet the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973.

- Owners must maintain properties in accordance with property standards throughout the affordability period. This will require periodic property inspections, as described in the section below on monitoring and inspections.

Other Standards

- A PJ's HOME program must comply with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Section 504, Executive Order 11063 and HUD regulations issued pursuant thereto so as to promote greater choice of housing opportunities.

- The site and neighborhood standards of 24 CFR 983.6(b) apply only to new construction of rental housing. PJs are required to maintain records that document the results of the site and neighborhood standards review.

LONG-TERM AFFORDABILITY

Affordability Period

- HOME-assisted rental units carry rent and occupancy restrictions for varying lengths of time, depending upon the average amount of HOME funds invested per unit:

ACTIVITY	AVERAGE PER-UNIT HOME $	MINIMUM AFFORDABILITY PERIOD
Rehabilitation or Acquisition of Existing Housing	<$15,000/unit $15,000-$40,000/unit >$40,000	5 years 10 years 15 years
Refinance of Rehabilitation Project	Any $ amount	15 years
New Construction or Acquisition of New Housing	Any $ amount	20 years

- HOME affordability periods are minimum requirements. Program administrators may establish longer terms of affordability for their programs.

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- If a shorter affordability period is desirable, the PJ or developer can take steps to minimize the HOME per-unit subsidy.

  - The HOME subsidy could be reduced and replaced with other funds that do not have long-term requirements, such as CDBG or state funds; or

  - The developer may choose to designate a higher number of HOME-assisted units than required by the "floor" in order to reduce the HOME investment per unit.

    <u>Example</u>: Remember Sable Park Housing's 20-unit, $400,000 development. Soccer City provided $100,000 in HOME funds and required that five of the 20 units be designated HOME-assisted. Under this arrangement, Sable Park would be obligated to keep the development affordable for 10 years ($100,000 ÷ 5 = $20,000 HOME funds per unit requiring a 10-year affordability period). If Sable Park Housing designates 10 of the units as HOME-assisted, the per-unit HOME investment will be reduced to $10,000 per-unit, requiring only a five-year affordability period.

- Affordability restrictions remain in force regardless of transfer of ownership. At the PJ's discretion, they may be terminated only upon foreclosure or transfer in lieu of foreclosure.

  - It is important to note that the termination of the affordability restrictions do not terminate the requirement that the units remain affordable (i.e. the PJ's responsibility to repay HOME funds invested in projects that are no longer affordable).

- However, affordability requirements will be revived if, before the foreclosure, the owner of record, or anyone with business or family ties to the owner, obtains an ownership interest in the property or project.

<u>Rent and Occupancy Requirements</u>

- Program administrators must enforce rent and occupancy agreements through:

  - Covenants running with the property;
  - Deed restrictions; or
  - Other mechanisms approved by HUD.

- Covenants and deed restrictions may be suspended upon transfer by foreclosure or deed-in-lieu of foreclosure.

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- **Initial "HOME rents:"** 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."
  - Annually, the PJ must establish maximum monthly rents and allowances for utilities for HOME-assisted rental projects. However, project owner may submit a proposed utility allowance to the PJ for review and approval.
  - HUD will annually publish FMRs and calculations of rents affordable to families earning 65 percent and 50 percent of median so that owners and program administrators can establish new HOME rents for projects.
  - Based on changes in area income levels or market conditions, HOME rents, as calculated by HUD annually, may increase or decrease.
    - ✓ 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.
    - ✓ HOME rents may 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.
    - ✓ HUD 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.
- **Basic steps for establishing maximum HOME rents**
  - **Calculating HOME rents**: HUD publishes the High and Low HOME rents and the FMRs for each area annually. The PJ should use the numbers provided to calculate project rents as shown below:

Calculating High and Low HOME Rents

Anywhere MSA	Eff.	1 BR	2 BR	3 BR	4 BR	5 BR
Fair Market Rent (FMR)	$331	$396	$466	$634	$750	$862
50% Rent Limit	$356	$381	$457	$529	$690	$651
65% Rent Limit	$442	$475	$573	$653	$710	$764

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- To calculate the High HOME Rent:

  1. On the rent chart provided by HUD (see example above), find the row labeled "Fair Market Rent" or "FMR" and follow this row over to the column that indicates the number of bedrooms in the unit.

     <u>Example</u>: The FMR for a two-bedroom unit, using the sample rent chart above, is $466.

  2. On the rent chart, find the row labeled "65% Rent Limit" and follow it over to the column that indicates the number of bedrooms in the unit.

     <u>Example</u>: The 65% rent limit for a two-bedroom unit is $573.

  3. Determine which of the two rents (the FMR or the 65% Rent Limit) is lower. This is the High HOME Rent.

     <u>Example</u>: For a two-bedroom unit, the FMR is $466 while the 65% Rent Limit is $573. The FMR of $466 is the lower of the two figures, and is the High HOME Rent.

  4. Subtract any tenant-paid utilities from the High HOME rent established in Step 3. This is the maximum actual rent that can be charged to the tenant.

     <u>Example</u>: Unit 21 includes water in the rent, but does not include heat and electricity. The utility allowance that the PJ has established is $75 per month. The actual maximum rent that can be charged to the tenant for this unit is $391 ($466 less $75).

- To calculate the Low HOME Rent:

  1. Follow the same steps as outlined above EXCEPT that the 50% Rent Limit figures must be used instead of the 65% Rent Limit figures.

     <u>Example</u>: The 50% Rent Limit for a two-bedroom unit is $457, while the FMR is $466. The Low HOME Rent would be the 50% Rent Limit of $457. However, the tenant pays for heat and electricity, for which the PJ has established a $75 utility allowance. The actual maximum rent for this unit would be $382 ($457 less $75).

  2. If a project receives federal or state project-based subsidies and the tenant pays no more than 30 percent

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of his/her adjusted income for rent, the maximum rent may be the rent allowable under the project-based subsidy program.

