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HOME Rental Compliance

January 13, 2019

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Welcome

- Sponsored by:
  - HUD, Office of Affordable Housing Programs
  - NCSHA
- Presenter
  - Les Warner, ICF

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Agenda

- Key HOME Rental Requirements
- Underwriting and Subsidy Layering
- Maintaining Affordability
- Marketing and Tenant Relations
- Unit Quality and Inspections
- Project Sustainability Oversight

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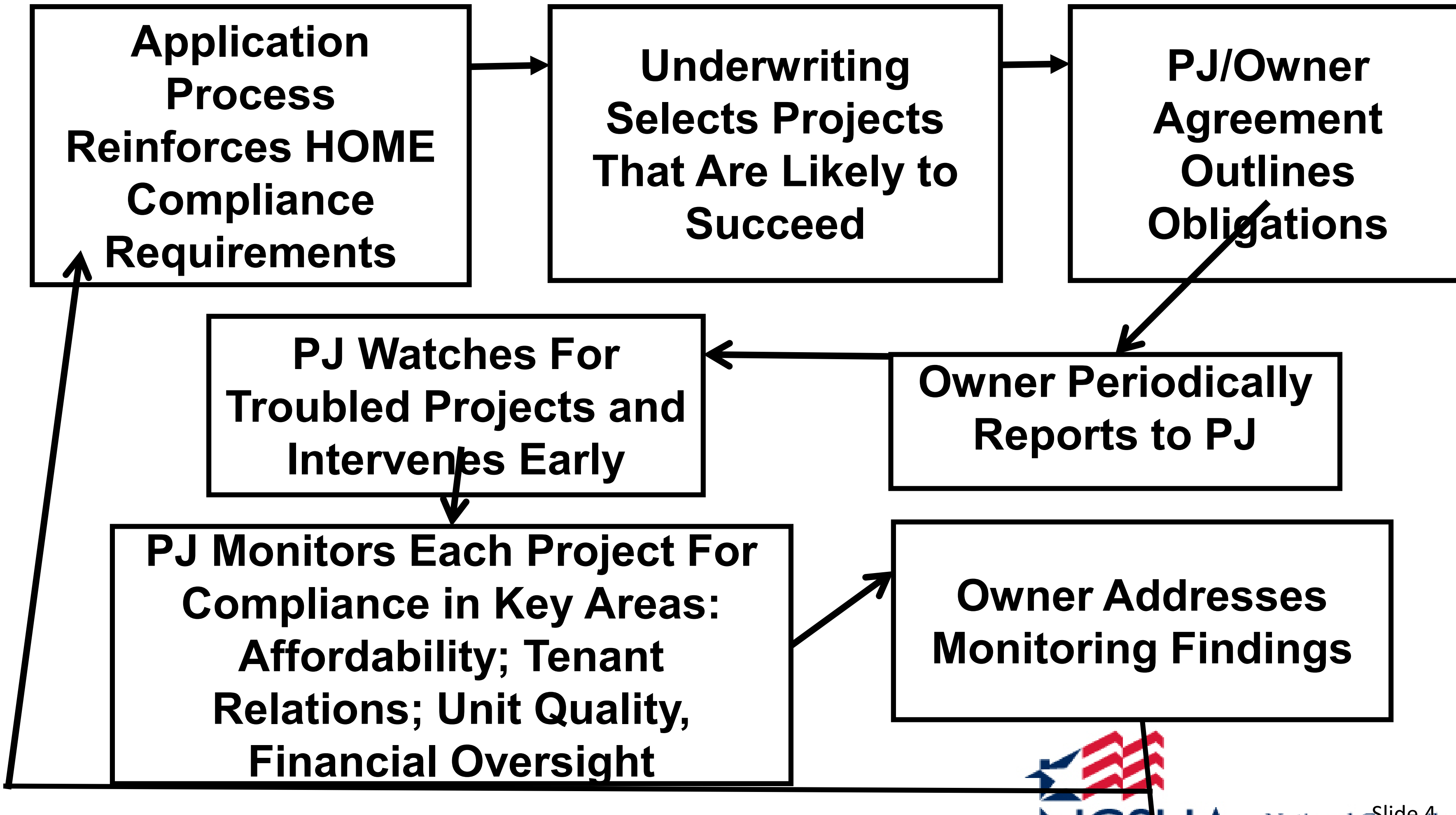

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SETTING THE GROUNDWORK FOR COMPLIANCE

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In This Module…

- This module will cover:
  - Brief overview of HOME rules
  - Summary of underwriting implications for monitoring
  - Effective written agreements

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Designing a Rental Program

- Eligible approaches under HOME:
  - Acquisition
  - Rehabilitation
  - Reconstruction/conversion
  - New construction
- PJ rental strategy based on who needs housing, where, what can they afford, current housing supply, leverage other resources for the greatest impact

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Maximum Subsidy Limits

- Minimum = $1,000 per unit
- Maximum investment is capped by the HUD published per unit subsidy limits
  - Calculated based on the amount of HOME investment in the unit– does not cover all other sources of financing
- PJ may not invest more than the actual cost of HOME units (cost allocation)

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Commitment of HOME funds

- PJs may not commit HOME funds to a project until:
  - A project is identified
  - Environmental review requirements are met
  - A budget and production schedule is established
  - All necessary financing is secured
  - **Underwriting and subsidy layering is complete (including assessment of market and developer capacity)**
  - Construction is expected to start within 12 months

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Commitment Requirements

- HOME Notice CPD-18-10 suspended the 24-month commitment requirement
- HUD will not enforce the 24-month commitment deadlines occurring in 2016, 2017, 2018, 2019 and 2020.
- CHDO commitment and 5 year expenditure for pre-2015 funds deadlines remain in place
- Deadline Compliance Status Report revised

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Deadline Compliance Status Report

- https://www.hudexchange.info/programs/home/home-deadline-compliance-status-reports/ - real time report is the PR 49
- Assist PJ in monitoring compliance with the 2-year commitment of CHDO funds
- Grant years prior to 2015 also held to commitment and expenditure rules for all funds
- Also see PR 27 and PR 25

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Open Activities Report

- https://www.hudexchange.info/programs/home/home-pjs-open-activities-reports/
- PJs can use this report to view open activities in IDIS including activities with 100 percent of the funds drawn and with a status code of FD, or final draw. Also see PR22 and PR48
- PJs to enter project completion data into IDIS within 120 days of making a final draw for a project (see HOMEfires Vol. 6 No. 1, August 2005).
- PJs can view activities that have been open (OP) for several years with little or no HOME funds drawn. These projects, if not progressing, should be cancelled.