3. If the Low HOME Rent as calculated above is ***higher*** than the High HOME Rent, then the High HOME Rent must be used. This can occur when the High HOME Rent is equal to the FMR, and the FMR is lower than the Low HOME Rent.

➢ **Implementing new HOME rents**: New rents are effective upon receipt of the new HUD-published numbers. However, tenants' rents should not be adjusted until their leases are renewed.

♦ **Maximum allowable HOME rents and utility allowances**

➢ The maximum allowable HOME rents must be reduced if the tenant pays for utilities.

✓ The calculation of Section 8 FMRs includes all utilities and housing-related services, except telephone.

✓ HUD's calculation of high and low rents also includes utilities.

✓ In practice, many utilities -- water, heat, air conditioning, fuel, etc. -- are not included in rents and are paid by the tenant.

✓ Utility allowances provide a mechanism for reducing the maximum allowable HOME rents when some or all utilities are paid by the tenant.

Examples:

$728	High HOME rent	$577	Low HOME Rent
-$ 50	Utility allowance	-$ 50	Utility allowance
$678	Maximum HOME rent for 80% of units	$527	Maximum HOME rent for 20% of units

➢ The utility allowances prepared by the local public housing authority (PHA) may be used when adjusting rents. The form used by PHAs to establish utility allowances is provided in Attachment 6-4 to this chapter.

➢ Utility allowances prepared by the PJ may also be used when adjusting rents.

➢ Utility adjustments proposed by owners/developers for specific projects that differ from the PHA utility allowance

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must be approved by the PJ, and must be supported by documentation.

- **Leasing mixed-income projects**

  - When leasing mixed-income projects, owners/managers must assure that:

    - ✓ A sufficient number of units are leased or held available for lease to HOME eligible tenants in order to meet the low- and very-low-income targeting requirements of the program; and rents charged to tenants in the HOME units are within the High and Low HOME rent limits published by HUD.

THE APPLICANT/BENEFICIARY

Income Eligibility Requirements

- 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.

- HOME rental housing has two constraints on occupancy:

  - **Program funds rule**: The program funds rule applies to both rental units and TBRA assistance. It specifies that 90 percent of the total households assisted through the rental or TBRA program (counted together) have incomes that do not exceed 60 percent of the area median income. The balance of rental units and TBRA assistance must assist tenants with incomes that do not exceed 80 percent of the area median income. This rule applies to all funds expended from each fiscal year allocation; it is not project specific.

  - **Project rule**: The "project" rule specifies the occupancy of units in each rental project.

    - ✓ In projects of five or more HOME-assisted units, at least 20 percent of the HOME-assisted

> In theory, the balance of the units may be occupied by tenants with incomes up to 80 percent of median. However, in practice, virtually all remaining HOME-assisted rental units will be initially occupied by tenants with annual incomes at 60 percent of median or less, in order to meet the program funds rule described above.

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rental units must be occupied by families who have annual incomes that are 50 percent or less of median income. These very-low-income tenants must occupy units at or below the Low HOME Rent level.

✓ Projects with fewer than five HOME-assisted units do not have to restrict any units to the Low HOME rents or limit occupancy to tenants at 50 percent or below of the area median income.

Determining and Verifying Income Eligibility of HOME Tenants

- **Income definitions:** As described in Chapter 2: General Program Rules, PJs may choose from three definitions of income to determine tenant eligibility:

  - The Section 8 Program definition of annual (gross) income;
  - The IRS definition of adjusted gross income as defined for reporting on the IRS Form 1040; or
  - The definition of annual income as defined by the U.S. Census long form.

- **Choosing an income definition:** The PJ may choose any of the three definitions listed above; however, there are certain considerations.

  - In some projects, because of the mix of financing, there may be reasons to select a certain definition. For example, a tax credit project must use the Section 8 definition of income.
  - Note that these definitions are used only to determine eligibility. They do not affect the manner in which income is verified or the rent calculation for over-income tenants.

Initial Income Verification

- Before the tenant occupies a unit, tenant eligibility must be documented with source documents, such as wage statements, interest statements and unemployment compensation statements.

> **Remember:** Income eligibility is based on anticipated income. When collecting income verification documentation, property owners (or managers) must also consider any likely changes in income. For example, last year's tax return does not establish anticipated income; nor is it adequate source documentation.

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- Normally, the project owner is responsible for collecting this information and determining eligibility.
- The PJ is responsible for monitoring the project owner to ensure that initial income verifications are performed correctly. (See Part II of Chapter 9 on Monitoring, Record-keeping and Reporting for a more detailed discussion of monitoring responsibilities.)
- Property managers often have high staff turnover rates so it is important for the PJ to review the income verification process and PJ expectations with property management staff every 2 to 3 years.

Annual Recertification of Income

- Because 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 PJ performs on-site inspections of the project, it should 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 collecting source documentation, owners have the option, if the PJ allows, to recertify income with:
  - 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 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.

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- **Using alternative recertification methods**: If the PJ chooses to allow either of the two alternative methods described above, owners of properties with affordability periods of 10 years or more are still required to collect full source documentation of tenants every sixth year of the affordability period.

  - Owners of properties with affordability periods of less than 10 years that accept the tenant's statements and certification are not required to examine the income of tenants unless there is evidence that the tenant's written statement failed to completely and accurately state information about the family's size or income.

  Example: This means that for a property with a 20-year affordability period, source documentation must be used to certify tenant income at initial lease-up, and in years six, 12 and 18 of the affordability period.

Increases in Tenant Income

- A tenant's income is likely to change over time. If these changes occur during the affordability period, the project owner must take certain steps to maintain compliance with HOME rent and occupancy requirements.

  - The project must maintain the total number of HOME-assisted units, as required in the written agreement with the PJ.

  - The project must maintain the correct proportion of High and Low HOME rent units.

  - Rents must be adjusted for tenants whose incomes rise above 80 percent of the area median income.

Fixed Unit Projects

- The owner should take the following steps to maintain the correct numbers of High and Low HOME rent fixed units.

  - If the income of a tenant occupying a Low HOME rent unit increases above 50% of median, but ***does not exceed 80 percent*** of area median income, that unit remains a Low HOME rent unit until a HOME-assisted unit can be substituted.

    - ✓ The owner may not increase the tenant's rent above the Low HOME rent limit for as long as the unit retains the Low HOME unit designation and is occupied by the low-

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income household whose income increased above 50% of median but does not exceed 80% of median,

- ✓ When a High HOME rent unit in the property vacates, that unit must be redesignated as a Low HOME rent unit. This unit must be rented to a very low-income tenant, at no more than the Low HOME rent.

- ✓ Once the new Low HOME rent unit has been designated, the previous Low HOME rent unit that is occupied by the tenant at between 50 and 80% of median must be redesignated as a High HOME rent unit. At this time, the owner can increase the tenant's rent up to the High HOME rent, subject to the terms of the lease.

- ➢ If a tenant's income **increases above 80 percent** of the area median income, the unit this tenant occupies is still considered to be a HOME-assisted unit, but the tenant's rent must be adjusted as described below.

  - ✓ Over-income tenants with incomes over 80 percent of the area median in HOME-assisted "fixed" units must pay 30 percent of their adjusted income for rent and utilities. There is no rent cap for "fixed" units.

  - ✓ Where state or local law imposes rent controls, the rent control applies.

  - ✓ If the person whose income went over 80% of median was in a Low HOME unit and they elect to vacate the property, the new tenant must be at or below 50% of median income and rented at a Low HOME rent.

  - ✓ If the person whose income went over 80% of median was in a High HOME unit and they elect to vacate the property, the new tenant must be at or below 80% of median income and rented at a High HOME rent.

Floating Unit Projects

- ♦ The owner must take the following into consideration to maintain the correct numbers of High and Low HOME rent floating units

  2. Generally, the owner can draw on all the units in the property to designate High and Low HOME rent units. This means that the owner is not restricted to those units initially designated as HOME-assisted units when looking to redesignate a comparable unit as the new Low or High HOME unit.

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- However, at no point is the owner required to designate more HOME-assisted units than was agreed upon in the written agreement with the PJ.

- When the income of a tenant occupying a Low HOME rent unit income increases over 50% of the median, but **does not exceed 80 percent** of the area median income, the unit that is occupied by the over-income tenant is considered a Low HOME rent unit until a comparable unit can be substituted.

  - ✓ The rent of the tenant whose income has gone above 50% of median must not exceed the Low HOME rent limit while the unit has a Low HOME rent unit designation.

  - ✓ To replace the Low HOME rent unit, the PJ must rent the next available High HOME-assisted unit to a very-low-income tenant. The newly designated Low HOME rent unit must be rented to a tenant whose income does not exceed the very low-income limit (50% of median), at a rent that does not exceed the Low HOME rent limit.

  - ✓ Once a new Low HOME rent unit has been designated, subject to the terms of the lease, the rent of the initial tenant whose income has increased may be increased to the High HOME rent for the unit. This process should not increase the number of assisted units.

  - ✓ Note that the owner is not required to re-designate a vacated market rate unit as a HOME assisted unit unless one of the existing HOME-assisted units is occupied by an over-income household (over 80% of median). If one of the HOME-assisted units is occupied by an over-income person, that unit can become a market rate unit when the next vacant market rate unit is designated as a HOME-assisted unit. As noted above, the point is to maintain the total number of HOME assisted units in the project.

- If a tenant's income **increases above 80 percent** of the area median income, the unit this tenant occupies is still considered to be a HOME unit, but the tenant's rent must be adjusted as described below.

  - ✓ The next available market unit in the project of comparable size or larger must be rented to a HOME-eligible household. The unit occupied by the over-income tenant is no longer considered HOME-assisted, and the rent of that unit can be adjusted.

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- ✓ Over-income tenants in HOME-assisted “floating” units must pay 30 percent of their adjusted income for rent and utilities; however, the rent may not exceed the market rent for comparable, unassisted units in the neighborhood.

➢ Note: In assisted units that are financed with both HOME and Low Income Housing Tax Credits (LIHTCs), the LIHTC rules apply when **existing** assisted tenant rents exceed 80% of median. 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 the LIHTC program eligibility threshold. This rule **only applies** to over income tenants in existing assisted units. PJs and owners may not defer to LIHTC rents in HOME units when initially developing assisted units.

EXHIBIT 6-3

SECTION 8 ADJUSTMENTS

Adjusted income 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 child care expenses (for children 12 and under) during the period for which annual income is computed that enable a family member to work or go to school, if no adult is available in the household to provide child care;
- For elderly households only, medical expenses, including medical insurance premiums, in excess of three percent of annual income that are anticipated during the period for which annual income is computed and that are not covered by insurance;
- 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 under Section 8 rules, 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 regulations at 24 CFR Part 5 (subpart F).

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MONITORING AND INSPECTIONS

On-Site Inspections

Remember that the HOME property standards apply to the common areas and the building's exterior, not only the HOME units. Any deficiencies seen in these areas must be addressed.

- 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 require on-site inspections of HOME properties according to the total number of units in a project as follows:

Number of Units	Inspection Required
1-4	every 3 years
5-25	every 2 years
26 or more	annually

- **Sampling units**: Not all units must be inspected in a large project, only a "sufficient" sample.
  - A good "rule-of-thumb" is to inspect at least 15 percent to 20 percent of the HOME-assisted units in a project, and a minimum of one unit in every building.

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 slightly more substantial. This section briefly describes the record-keeping responsibilities associated with rental housing for both the PJ and the property owner. For a more detailed discussion of the PJ's record-keeping responsibilities, see Part II of Chapter 9: Monitoring, Record-keeping and Reporting.

- **PJ records**: In addition to the general program and project documentation described in Part II of Chapter 9, the PJ must keep the following:
  - Refinancing guidelines**:** If existing debt is refinanced for a rental rehabilitation project, the PJ must have documentation of its refinancing guidelines established and described in the Consolidated Plan.
  - Layering review**:** The PJ should keep project records demonstrating that each rental housing project meets the

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subsidy layering guidelines. (See Part II of this chapter for further guidance on layering guidelines.)