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HOME Deadlines

- 18-month lease-up in rental housing projects - 18 month period begins when the project meets the rental project completion definition (more details to follow)
- 4-year project completion deadline – 4 year period for completion begins at the project commitment in IDIS

Project Completion Deadline

- Projects must be completed 4 years from the date the written agreement is executed
- PJs may request 1-year extension by providing:
  - Information on status of the project
  - Steps being taken to overcome obstacles to completion
  - Proof of adequate funding to complete project
  - Schedule with milestones for completion
- Otherwise, must repay HOME investment

Definition of Project Completion

- A project is “complete” when:
  - All construction work complete and property standards met
  - Final drawdown of HOME funds disbursed
  - Rental Housing, only:
    - Project can be completed in IDIS with units marked vacant
    - Beneficiary data must be entered as units rent up

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Rental Occupancy Deadline

- HOME units must be occupied by income-eligible tenants within 18 months of project completion
- Market evaluation prior to funding to determine if proposed number of units can be absorbed in market within timeline
- HUD will track HOME units not occupied within 6-months – PJ to provide strategy to meet deadline
- PJ must repay HOME investment for units not occupied within 18 month term

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Vacant Unit Report

- https://www.hudexchange.info/programs/home/home-pjs-vacant-unit-reports/IDIS reports
- Can help PJs identify units in HOME projects that are marked "vacant" in IDIS.
- If the vacant units are part of a completed HOME IDIS activity, occupancy and beneficiary data should be entered for these units.
- HUD uses this report as a desk-monitoring
- Completion of occupancy and beneficiary data should improve a PJ's "Low-Income Benefit" and "Lease-Up" factors on its SNAPSHOT

Program Rule

- HOME requirements related to beneficiaries:
  - All assisted households at or below 80% AMI
  - Eligibility is determined at initial occupancy and recertified on an annual basis
- 90% of HOME rental and TBRA households must have incomes at/below 60% of AMI at initial rent up of property

Project Rule

- Projects with 5 or more HOME-assisted units:
  - At least 20% of units must occupied by households at/below 50% of AMI [Note: can have more than 20%!]
  - Determination of appropriate unit type is based on gross income of household
  - Rents must be at low HOME rent level
  - Balance of units may be at/below 80% of AMI with high HOME rent level

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Broadband

- Broadband Final rule effective for HOME projects for new commitments on our after January 19, 2017
- Required for buildings with 4 or more rental units
- Applies for both new construction and substantial rehabilitation
- Waivers possible where infeasible
- See resource list for link

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Sizing the Level of Assistance: Cost Allocation, Underwriting and Subsidy Layering

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In This Module...

- Underwriting/Subsidy Layering Requirements
- Project Review
- Cost Allocation
- Capital Needs
- Reserves
- Market Assessments
- Developer Capacity Review
- Written Agreements

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Underwriting link to Compliance

- Compliance success begins at underwriting
  - Compliance problems can relate to viability issues that can be traced back to original plan/proposal
- Underwriting must address sustainability
  - Evaluate income and expense over time
  - Consider market forces
  - Plan sufficient reserve funds for moderate losses of revenue or increased costs

Applicability

- Applies to projects funded in part or in whole with HOME funds
- CPD Notice 15-11 HOME Underwriting and Subsidy Layering Guidelines published on December 22, 2015
- https://www.hudexchange.info/trainings/courses/home-underwriting-and-subsidy-layering-guidelines-hud-notice-cpd-15-11-webinar/1062/

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Underwriting Strategy

- In its review, a PJ must ensure that:
  - Cash flow is adequate each year
  - Income is sufficient to cover expenses and debt service for entire period of affordability
  - Assumptions allow for “bumps in the road”
  - Are rent assumptions realistic?
  - Are rents in compliance with HOME limits?
  - Are expense assumptions realistic?
- Plan in place for balloon payments
- Reserves are adequate over affordability period

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Project Review

- A PJ is required to have written underwriting guidelines
- At a minimum, collect and review:
  - Development budget
  - Sources and uses statement
  - Cost Allocation
  - Operating pro-forma
- Compare projects against PJ's guidelines, which take into account:
  - Market
  - Targeting: geography and project type
  - Targeting: income levels/mixed-income
  - Trade off between volume and quality
  - PJ tolerance for risk

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Reviewing Sources and Uses

- PJs must determine all project costs are **eligible, customary and reasonable**
- Sources and Uses must include all funds and costs to complete the project
  - All sources must be firmly committed
- Budget must be in sufficient detail to determine: total cost, per unit cost, and line item percentages
  - Ensure all HOME costs eligible per 92.206
  - Ensure HOME investment does not exceed max per unit subsidy limits
  - Review cost allocation to be sure costs correctly allocated to HOME units

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Cost Allocation

- HOME funds may only be used to pay eligible costs for HOME-assisted units
- A PJ must perform cost allocation for a project where less than 100% of the units are HOME-assisted.
- Cost allocation results dictate:
  - The maximum HOME investment (capped by subsidy limits), or
  - The minimum number of HOME units
  - See Notice CPD-16-15