- Records of its regular inspections of each rental project**:** These records should demonstrate that the PJ checked for and enforced compliance with the following HOME requirements:

  - ✓ *Property standards*: The PJ's records should show that a sufficient sample of HOME-assisted units were inspected, as well as exterior and common areas, and that any deficiencies identified were corrected.

  - ✓ *Rent and occupancy requirements*: Inspection records should also show that the PJ examined a sample of unit files to verify that HOME rent and occupancy requirements were met.

  - ✓ *Lease requirements*: In its review of unit files, the PJ should also ensure that leases meet HOME requirements.

  - ✓ *Tenant selection policies*. In its review of project files, the PJ should ensure the owner has adopted written tenant selection policies and criteria.

  - ✓ *Other items in the written agreement*: If the written agreement between the PJ and the property owner contained any other provisions that require monitoring, the PJ's records should reflect that they were monitored.

- **Property owner records**: One of the owner's responsibilities is to keep adequate records, to be able to demonstrate compliance with HOME requirements. The owner should keep 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.

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- 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.
- **Other project oversight responsibilities:** PJ should also conduct additional oversight of rental projects by analyzing the projects for financial stability, management capacity and other long-term viability issues. This type of oversight will held to identify financial or management issues before they affect the project's ability to remain a viable component of the PJ's affordable housing stock.

APPLICABILITY OF OTHER FEDERAL REQUIREMENTS

- Exhibit 6-4 identifies the other federal requirements that must be followed in implementing rental housing activities. This exhibit is meant to serve as a checklist only; for detailed information on each requirement, see the specifics in Chapter 10: Other Federal Requirements.
- HUD's new consolidated Federal lead-based paint regulation took affect September 15, 2000. This regulation makes several important changes in the requirements for Federal community development programs that fund housing. For more information about lead-based paint, see the summary provided in the "Other Federal Regulations" chapter of this manual. Other resources PJs may find helpful are the training manual, *Learning the Rules: Addressing Lead-based Paint in Local Housing Programs Receiving CPD Funds*, the training manual, *Making it Work: Implementing the Lead Safe Housing Rule in CPD-Funded Programs*, and HUD's Office of Healthy Homes and Lead Hazard Control website, http://www.hud.gov/offices/lead

EXHIBIT 6-4

SUMMARY OF OTHER FEDERAL REQUIREMENTS

Other Federal Requirements	Applies to Rental Housing Programs?	Special Issues/ Considerations	Regulatory Citations and References
Non-Discrimination and Equal Access Rules			
Fair Housing and Equal Opportunity	Yes.	PJs must affirmatively further fair housing. Pay particular attention to signs of discrimination in leasing practices.	• 92.202 and 92.250 • Title VI of Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.) • Fair Housing Act (42 U.S.C. 3601-3620) • Executive Order 11063 (amended by Executive Order 12259) • Age Discrimination Act of 1975, as amended (42 U.S.C. 6101) • 24 CFR 5.105(a)
Affirmative Marketing	Yes; for projects containing five or more HOME-assisted units.	PJ must adopt specific procedures and requirements.	• 92.351
Handicapped Accessibility	Yes.		• Section 504 of the Rehabilitation Act of 1973 (implemented at 24 CFR Part 8) • For multi-family buildings only, 24 CFR 100.205 (implements the Fair Housing Act)
Employment and Contracting Rules			
Equal Opportunity Employment	Yes.	Contracts and subcontracts over $10,000 should include language prohibiting discrimination.	• Executive Order 11246 (implemented at 41 CFR Part 60)
Section 3 Economic Opportunity	Yes, if amount of assistance exceeds $200,000 OR contract or subcontract exceeds $100,000.	Include Section 3 clause in contracts and subcontracts.	• Section 3 of the Housing and Urban Development Act of 1968 (implemented at 24 CFR Part 135)
Minority/Women Employment	Yes.	PJ must prescribe procedures and include in contracts and subcontracts.	• Executive Orders 11625, 12432 and 12138 • 24 CFR 85.36(e)
Davis-Bacon	Yes, if construction contract includes 12 or more HOME-assisted units.	Include language in all contracts and subcontracts. Requirements apply to whole project not just the HOME-assisted units.	• 92.354 • Davis-Bacon Act (40 U.S.C. 276a - 276a-5) • 24 CFR Part 70 (volunteers) • Copeland Anti-Kickback Act (40 U.S.C. 276c)
Conflict of Interest	Yes.	PJs should ensure compliance both in-house and when using subrecipients.	• 92.356 • 24 CFR 85.36 • 24 CFR 84.42

EXHIBIT 6-4 (continued)

Other Federal Requirements	Applies to Rental Housing Programs?	Special Issues/ Considerations	Regulatory Citations and References
Debarred Contractors	Yes.	PJs should check HUD list of debarred contractors.	• 24 CFR Part 5
Environmental Requirements			
Environmental Reviews	Yes.	Level of review depends upon the activity. For rehabilitation and new construction (4 or fewer units); categorically excluded **subject** to 58.5. New Construction (more than 5 units) **subject** to environmental assessment.	• 92.352 • 24 CFR Part 58 • National Environmental Policy Act (NEPA) of 1969
Flood Insurance	Yes for PJs that are cities or counties. No for state programs..	Must obtain flood insurance if located in a FEMA designated 100-year flood plain. Community must be participating in FEMA's flood insurance program.	• Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106)
Site and Neighborhood Standards	Yes; for new construction only.		• 24 CFR 893.6(b)
Lead-Based Paint	Yes for rehabilitation of pre-1978 units. Applies to HOME and non-HOME-assisted units. Requirements differ depending on whether rehabilitation work is performed.	Rehabilitation Notices to owners. Paint testing of surfaces to be disturbed. Risk assessment, if applicable, based on level of rehabilitation assistance. Appropriate level-hazard reduction activity (based on level of rehabilitation assistance). Safe work practices and clearance. Provisions included in all contracts and subcontracts.	• 92.355 • Lead Based Paint Poisoning Prevention Act of 1971 (42 U.S.C. 4821 et. seq.) • 24 CFR Part 35 • 982.401(j) (except paragraph 982.401(j)(1)(i))

EXHIBIT 6-4 (continued)

Other Federal Requirements	Applies to Rental Housing Programs?	Special Issues/ Considerations	Regulatory Citations and References
Lead-Based Paint (Continued)		Activities not involving rehabilitation Notices to purchasers and tenants. Visual assessment must be performed. Paint stabilization must be completed (if applicable). Safe work practices and clearance. Provisions included in all contracts and subcontracts.	
Relocation	Yes.	Displacement must be minimized; existing tenants must be provided a reasonable opportunity to lease a dwelling unit in the building upon completion of the project. Reimbursement for temporary relocation, including moving costs and increase in monthly rent/utilities, must be provided, as well as advisory services.	• 92.353 • Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) • 49 CFR Part 24 • 24 CFR Part 42 (subpart B) • Section 104(d) “Barney Frank Amendments”

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PART II: PROGRAM DESIGN AND IMPLEMENTATION ISSUES

SUBSIDY LAYERING

- HUD establishes limits on the amount of HOME funds that may be invested in affordable housing on a per-unit basis for specific areas.

- Before committing funds to a project that combines the use of any other local, state or federal assistance, the PJ must evaluate the project in accordance with guidelines that it has adopted, to ensure that the PJ does not invest any more HOME funds than are necessary to provide affordable housing. The Consolidated Plan must certify that these guidelines, referred to as Layering Guidelines, exist.

- The project file should contain the subsidy layering evaluation.

- A PJ is in compliance with this requirement if it uses the following types of subsidy layering evaluations:

  - Those produced by HUD when the other source of funding is provided by HUD, and HUD conducts a subsidy layering review;

  - Those produced by state tax credit agencies when the Low Income Housing Tax Credit is used, and the state agency conducts an evaluation to determine whether there are excess tax subsidies;

  - Those produced by the PJ in accordance with the guidelines presented in HUD Notice CPD-98-01 (see the Appendix). These guidelines include review of the following documents from the applicant:

    - ✓ *Sources/uses of funds*: As part of the application process, the PJ should require a sources/uses of funds statement for the project with supportive documentation. This should reflect the project development budget and should list:

      - All proposed sources (both private and public) of funds and the dollar amounts for each respective source; and

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- All uses of funds (including acquisition costs, rehabilitation/or construction costs, financing costs and professional fees) associated with the project.

✓ *Certification of governmental assistance*: The PJ should obtain a formal certification from the applicant as to whether or not additional governmental assistance will be provided to the project, and if so, what kind of assistance.

✓ *Project development budget*: The PJ should review the project development budget to determine whether the development costs are necessary and reasonable. The budget should include all costs associated with the development of the project, regardless of the funding sources.

- "Reasonableness" of costs should be based on all of the following factors: (1) costs of comparable projects in the same geographical area, (2) the qualifications of the cost estimators for the various budget line items, and (3) comparable costs published by recognized industry cost index services.

✓ *Proforma*: The PJ should determine the reasonableness of the rate of return on equity investment by looking at the applicant's proforma (project income and expense statement). The proforma should include achievable rent levels, market vacancies and operating expenses. It should also specify the consequences of tax benefits, if any, and any other assumptions used in calculating the project cash flow. The proforma should represent, at a minimum, the term of the HOME affordability requirements, or longer if other funding sources require longer affordability terms.

➢ The subsidy guidelines can also be used to determine the appropriate level of HOME funds to be used in a project absent other governmental assistance.

USING THE LOW INCOME HOUSING TAX CREDIT WITH HOME FUNDS

♦ There are essentially four ways HOME funds can be used with low-income housing tax credits.

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- Market rate loan: If the HOME funds are provided at or above the applicable federal rate, these funds are not treated like a federal subsidy. The project qualifies for the 9% credit for eligible improvement costs and is eligible for the 130 percent basis for projects in “qualified census tracts” or “difficult development areas” (QCT/DDA).
- Below market rate loan with 9% credit: If HOME funds are provided at an interest rate below the applicable federal rate, they may still be counted in the eligible basis and the project may receive a 9% credit if the project meets stricter occupancy requirements. Under OBRA, the project may receive the 9% credit if 40% of the residential rental units are occupied by tenants with incomes at or below 50% of the area median income. However, such projects are not eligible for the 130 percent basis for projects in “qualified census tracts” or “difficult development areas”.
- Below market rate loan with 4% credit: Some projects qualify only for a 4% credit regardless of the way HOME funds are invested in the project. For example, a project with other Federal or tax-exempt mortgage revenue bond funds included in the basis is only eligible for a 4% credit under any circumstance, so HOME funds can be lent at any below market interest rate terms without consequence to the credit.
- Grant: HOME funds may be provided in the form of a grant, but, they may not be counted in the eligible basis for the project, and therefore do not contribute to the credits for which the project is eligible. Therefore, a loan instrument is generally preferable to a grant. (Note that deferred payment loans are generally permissible provided the debt service accrues and there is a reasonable expectation that the loan can be repaid no later than when the loan matures.) In some cases, however, a grant of a small amount of HOME funds may be preferable to a below market interest rate loan, particularly if the project is eligible for the 130% QCT/DDA basis. Some experts have estimated that it could be more cost effective to provide a HOME investment of up to 20% of basis as a grant rather than a loan in such circumstances.

♦ Projects using HOME funds with Low Income Housing Tax Credits have to consider a number of items in blending the two sets of program rules. Exhibit 6-5 provides an overview of tax credit rules and the requirements for combining the two programs.