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Reviewing Pro-Formas

- Developer must provide operating budget and affordability period pro-forma
- At minimum should cover:
  - Projected income and vacancies
  - Operating expenses
  - Contributions to reserves
  - Debt service
  - Cash flow and payments of deferred fees
- PJ should establish standard format

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Initial Operating Reserve

- Initial operating reserve is the only allowable reserve that can be capitalized as a part of the project funding
- Reserve is sized to cover the projected cash shortfall during the lease-up
- Limited to 18 month rent-up period
- This should be sized based on the project's specific market and projected absorption of new HOME units

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Funding Capital Repairs

- HOME can provide initial 18-month operating reserve from which regular contributions to capital escrow are allowed
- Can also invest additional HOME funds during first year of project
- Afterwards, cannot invest HOME $ during affordability period without HUD waiver
- Must rely on reserve for replacement, owner investment, or other funding sources

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Reserves for Replacement

- Deposits for future capital expenditures
- Approaches to capital budgeting:
  - Future cash flow
  - Regular deposits to a reserve account escrow
- Replacement reserve cannot be capitalized as a part of the development budget expenditures
- Standards for reserves part of Underwriting policies

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Market Assessment

- Develop policies and procedures to assess and document current neighborhood market for projects
- Determine demand for each project, including review of neighborhood market data
  - Need vs. demand
- Level/type of assessment scaled to the project size
- Three options for market assessment:
  - PJ uses its own knowledgeable, experienced staff
  - PJ contracts for market assessment
  - PJ requires owner to do professional assessment and PJ reviews

Evaluating Developer Capacity

- Key questions in assessing developers
  - Assessment varies by project size, scope, complexity
  - Type of development entity (CHDO, nonprofit, for-profit)
  - New entities v. established developers
  - Current workload
- Areas to assess:
  - Recent, relevant experience & skills
  - Strength: financial & organizational

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Written Agreement Elements & Compliance

- Number and type of HOME assisted units
  - Bedroom distribution
  - Low HOME/ High HOME
  - Fixed or floating
  - Rent limits
- Affordability period
- Affirmative marketing
- Definition of income
- Enforcement provision

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Written Agreement Elements and Compliance (cont)

- Income certification
  - Annual certification
  - Verification
  - Over income
- Lease requirements
- Property standards
- Access to files & units: PJ, HUD, IG
- Reports (annual)
- Recordkeeping

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Written Agreement Suggested Contents

- Approval of (due on) sale or transfer
- Default provisions – noncompliance
- Budget review & financial reports
- Optional monitoring & intervention rights:
  - Reserves contributions/disbursement approvals
  - Change in management/ownership
  - Access to CPA/auditor

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HOME Units and Affordability Period

- Number of HOME-assisted units described in the written agreement
  - All units HOME-assisted, or
  - Some units determined to be HOME-assisted through a cost allocation process
- Affordability period based on HOME investment per unit
- Above minimum # units required - PJ's discretion
- Project must maintain unit mix thru affordability period

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Affordability & Compliance

	HOME Investment Per Unit	Length of Compliance/Affordability period
Rental housing acquisition and/or rehabilitation	Less than $15,000	5 years
	$15,000 - $40,000	10 years
	More than $40,000	15 years
New construction of rental housing	Any $	20 years
Refinancing of rental housing	Any $	15 years

* Pay-off of the HOME assistance does not end the affordability period

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Designate Fixed or Floating Units

- Only units receiving HOME $ are subject to HOME requirements
- For properties with HOME and non-HOME units, must select “fixed” or “floating” HOME units
  - Fixed = HOME units for duration of affordability period
  - Floating = unit numbers change but always have same portion of HOME units
- Fixed or floating is designated in written agreement

HOME & LIHTC: Affordability Period

- LIHTC compliance period determined by State
  - Base compliance period of 15 years
  - After year 15, some projects terminate compliance period
  - For other projects, post 15 year compliance period often less stringently enforced
  - States may impose longer period
- Comply with HOME rules for affordability period and LIHTC rules for Tax Credit compliance period

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Deed and Use Restrictions

- HOME rental affordability restrictions must be imposed by deed or other restrictions on the property that run with the title to the land for at least the minimum affordability period
- Must apply without regard to any loan, repayment, or transfer
- Rights of purchase and other methods may supplement

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Maintaining Affordability

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In This Module…

- This module will cover:
  - Income limits & targeting
  - Documenting income eligibility
  - Rent limits
  - Occupancy mix over time
  - Rent & occupancy records

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What Counts As Income

- Two definitions
  - Section 8 (Part 5)
  - IRS Adjusted Gross Income
- Must anticipate income for next 12 months
- PJ selects one for each rental project
- Income definition remains same throughout affordability period

Use the Income Calculator on HUD's website

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Income Eligibility Levels

- HOME defines two key levels of income for tenants:
  - Very Low Income (VLI): established by HUD at 50% of Area Median Income (AMI)
  - Low Income (LI): established by HUD at 80% of AMI
- 60% of AMI is only applicable to initial occupancy of HOME rental properties (program rule)

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Income Targeting

- Two phases of income targeting:
  - At initial occupancy (program rule)
  - Over life of the affordability period
- Requirement also depends on number of HOME units in project
- At no time may <u>new</u> tenants in HOME units have incomes greater than 80% of median
  - Existing HOME unit tenant incomes may increase
  - Must not "kick out" existing HOME tenant due to income increase
- Some projects will have an extended use period of affordability after HOME has been completed

HOME Income Limits

- "Household" is all occupants of unit – not just related family members
- HUD issues income limits annually
  - Vary by jurisdiction and household size
- PJ responsible for informing owner/manager of annual income limit updates

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Income Limit Example

	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
30% LIMIT	12,900	14,700	16,500	18,400	19,850	21,350	22,800	24,300
VERY LOW INCOME	21,450	24,500	27,600	30,650	33,100	35,550	38,000	40,450
60% LIMIT	25,740	29,400	33,120	36,780	39,720	42,660	45,600	48,540
LOW INCOME	34,350	39,250	44,150	49,050	52,950	56,900	60,800	64,750