EXHIBIT 6-5
RULES FOR COMBINING HOME FUNDS AND TAX CREDITS

	Tax Credit Program Rules	Combining Tax Credits with HOME
Occupancy Requirements	At least 20 percent of assisted units must be reserved for households with incomes at or below 50 percent of area median; **or** 40 percent of the units must be reserved for households with incomes at or below 60 percent of area median income.	If HOME funds are provided at below the market interest rate, at least 40 percent of the units must be reserved for households with incomes at or below 50 percent of the area median income to qualify for the 9 percent credit. Otherwise, at least 20 percent of the units must serve households with incomes at or below 50 percent of area median income (to meet HOME requirements).
Rent Requirements	Rents for qualified units must not exceed the rent limit set for the program. These limits are set by bedroom size and are based on the qualifying incomes of an imputed household size. They are published by HUD.	For units to qualify as both tax credit and HOME-assisted units, rents cannot exceed either program limit. Low HOME rent units are subject to Low HOME rents and tax credit limits and High HOME rent units are subject to High HOME rents and tax credit limits.
Establishing Tenant Eligibility	*Documentation* -- Tenants must provide acceptable documentation of income from a third party source. All sources of income are verified. *Definitions* -- The tax credit program defines income using the Section 8 definition of annual (gross) income. *Asset Income* -- Assets $5000 or less: tenants certify asset amount and income. Use actual income. Assets above $5000: verify amount and income. Use larger of actual income from assets or imputed asset income.	*Documentation* -- Initial tenant eligibility documentation for both programs is the same. *Definitions* -- Use the Section 8 definition of income. *Asset Income* -- Follow more stringent HOME rules and verify all asset income.
Reexaminations of Income	Reexaminations are performed annually following the same procedures as at initial certification; however, an owner may request a waiver from reexamination requirements if all units in the project are tax credit units. State housing credit agency determines the frequency.	Tax credit/HOME projects may request waivers from the tax credit allocating agency to perform reexaminations similar to HOME. Otherwise, the project must follow the more stringent tax credit requirements.
Over-Income Tenants	Rent for over-income tenants remains restricted. An owner *may* increase an over-income tenants rent, but *only* ***after*** the unit is replaced with another low-income unit in the project, thereby keeping the portion of low-income units above the minimum amount required for the owner to be eligible for the credit. "Over-income" is defined as above 140 percent of the project rent limit.	HOME rules defer to tax credit rules -- rent remains restricted. (In other words, in no case can the rent exceed limits set by the tax credit program).
Monitoring	Projects are monitored annually throughout the affordability period. Affordability period: 30 years (15-year compliance period, 15-year extended use period). Statement of compliance is submitted annually with documentation of occupancy. On-site inspections are required at least every three years for at least 20% of Sec. 42 units. Use UPCS (Public Housing inspection standards.	The PJ and the tax credit allocating agency will each monitor according to their program requirements.

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- **Occupancy requirements**: Tax credit projects must set aside at least 20 percent of their units for tenants with incomes at or below 50 percent of the area median (20/40 set-aside) or 40 percent of their units for tenants with incomes at or below 60 percent of the area median income (40/60 set-aside). When combining HOME and tax credits, occupancy requirements depend on the type of credit taken and the type of HOME funding provided:

    - In order to take the 9 percent credit in conjunction with below-market-rate HOME funds, joint HOME/tax credit projects must meet a higher occupancy standard than either the tax credit program or the HOME program alone requires: 40 percent of the units must be occupied by tenants with incomes at or below 50 percent of area median. (However, such projects are not eligible for the 130 percent increase in basis for projects in "qualified census tracts" or "difficult development areas." To receive the 130 percent increase, the project must either take the four percent credit, or use the HOME funds at or above the applicable federal rate.)

    - In all other cases, projects must ensure that they meet both sets of program rules. For example, a project receiving a market rate loan can comply with both sets of rules by establishing a 20 percent set-aside for households with incomes at or below 50 percent of the area median income (as long as all remaining HOME-assisted units are leased to tenants with incomes at or below 80 percent of the area median income.)

    - Of course, projects may choose to exceed these standards. Owners/ developers of tax credit projects will generally try to maximize their credits by creating higher set-asides for qualified occupants.

- **Rents**: When combining the two types of funding, two sets of rent rules apply.

    - Qualified tax credit units must not exceed tax credit rent limits, while HOME-assisted units must meet HOME rent requirements. If a unit is being counted under both programs, the stricter rent limit applies.

        - ✓ Low HOME rent units are subject to the lower of the Low HOME rent and the tax credit rent (usually the Low HOME rent).

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- ✓ High HOME rent units are subject to the lower of the High HOME rent and the tax credit rent (usually the tax credit rent).

- When tenants receive additional subsidy through rental assistance programs such as Section 8, additional requirements apply.

  - ✓ Under tax credit rules, if the rental assistance program rent limit exceeds the tax credit rent, the unit rent may be raised to the higher limit as long as tenants pay no more than 30 percent of their adjusted monthly income for housing costs.

  - ✓ HOME allows the rent to be raised to the rental assistance program limit only if the tenant pays no more than 30 percent of adjusted income, the subsidy is project-based (not tenant-based), and the tenant's income is less than 50 percent of the area median income.

  - ✓ In a joint tax credit/HOME-assisted unit, the stricter HOME requirements would apply.

♦ **Establishing tenant eligibility**: Both the HOME and tax credit programs require project owners to certify tenants' incomes, to ensure that they are income-eligible and that the project is in compliance with initial occupancy requirements.

- To demonstrate eligibility under both programs, property managers must have tenants certify their income, and obtain supporting documentation. This documentation must be kept in project unit files for review by the monitoring agencies.

- Under tax credit rules, only the Section 8 definition of annual (gross) income is used, whereas HOME allows a choice of three definitions. Projects using HOME funds and tax credits must use the Section 8 definition of income.

- Another difference between HOME and tax credit rules is that HOME requires verification of all asset income, whereas the tax credit rules require verification of asset income if the household's assets are greater than $5,000.

  - ✓ For total assets of less than $5,000, the tax credit program allows tenants to provide a signed statement of asset income.

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- ✓ A tenant in a unit subsidized by both sources of funds would have to comply with the stricter HOME requirements.

- ♦ **Reexaminations of tenant eligibility**: The tax credit program does not allow alternative methods of tenant recertification allowed under the HOME program.

  - ➢ For projects with both HOME funds and tax credits, owners may seek a project waiver from the state allocating agency to allow certification documentation similar to HOME.

  - ➢ Alternatively, the project must comply with the tax credit rules (and, thus, automatically comply with the HOME requirements).

- ♦ **Over-income tenants**: The HOME and tax credit programs have slightly different approaches to over-income tenants.

  - ➢ The definition of an over-income tenant differs under the two programs. Tax credit rules define "over-income" as having income above 140 percent of the project income limit. Under HOME, the tenants are considered over-income if their income rises above 80 percent of area median income.

  - ➢ Further, unlike under HOME, the rent remains restricted under the tax credit program.. An owner may increase an over-income tenants rent, but only **after** the unit is replaced with another low-income unit in the project, thereby keeping the portion of low-income units above the minimum amount required for the owner to be eligible for the credit. To resolve this conflict, HOME rules state that when funds from both programs are used on the same unit, the tax credit rules should be followed.

- ♦ **Monitoring**: Both programs require annual monitoring to ensure compliance with program rules over the length of a pre-established affordability period. Different agencies may monitor a project for compliance with the specific requirements of each program.

  - ✓ Under the tax credit program, the affordability period is generally 30 years, unless the allocating agency establishes a longer one.

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- ✓ Projects combining HOME funds and tax credits are subject to two sets of affordability periods. These periods may be set to be equal in length, or the project may be subject to one set of requirements for a shorter time period than the other.

- ✓ The tax credit program requires on-site inspections at least once every three years for no less than 20% of the tax credit units. HOME program units are subject to on-site inspections. The frequency of the HOME on-site inspections depend on the total number of units in a project, ranging from annual inspections for projects with 26 or more units to once every three years for projects with 1-4 units (refer to Page 6-20 for the discussion on Monitoring and Inspections). Consequently, the HOME units within a tax-credit project may be subject to more frequent inspections.

REFINANCING GUIDELINES

- ♦ While refinancing is an eligible cost under 92.206(b), it cannot be the primary purpose of the HOME investment. Refinancing is only appropriate and eligible when HOME funds are loaned to rehabilitate a project and refinancing is necessary to permit, or continue, affordability as defined by the HOME Program. Moreover, HOME funds cannot be used to refinance Federal debt (e.g. FHA loans, federal multifamily mortgages, etc).

- ♦ PJs must establish minimum refinancing guidelines and include them in their Consolidated Plan. At a minimum, the guidelines must:

  - ➢ Demonstrate that rehabilitation is the primary activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing;

  - ➢ Require a review of management practices to demonstrate that disinvestment in the property has not occurred, that the long-term needs of the project can be met and that the feasibility of servicing the targeted population over an extended affordability period can be demonstrated;

  - ➢ State whether the new investment is being made to maintain current affordable units, create additional affordable units or both;

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- Specify whether the investment of HOME funds will be jurisdiction-wide or limited to a specific geographic area (for example, Neighborhood Revitalization Strategy area, Empowerment Zone or Enterprise Community);
- Specify the required period of affordability (whether it is the required 15 years or longer); and
- State that HOME funds cannot be used to refinance multi-family loans made or insured by any other federal program, including Community Development Block Grant (CDBG).

LEASES

- The lease between the owner and the tenant in a HOME-assisted property must be for at least one year, unless by mutual agreement between the tenant and the owner.
- The lease between the owner and tenant in a HOME-assisted property ***can not*** contain any of the following provisions:
  - 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

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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 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; violation of applicable federal, state or local law; completion of the tenancy period for transitional housing or for other good cause.

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

MANAGING FOR ONGOING COMPLIANCE

♦ To maintain compliance with HOME rules, property owners will need to ensure 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.

♦ Hiring a qualified property manager will help ensure all necessary actions are taken.

♦ PJs may use the sample forms provided in Attachment 6-3 to manage rental projects for ongoing compliance with HOME requirements.

ATTACHMENT 6-1

SROs AND GROUP HOUSING COMPARED*

CATEGORY	SRO	GROUP
DESCRIPTION	Single-room occupancy units (SROs) are single-room dwelling units with either sanitary and/or food preparation area in the unit. If project is new construction or reconstruction, it may have both. If acquisition or rehabilitation, not required to have sanitary and food preparation areas. May have common facilities. NOT student housing.	One unit with separate bedroom(s) and shared living, kitchen, dining, and/or sanitary facilities. Occupied by two or more single persons or families. NOT student housing.
MAXIMUM SUBSIDY	Based on zero-bedroom unit subsidy limit times number of HOME-assisted units; common area costs prorated based on percent of HOME-assisted units.	Based on number of bedrooms, including bedrooms of caretakers.
TARGETING	All tenants of HOME-assisted units must be low- or very-low-income.	All tenants, excluding live-in service providers, must be low-income.
RENTS	If the unit has neither food preparation nor sanitary facilities, or only one, the rent may not exceed 75 percent of the FMR for a zero-bedroom unit. The “lesser of” rule comparing the FMR to 30 percent of 65 percent of area median income and low HOME rents does not apply. If the unit has food and sanitary facilities, High and Low HOME rents apply. In projects with 5 or more units, 20% of the units should have Low HOME rents. Low HOME rents are defined for SROs as not more than 30 percent of the occupant’s monthly adjusted income or not more than 30 percent of the gross income of a family at 50% of the area median income, adjusted for family size. High HOME rents apply to all other units. (They are defined, as for other projects, as the lesser of the FMR or 30% of 65% of area median income, adjusted for family size.)	Maximum rent based on appropriate FMR (based on number of bedrooms excluding rooms occupied by live-in service providers); each household pays proportionate share of rent. There is no Low HOME rent requirement.
TENANCY	Permanent and transitional rental housing.	Permanent and transitional rental housing.