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Larger Households

- Income limits stop at 8 person households
- Rules for calculating income limit as:
  - 9 person = 1.4 times 4 person limit
  - 10 person = 1.48 times 4 person limit
  - 11 person = 1.56 times 4 person limit
- Online income calculator provides income limits for all household sizes

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Gross v. Adjusted Income

- Gross income used for eligibility
  - Income inclusions & exclusions based on chosen definition
- Adjusted income used in limited circumstances:
  - Deducts specific amounts for topics such as elderly, disabled, dependents
  - Used for:
    - Over-income tenant rent
    - TBRA
    - Some URA calculations

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Income Verification

- Owners must verify initial tenant income using source documentation
  - Verification is good for 6 months
- Acceptable source documents:
  - Wage statements (2 months required)
  - Interest statements
  - Unemployment compensation statements
  - Third party verification from employer, bank, etc.

Income Recertification

- Must recertify rental income <u>at least</u> annually:
  - Must review source documents every 6th year of the affordability period
  - For other years can use:
    - Source documents
    - Written statement from household
    - Statement from administrator of another program
- Recertify at:
  - Anniversary date of initial verification;
  - Lease renewal; or
  - Annual schedule where all tenant incomes are verified at one point

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HOME & LIHTC: Income Definition

- Low Income Housing Tax Credit (LIHTC) rules
  - Uses Section 8 definition of annual (gross) income
  - Allows for tenant certification of assets when ≤ $5000
  - Like HOME, LIHTC income limits now based on household size
- Use Section 8 income on all units (HOME & LIHTC)
- HOME's more stringent rules on asset income apply to HOME assisted units -- all asset income must be verified
- When programs combined in same unit, use lowest income limit

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HOME & LIHTC: Re-Certification

- LIHTC rule
  - Annual re-examinations
  - Documentation from third party source required
  - All sources verified
  - For 100% LIHTC projects under QAP 2009 and after, state has option to not require annual recertification – check QAP
- HOME allows self certification for re-exam of income but requires 3rd party documentation every 6th year of afford period
- Owner may request waiver to match HOME rules for re-examination

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HOME Rent Limits

- Key terms in looking at High and Low HOME rents:
  - ***HOME rent limits*** – maximum rent cap (High and Low HOME rents) published by HUD for each PJ by bedroom size
  - ***Maximum rent*** – the most an owner is permitted to charge for rent once tenant-paid utilities are deducted; never more than the HOME limit
  - ***Contract rent*** – the actual rent in the lease charged to household by owner; can never exceed the maximum rent but may be less

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HOME Rent Limits (cont.)

- HOME rent may not apply for certain special unit types (more later)
- HOME rent limits may go up or down over time
- Owner is not required to accept rents lower than initial rents in the written agreement

HOME Rent Example

	EFFICIENCY	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
LOW HOME	482	564	690	796	888	980	1072
HIGH HOME	482	564	722	918	947	1089	1231
FAIR MARKET RENT	482	564	722	918	947	1089	1231
50% RENT LIMIT	536	574	690	796	888	980	1072
65% RENT LIMIT	678	728	874	1002	1099	1193	1289

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Utilities

- Published HOME rents include the cost of utilities
- Must adjust max rent limits if tenant pays utilities
  - Subtract utility allowance to determine limit for rent paid by tenant
- PJs must determine the utility allowance for HOME – assisted rental units by using either:
  - The HUD Utility Schedule Model (HUSM); or,
  - A project specific methodology
- HOMEfires – Vol 13 No 2, May 2016 provides further guidance including identifying four other acceptable utility models

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Special Units: Project Based Assistance

- PJ may allow owner to charge project based program rent when:
  - Low HOME unit; and
  - Unit receives federal or state project-based assistance (not tenant-based); and
  - Unit is occupied by very Low Income tenant; and
  - Tenant does not pay more than 30% of adjusted income for rent

Special Units: Group Homes

- Defined as housing occupied by 2+ persons or families with common space/facilities for group use
- Low HOME rent limit does not apply
- Group home is considered a single unit
- Rent calculated as a single unit with multiple bedrooms
- Capped at the HUD published FMR
- Do not count bedroom of service provider
- Rent is pro-rated across tenants

Special Units: SRO

- SRO defined as single room that may or may not have food prep and sanitary facilities
- Rents capped at either FMR or the applicable HOME rent
  - Depends whether unit has food preparation and sanitary facilities
  - If no food/sanitary or only one = 75% of 0 bedroom (efficiency) FMR
  - If both = HOME efficiency unit rents or 30% of household adjusted income

HOME & LIHTC: Rents

- Both programs publish rent limits & subtract utility allowance to get to max rent
- Cannot exceed either program limits:
  - HOME rent – HOME utility allowance = max HOME rent
  - LIHTC rent – LIHTC utility allowance = max LIHTC rent
  - Choose lower when combined in unit
- Note: in some markets, HOME & LIHTC rents exceed market – unwise to charge rents at max levels

HOME & LIHTC: Rent Changes

- HOME & LIHTC rents change over time
  - Combined units must comply with both rules
- Rents may go up or down
  - HOME units not required to go lower than initial rents in HOME agreement

LIHTC Rents

- Tax Credit agencies establish floor rents for projects at time of allocation or carryover
- LIHTC rents can go down but less likely to occur due to recent statutory change
- HERA changes to income limit calculations could affect LIHTC rents
- LIHTC rents not capped by FMR – less likely to go down

PJ Annual Action on Rents

- PJ must:
  - Provide new HOME rents to owners/managers annually when published
  - Review and approve rents, or require changes if not in compliance
  - Review utility schedules