* For further information, see CPD Notice 94-01, “Using HOME Funds for Single Room Occupancy (SRO) and Group Housing.”

ATTACHMENT 6-2

ELDER COTTAGE HOUSING OPPORTUNITY UNITS

Elder Cottage Housing Opportunity (ECHO) units are small, free-standing, barrier-free, energy-efficient, removable and designed to be installed adjacent to existing single-family dwellings.

- The owner of an ECHO unit must be the owner-occupant of the single-family host property on which the ECHO unit will be located, a PJ or a non-profit organization.
- During the affordability period, the tenant must be a low-income family and an elderly or disabled family as defined in 24 CFR 5.403.
- HOME rental housing restrictions apply, except for the following:
  - Only one ECHO unit may be provided per host property.
  - The ECHO unit owner may choose whether or not to charge the tenant of the ECHO unit rent, but if a rent is charged, it must meet HOME requirements.
  - The ECHO unit must meet the HOME affordability restrictions. If within the affordability period the original occupant no longer occupies the unit, the ECHO unit owner must:
    - ✓ Rent the unit to another eligible occupant on site;
    - ✓ Move the ECHO unit to another site for occupancy by an eligible occupant; or
    - ✓ If the owner of the ECHO unit is the host property owner-occupant, the owner may repay the HOME funds in accordance with the PJ's recapture provisions.
  - The PJ has the responsibility to enforce the project requirements applicable to ECHO units.

ATTACHMENT 6-3

SAMPLE DOCUMENTS TO MANAGE RENTAL PROJECTS FOR ONGOING COMPLIANCE

1. HOME Rental Housing Income Limits
2. HOME Rental Housing Rent Determination Chart 1 -- Low and High HOME Rents
3. HOME Rental Housing Rent Determination Chart 2 -- Utility Allowance
4. HOME Rental Housing Rent Determination Chart 3 -- Actual Maximum Rent Computation
5. HOME Rental Project Compliance Report
6. Affirmative Marketing, Tenant Selection and Lease Compliance Checklist

HOME RENTAL HOUSING
INCOME LIMITS
(PJs should complete and provide to owner/manager)

Effective Date: ______________

Income Level	Household Size					
	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons
50% of Median (Very Low Income)						
60% of Median						
80% of Median (Low Income)						

HOME RENTAL HOUSING
RENT DETERMINATION CHART 1
LOW AND HIGH HOME RENTS
(PJ should complete and provide to owner/manager)

Effective Date: ______________

Rent Level[1]	Unit Size					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	5 Bedroom
Low HOME Rent[2]						
High HOME Rent						

[1] These are the rents which are determined by comparing fair market rents with 50% and 65% rent limits provided by HUD. Remember, these rents include utilities, and must be reduced if the tenant pays utilities (see Chart 2). Utility allowances must be approved by the PJ.

[2] The Low HOME Rent applies to a minimum of 20% of the units in projects with five or more HOME-assisted units.

Allowances for Tenant-Furnished Utilities and Other Services

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 9/30/2002)

See Public Reporting Statement and Instructions on back

Locality	Unit Type	Date (mm/dd/yyyy)

Utility or Service		Monthly Dollar Allowances					
		0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
Heating	a. Natural Gas						
	b. Bottle Gas						
	c. Oil / Electric						
	d. Coal / Other						
Cooking	a. Natural Gas						
	b. Bottle Gas						
	c. Oil / Electric						
	d. Coal / Other						
Other Electric							
Air Conditioning							
Water Heating	a. Natural Gas						
	b. Bottle Gas						
	c. Oil / Electric						
	d. Coal / Other						
Water							
Sewer							
Trash Collection							
Range/Microwave							
Refrigerator							
Other -- specify							

Actual Family Allowances To be used by the family to compute allowance. Complete below for the actual unit rented.

Name of Family

Address of Unit

Number of Bedrooms

Utility or Service	per month cost
Heating	$
Cooking	
Other Electric	
Air Conditioning	
Water Heating	
Water	
Sewer	
Trash Collection	
Range/Microwave	
Refrigerator	
Other	
Total	$

HOME RENTAL HOUSING
RENT DETERMINATION CHART 3
ACTUAL MAXIMUM RENT COMPUTATION
(PJ should complete and provide to owner/manager)

PROJECT NAME: ______________________________ DATE: _________________________

ADDRESS: ____

A	B	C	D	E	F
Unit #	**# of Bedrooms**	**Low or High HOME Rent Unit (L or H) Designation**	**Maximum Rent (including Utilities) from Chart 1**	**Utility Allowance (from Chart 2)**	**Actual Maximum Rent (Column D - E)**
Example	*2*	*L*	*$450*	*$75*	*$375*

HOME RENTAL PROJECT COMPLIANCE REPORT

(PJ should complete and place in project file)

Project: ____ **Date:** ___________________________________

Address: ____ **Reporting Period:** ________________________

No. of Units: __________

No. of HOME Units: __________

Low HOME Rent Units: __________

High HOME Rent Units: __________

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

AFFIRMATIVE MARKETING, TENANT SELECTION AND LEASE COMPLIANCE CHECKLIST

(PJ should complete and place in project file)

PROJECT NAME: ________________________________ DATE: ________________________
ADDRESS: ________________________________ REPORTING PERIOD: ________________

	In Compliance? (Y or N)	**Comments**
Affirmative Marketing		
• Adhered to PJ policy and procedures		
Tenant Selection		
• Maintains a written tenant selection policy • Followed the written tenant selection policy • Properly determined tenant income eligibility (including reviewing source documentation) • Did not refuse to lease to Section 8 Certificate or Voucher holders or households with comparable assistance		
Leases		
• Length = at least one year • Leases do <u>NOT</u> contain the prohibited provisions (listed in 92.253) • Termination of tenancy or refusal to renew leases preceded by 30-day notice specifying grounds for such action		