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Monitoring Income and Rents

- Tips:
  - Use a standard reporting form that shows all units – sample form in owner guidebook – see resource list
  - Annual or quarterly report – Compare to previous reports to watch what happens at turnover
  - Annual submission of income certifications and leases required
  - On-site review required to verify report

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Managing Unit Mix Over Affordability Period

- PJ must ensure that owner maintains number and type of HOME assisted units
- Key considerations:
  - Total number of HOME vs other units
  - Rights of existing tenants
  - Timing of rent changes
  - Whether units are fixed or floating

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Unit Mix: Number of HOME Units

- Must maintain total number of HOME & non-HOME units
  - Designated in written agreement
  - Example: If agreement dictates 10 HOME units, owner is not required to have 11 units with HOME restrictions
- Must maintain proportion of Low & High HOME rent units
  - Minimum Low HOME: 20% of HOME-assisted units in rental projects with 5 or more HOME units
  - Actual number established in written agreement

Unit Mix: Rights of Existing Tenants

- Existing tenants are <u>never</u> required to move due to income change
  - Neither *required* to move out from project nor required to move to different unit in same project
  - Existing tenant may *choose* to move out if he/she does not like the new rent; this is not “displacement”
- No cap on percent of rent increase unless dictated by state/local law
  - Example: Tenant’s unit changes from low to high HOME and their rent changes from $600 to $900

Unit Mix: Timing of Rent Changes

- Tenant income is verified annually; rent changes occur when permitted by lease
  - Tenant is provided 30 days notice of rent change
- Cannot change rent from Low to High HOME until substitute Low HOME unit is identified
- Can change rent for over-income household (over 80% AMI) as permitted by lease – do not need to wait for substitute unit
- Project and unit may be in “temporary non-compliance”
  - Correct as soon as applicable units become available

Fixed Units

- If units are not comparable, HOME units must be fixed
- Fixed units remain HOME units throughout affordability period
  - Regardless of if the unit becomes vacant or when an existing tenant becomes over income
  - Unit number and location is known from outset
- Fixed units may switch between Low and High HOME designation during affordability period

Fixed Units: Tenant Income Increases

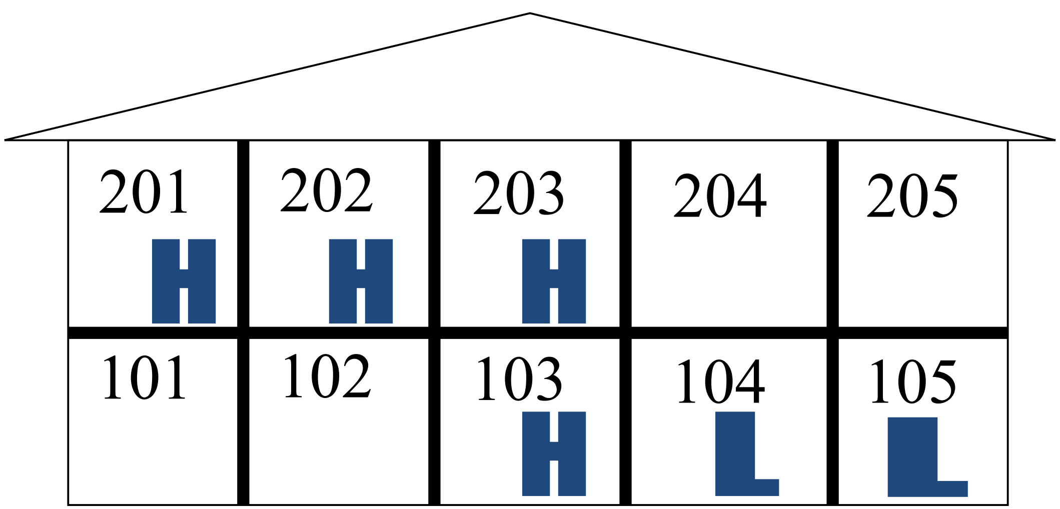
- When tenant income in Low HOME unit goes above 50% but remains $\leq$ 80% of AMI:
  - Rent next vacant High HOME unit at Low HOME rent, OR
  - Can re-designate existing High HOME unit to Low HOME if occupied by VLI household
  - Until re-designation, rent stays at Low HOME
- Once VLI/Low HOME Rent requirement met, then existing tenant rent may change to High HOME rent level - subject to lease terms

Fixed Units: Over Income Tenants

- If income of a tenant in a fixed HOME unit exceeds 80% of AMI:
  - Tenant may remain in HOME unit, BUT
  - Tenant must pay rent equal to 30% of adjusted monthly income (if allowable under state/local law and according to their lease)
- Next available HOME unit must be rented to low income person (if High HOME unit needed) or very low income person (if need Low HOME unit)

Fixed Unit Exercise

- 10 one bedroom units in project; 6 units are HOME
- Example 1: Ms. Smith’s income in 104 goes up to 64% AMI & 202 becomes vacant
- Example 2: Mr. Ramirez in 203 goes up to 92% AMI & 204 becomes vacant



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Floating Units

- Total number of HOME units is constant but individual unit designations may change
- Units must be comparable in terms of:
  - Amenities and finishes
  - Square footage
  - Configuration
- Can have bedroom size mix if :

  1) All one-bedrooms are comparable, all two-bedrooms are comparable, etc.; and,

  2) Number of HOME units by bedroom size does not change over time

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Floating Units: Tenant Income Increases

- If income of VLI tenant in Low HOME Rent unit increases above 50% but remains $\leq$ 80% of AMI:
  - Remain temporarily out of compliance until comparable High HOME unit is available, rent stays at Low HOME
  - Do not look to market rate unit unless project has insufficient total number of HOME units
  - Can re-designate existing High HOME unit to Low HOME if occupied by VLI household

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Floating Units: Tenant Income Increase Example

- Assume agreement requires 20 HOME units and all are occupied by eligible households. If change next available market rate unit to Low HOME, would now have 21 HOME units, which exceeds owner’s commitment
- Project remains in temporary non-compliance unit correction can be made

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Floating Units: Over Income Tenants

- When existing household becomes over income (over 80% AMI):
  - Must increase rent to 30% of adjusted gross income, capped at market rent for comparable, unassisted unit
  - Project remains temporarily out of compliance until next available, comparable, non-assisted unit is substituted

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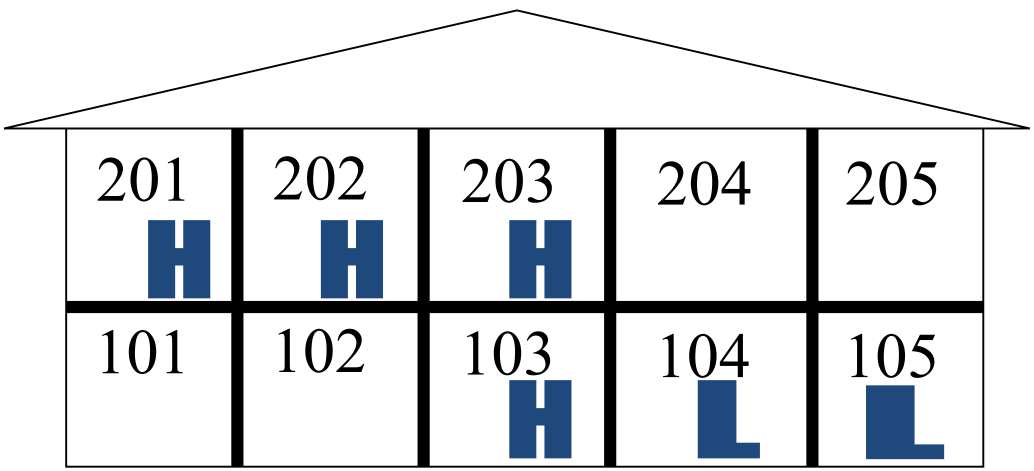
Floating Units: Over Income Tenants (cont.)

- When existing household becomes over income (cont):
  - New unit must be comparable
  - If need Low HOME unit: substituted tenant must be VLI and rent is Low HOME
  - Can re-designate existing market rent unit to Low HOME if occupied by VLI household
  - If need High HOME unit: substituted tenant may be up to 80% median and rent is High HOME
  - Once new unit designated, old unit can become market rent unit

Floating Unit Exercise

- 10 one bedroom units in project; 6 units are HOME
- Example 1: Ms. Chan’s income in 105 goes up to 58% AMI & 102 becomes vacant (for now assume all HOME units occupied & eligible)
- Example 2: Mr. Preston in 203 goes up to 102% AMI & 204 becomes vacant



Unit Mix Questions When Reviewing Owner's Annual Report

- Does total number of HOME-assisted units match written agreement?
- Does project have correct number of Low and High HOME rent units?
- Are there tenants in Low HOME units whose income exceeds 50% AMI?
- Are there tenants in any HOME unit whose income exceeds 80% AMI?
- Can project be brought back into compliance by making a unit swap?

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Unit Swaps

- Depending on existing tenant incomes and units, unit swap may be possible
  - PJ/owner is expected to make swap if needed to bring project back into compliance
  - Example: need Low HOME unit & VLI household lives in High HOME unit
    - Good idea to recertify income again
  - In fixed projects, swap only within HOME-assisted units
  - In floating projects, look within whole project BUT never need to exceed total agreed-upon number of HOME units

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HOME & LIHTC: Over-Income Tenants

- LIHTC rule: rent for over-income tenant remains restricted
  - "Over-income" defined as above 140% of income limit (not AMI)
  - May increase rent only after unit is replaced with another low-income unit in the project
  - Priority to maintain portion of low-income units above the minimum

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HOME & LIHTC: Over-Income Tenants (cont.)

- In units with both $$$, HOME defers to LIHTC and does not deem household as over-income until 140% of LIHTC income limit
  - If household income is over 80% AMI, can raise rent to LIHTC rent (if greater than HOME)
  - HOME rule on increasing rent for over-income tenants in High HOME units does not apply
  - Rent does not change to market until unit is replaced through “next available rule”

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HOME & LIHTC: Over-Income Tenants (cont.)

- Over income example:
  - Mr. Martinelli lives in a High HOME unit with LIHTC assistance
  - At recertification, his income is at 102% of LIHTC income limit
  - Because his unit has combined funding, he is not deemed to be over income:
    - His rent may go up to LIHTC rent (if higher)
    - However, if possible within unit configuration, HUD encourages PJ to look for unit swap

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Student Rule

- Generally, a student under the age of 24 is ineligible for HOME assistance, including occupying a HOME-assisted rental unit unless he or she meets a specific exception outlined in 24 CFR 5.612
- Applies to <u>both</u> full-time and part-time students.

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Student Rule Exceptions

- Student is a member of an income-eligible household
  - Must count the income of all members of the family, even if student resides in a different jurisdiction
- Student is not a dependent member of another household – example a youth emancipated from the foster care system
- The student meets one of the other exceptions:
  - A veteran of the United States military;
  - Married;
  - Has a dependent child; or
  - Is disabled and was receiving Section 8 assistance as of November 30, 2005

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In-Place Students in HOME Rental Units

- First step is to determine the composition of the household
- Property owner/manager must determine the household’s income level
- If the household is over-income, the property owner/manager must apply the over-income tenant provisions of the HOME regulations at § 92.252(i).

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MARKETING & TENANT RELATIONS

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In This Module…

- This module will cover:
  - Fair housing
  - Affirmative marketing
  - Marketing & selection practices
  - Lease & tenant protections
  - Marketing records

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HOME Requirements: Marketing & Tenant Selection

- Project marketing procedures must address:
  - HOME unit occupancy requirements
  - Marketing plan for accessible units
  - Nondiscrimination policies & affirmative marketing procedures
  - Lease requirements
  - Filling vacant units
  - Maintaining tenant selection records
  - CHDO tenant participation plan

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Fair Housing

- Laws prohibiting discrimination
- Applicable Federal laws:
  - Title VI of the Civil Rights Act
  - Fair Housing Act
  - Section 504
  - Americans with Disabilities Act
  - Age Discrimination

Affirmative Marketing

- Plan to conduct special outreach to those <u>least</u> likely to apply
- Required for PJ's program & all properties with 5 or more HOME-assisted units
- Outreach activities/procedure to be specified by PJ
  - Tie to PJ's activities to affirmatively further fair housing
  - Will vary by property/market
  - Outcome to be reported & assessed

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Affirmative Marketing (cont.)

- Affirmative marketing plans can be similar but should be specified to each property
- PJ must annually assess affirmative marketing success
- May require information from owners
- If affirmative marketing not successful, PJ may take corrective actions

Marketing Accessible Units

- Initial rent up:
  - Persons with disabilities needing accessible unit
  - Tenant application to self identify need for unit accommodations
- Ongoing offering:
  - First available to current occupant who requires accessibility features
  - Next to eligible qualified applicant on the waiting list who requires accessibility features
  - Market to attract new disabled applicant
  - Last to non-disabled person on waiting list

Documenting Marketing & Tenant Selection

- Must keep records documenting efforts to:
  - Market affirmatively to eligible population
  - Market accessible units to disabled persons who need accessibility features
- Maintain records of operation of tenant selection procedures
  - Waiting list
  - Who selected from waiting list & why
  - Leases

Occupancy Standards

- No specific HOME rule on max persons per unit
  - PJ should establish standards based on local code
  - Standards must be reasonable and not based on age, gender, relationship
- Not a HOME violation to have household too small for unit size
- Cannot require household to move if over crowded
  - Owner can work with household to find more appropriate unit

Tenant Protection: Lease Requirements

- PJ must review and approve leases
- Leases are required for all tenants
- One year term at minimum
  - Unless mutually agreed upon
- The lease must include:
  - Rent, and
  - Procedures for adjustments to rents

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Prohibited Lease Requirements

- Agreement to be sued
- Treatment of property
- Excusing owner from responsibility
- Waiver of notice
- Waiver of legal proceedings
- Waiver of a jury trial
- Waiver of right to appeal court decision
- Tenant chargeable with costs of legal actions regardless of outcome

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Tenant Protection: Terminating Tenancy/ Refusal To Renew

- Termination or Refusal to renew lease requires good cause:
  - Violation of lease terms;
  - Violation of applicable laws;
  - Completion of tenancy period for transitional housing; or,
  - Other good cause
    - Lease should specify basis
    - Increase in income is not good cause

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VAWA

- Violence Against Women Reauthorization Act of 2013 Final Rule applies to project committed on or after Dec. 16, 2016 and all HTF projects
- VAWA protects any person who is an applicant or tenant of a covered project: **AND**
  - A survivor of
    - Domestic violence,
    - Dating violence,
    - Sexual assault, or
    - Stalking

VAWA (cont.)

- Adopt emergency transfer plans (deadline was June 14, 2017)
- Must allow tenants who qualify to transfer to another HOME/HTF unit in same project if considered safe or may assist to move out of project into another HOME/HTF project
- May utilize TBRA for emergency transfers if a part of TBRA program
- May bifurcate lease to evict abuser

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UNIT QUALITY & INSPECTIONS

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In This Module…

- This module will cover:
  - HOME property standards
  - Inspection requirements

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Property Standards

- If HOME $ is spent, the unit must be brought up to “standard”
- Three types of codes or requirements may apply:
  - Building and Rehabilitation Codes
  - Rehabilitation Standards
  - Ongoing Property Condition/Habitability Codes or Housing Quality Standards
- Building codes & rehab standards apply at project development phase
- Housing quality standards apply for acquisition only activities and throughout affordability period (ongoing property condition)

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Rehabilitation Standards

- Required by the HOME Program
- Developed locally, but may use existing model
- Defines the type and quality of materials and workmanship for rehabilitation projects
- Specifies the type of repairs to be carried out
- May define performance standard for items that are not addressed such as remaining useful life

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Capital Needs Assessment

- Capital needs assessment required under the new HOME rule for rental rehab projects with 26 or more total units
- If remaining useful life of component(s) is less than affordability period:
  - An adequate replacement reserve must be established
  - Underwriting must include regular payments to reserve account

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Ongoing Property Standards

- Sets basic conditions for decent, safe and sanitary housing
- Basis for inspection during affordability period
- Minimum standards for on-going rental habitation (not construction)
  - State and local property condition/habitability
  - UPCS list of inspectable items
  - Must include on-going LBP maintenance
  - Also includes UFAS standards for handicapped access
- PJs may adopt more stringent standards

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Ongoing Property Standards (cont.)

- For pre-1978 structures:
  - Must notify prospective tenants of LBP presence & LBP hazards
  - Also must give LBP pamphlet
  - Be prepared for response to any Elevated Blood Lead Level (EBLL) identified children (LSHR Amendment)
  - On-going basis, maintain units through:
    - Visual assessment
    - Lead hazard reduction
    - Clearance
    - Notification of tenants if work done
    - Keep records

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Non-Compliant Properties

- PJ must require owner to correct deficiencies
  - May include requiring specific repairs
  - After first year, PJ cannot pay for these repairs with HOME $$$ during affordability period
- If property not brought up to standard PJ must enforce agreement with owner
  - May involve legal action

Required Oversight & Inspections

- PJs must verify compliance with HOME requirements each year
  - Owner Certification of property condition; might include pictures of property, maintenance records, sub work orders, and tenant complaints
  - Provide a reporting format!
  - Drive-by is also recommended

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Onsite Inspection Frequency

- 2013 HOME rule change onsite inspection requirements
- Under the New Rule:
  - Once within 12 months of completion
  - At least every three years thereafter
  - More often if health/safety issues or other problems identified
- PJ can adopt 2013 frequency for portfolio but may need to amend agreements

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HOME & LIHTC: Inspection Schedule

- LIHTC rule:
  - Projects are monitored annually throughout the affordability period
  - On-site inspections are required at least every 3 years for at least 20% of units using UPCS (HUD Uniform Property Condition Standards)
- PJ should conduct inspections according to each program's requirements

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Inspection Policies & Procedures

- PJs must have written policies and procedures for inspections
- Inform owner of compliance issues in writing and in person
- Consider impact on tenants
- Keep records of actions taken

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Project Sustainability Oversight

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Relationship between Underwriting and Compliance

- Many long term compliance issues rooted in initial project underwriting
- Underwritten to ensure:
  - Proper number of HOME-assisted units
  - Proper mix of tenant incomes
  - Sufficient cash flow to operate property and maintain units
- Monitoring verifies ongoing compliance and provides feedback for future funding decisions/underwriting

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Compliance Monitoring

- Important to ensure that rental projects meet compliance requirements for affordability period
  - Rents and income
  - Property condition
  - Financial condition
- If project is not compliant:
  - Not providing quality housing to eligible households
  - Requires more PJ oversight
  - May fail and HOME funds have to be repaid

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Financial Oversight

- PJ must do an annual review of financial condition
  - Applies to projects with 10 or more HOME units
- If PJ sees problems, must take action, such as:
  - More frequent reporting and monitoring
  - Provide technical assistance
  - Assist in identifying additional non-federal funding or another appropriate owner

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Monitoring Strategy

- Develop an annual monitoring plan
  - Monitoring objectives
  - Risk assessment
  - Monitoring strategy
    - Desk monitoring
    - On-site monitoring
    - Approaches and tools
    - Staff and schedule
  - Follow up activities
- Do as much from your desk as possible!

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Risk Assessment

- Determines priorities for monitoring (i.e., who, what, when and how often to monitor)
- Allocates staff and resources appropriately
- Determines what type of monitoring is necessary (i.e. financial, programmatic)
- Distinguish between need for desk review, more documentation, and on-site

Desk Monitoring

- Desk monitoring accomplishes:
  - Assessment of programs and projects
  - Selection of recipients for on-site monitoring
  - Preparation for on-site visit
- Analyze progress, compliance, and occupancy reports
- Analyze financial documents such as commitment and expenditures and sustainability
- Assess compliance with HOME, uniform administrative and other federal requirements

On-Site Monitoring

- On-site monitoring accomplishes:
  - Identification of good and bad performance
  - Assessment of compliance
- Steps:
  - Prepare for on-site visit
  - Interview staff
  - Review program and project files
  - Inspect units
  - Exit interview
- Follow up

Monitoring Fees

- Project committed under new rule – on or after August 23, 2013 to charge monitoring fee
- Must be based on actual costs
- Must be included in initial underwriting
- Does not apply to projects under old rule
- HOMEfires Vol. 14, No. 2: Guidance on Establishing a HOME Monitoring Fee, April 2018

TIP: Information Management System

- PJ can create database to provide feedback on property status and inform future investments:
  - Properties by type and funding
  - Owners, managers with cross referencing
  - Underwriting history matched with current financial reports
  - Average costs
  - Reporting history with easy review
  - Monitoring history and current compliance status

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Rule Change on Reporting

- 2013 HOME Rule added some reporting requirements
- PJ must review and <u>approve</u> rent schedules
- Owner must certify annually units are suitable for occupancy

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Fundamentals of Reporting

- Reports should provide full picture of property, its performance and its management
- Use reports as tool to identify those areas needing more follow up documentation
- Enable full monitoring of compliance (except physical condition)
- On-site visits are to confirm accuracy of reporting and documentation picture provided

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Annual Report to PJ

- HOME requires annual rent and occupancy report from owner to PJ
- May include non-financial, financial, and narrative information
  - Non-financial information relates to occupancy and property quality
  - Financial information relates to property's income, expenses, cash flow
  - Narrative information typically covers property management issues

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Annual Report Content: Financial

- Recommend PJ obtain financial report from owner/manager:
  - Budget vs actual operating statement
  - Schedule of major disbursements
  - Accounts payable listing
  - Aged tenant accounts receivable listing
- Recommend also obtain financial reports on:
  - Balance sheet
  - Annual audit
  - Number of and reasons for vacancies
  - Units off line
  - Balance in reserve for replacement

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Annual Report Content: Property Management

- Recommend obtain a narrative from the property owner or manager on:
  - Pending capital improvements
  - Status/turn-over in property management staff
  - Significant issues that the property is facing, such as:
    - Crime
    - High unit turn-over
    - High vacancy

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Reviewing Reports for Compliance

- Establish standards for report quality and thoroughness
- Identify properties as:
  - Compliant
  - Non-compliant
  - Documentation inadequate to make determination
- For new properties, non-compliant properties, or those with turnover review frequently – review more than once a year

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Helpful Resources

- **HUD Field Office staff**
- **Notices and HOME Facts**
  - https://www.hudexchange.info/trainings/courses/home-commitment-interim-rule-webinar/1809/
  - https://www.hudexchange.info/resource/5034/homefires-vol-13-no-2-guidance-on-how-to-establish-utility-allowances-for-home-assisted-rental-units/
- **HOME Written Model Guidebooks:**
  - *Compliance in HOME Rental Projects: A Guide for PJs*
  - *Compliance in HOME Rental Projects: A Guide for Owners*
  - HUD 1780-CPD, Technical Guide for Determining Income and Allowances for the HOME Program

Helpful Resources(cont.)

- Broadband – Narrowing the Digital Divide
  - https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-30708.pdf