

# THE HFA INSTITUTE 2021

## Mixed Financing, Part 2: Compliance

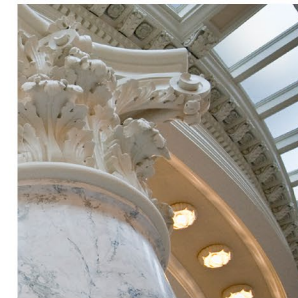
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National Council of  
State Housing Agencies



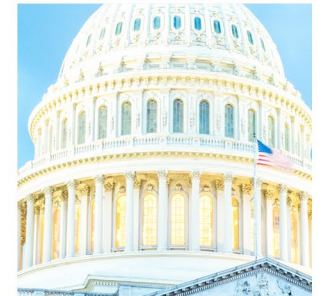
**MRBs and  
Other Federal  
Homeownership  
Programs**  
FEBRUARY 1 – 3



**Housing Credit**  
FEBRUARY 3 – 5



**Section 8 and  
Other Federally  
Assisted  
Multifamily  
Housing**  
FEBRUARY 8 – 10



**HOME and  
Housing Trust  
Fund**  
FEBRUARY 10 – 12



# Welcome

- Sponsored by:
  - HUD, Office of Affordable Housing Programs
  - NCSHA
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# Agenda

- Written Agreements and Project Specific Requirements
- Affordability Period
- Income eligibility
- Determining the eligible Rent
- Inspections and Compliance
- Wrap Up and Questions

# Written Agreements Set the Project Specific Requirements

- Income targeting and rent levels are specified for the affordability period
- The HOME written agreement will guide the owner and property manager throughout the affordability period
- Projects with layered financing may have conflicting requirements – generally the most stringent rule will apply

# Written Agreement - Unit designations

- Properties funded with multiple sources may have specific units designated at HOME or LIHTC units or funded by both HOME and LIHTC equity. Project based subsidies might be designated for individual units or float amongst unit type.
- The income targeting for each unit must be met
- If a unit carries the designation of both HOME and LIHTC, it must meet the more restrictive or lower of the two income limits

Unit Type	Applicable Income Limit
HOME-assisted High HOME Rent unit	HOME low-income limit (at or below 80% AMI), unless otherwise specified by the PJ
HOME-assisted Low HOME Rent unit	HOME very low-income limit (at or below 50% AMI), unless otherwise specified by the PJ
LIHTC-assisted unit	Tax credit limit (either at or below 60% or 50% AMI, or lower, depending on restrictions reflected in the LIHTC Use Agreement)
HOME- and LIHTC-assisted unit	<i>Lesser of</i> HOME income limit or the tax credit income limit
Market rate unit	No income restrictions

# HOME Program Minimum Requirements

- Low-Income Occupancy – All HOME-assisted units must be occupied by low-income households – not to exceed 80% of AMI
- Program Rule – At initial occupancy, 90% of households served across PJ rental programs at or below 60%; Many PJs required 100% at 60% AMI
- Project Rule – At initial occupancy and throughout period of affordability, if 5 or more HOME units, 20% of HOME assisted units must be very-low income- income at or below 50% AMI
- PJ may have adopted additional targeting

## LIHTC minimum set-aside requirements

- 40 percent of units must be affordable at or below 60% AMI
- 20 percent of units must be affordable at or below 50%
- State may impose additional income targeting in the QAP
- Income targeting applies both at initial occupancy and throughout the LIHTC compliance period
- LIHTC income averaging
  - Allows some units to be rented to households with income at 80%AMI provided the average income does not exceed 60% AMI on at least 40% of the units
  - Income averaging only an option for minimum set-aside elections made after March 23, 2018

# HOME & LIHTC: Affordability Period

- LIHTC Use Agreement define the project specific requirements
- LIHTC compliance period determined by State
  - Base compliance period of 15 years
  - 42(h)(6)(F) of the Internal Revenue Code requires an extension of the use restriction on the property for an additional 15 years beyond the compliance period - total of at least 30 years of affordability
  - States may impose longer period
- Comply with HOME rules for affordability period and LIHTC rules for Tax Credit compliance period

# 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  $\leq$  \$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

# Income Limits over Time

- Annually HUD updates and issues HOME and LIHTC limits
- HOME income limits are both low-income and very-low income
  - “low-income” definition for HOME program is at or < 80% of median
- HERA provisions “hold harmless” LIHTC properties from area income decreases – they can continue to use the highest income (and rent) limits achieved since being placed in service
- HOME units must always use the **current** HOME limits

# 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 source documentation every 6<sup>th</sup> year of affordability period
- Owner may request waiver to match HOME rules for re-examination

## 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
- “High HOME” rents in non-LIHTC project based on “65% of median income methodology”
  - High HOME rents exceed LIHTC 60% of median income limits
- 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
- LIHTC rents not capped by FMR – less likely to go down

# Rents Over time

- HUD issues HOME and LIHTC income limits annually – HOME publishes rents limits which go into effect 30 days after they are posted on the HOME website
- Owners can raise rents up to the new rent limits (minus any tenant-paid utilities) subject to the terms of the tenant's lease. HOME requires Owners to submit rent schedule for approval along with utility allowances
- Some tax credit allocating agencies provide LIHTC rents based on the updated income limits, others require owners to calculate the LIHTC rents from the income limits

# Rent Decreases

- HOME Program does not require the owner to decrease rents below the HOME rent limits in effect at the time of project commitment.
- LIHTC rules limit rents from dropping below either rents in effect at initial LIHTC allocation or if the owner elects, at the time the building was placed in service.

# Over Income Tenants

- HOME - Unit in temporary non-compliance if the tenant's income goes over-income 80 %AMI or 50% for Low HOME unit. Owner adjusts rent and unit designation as able to correct.
- LIHTC- Tenant considered over-income only when the household's income increases to above 140 percent of the current qualifying income limit for the household size. LIHTC rules require the rent to remain restricted until the applicable fraction is restored.
  - Tenant not required to be displaced; "next available unit" rented to income qualified tenant
- LIHTC and HOME- HOME Program (at 24 CFR 92.252(i)(2)) defers to the LIHTC guidance. The tenant's rent is not increased as they generally would be under the HOME income limit rules, but the rent is restricted to the LIHTC rent until the LIHTC applicable fraction is restored.

# Project Based Rental Assistance

- Low HOME rent unit with project-based Section 8 subsidy – may be charged project-based rent even if higher than Low HOME rent if is occupied by very low-income tenant and household pays not more than 30 % towards rent
- LIHTC with project based-assistance – maximum rent cannot exceed the greater of the LIHTC rent or the subsidy program rent limit. LIHTC allows this flexibility for both project-based Section 8 and TBRA rental assistance

# Property Inspections

- HOME Program - Onsite inspection of a HOME property within 12 months of project completion and at least once every three years thereafter.
- Property owners must certify annually that the property and all HOME-assisted units are suitable for occupancy
- LIHTC – Inspect all buildings and at least 20 percent of the assisted units in the project by the end of the second calendar year following the year the last building in the project is placed in service.
- LIHTC Ongoing - All buildings and at least 20 percent of the LIHTC project's assisted units must be inspected at least once every three years during the compliance period

# HOME Non-Compliance

- PJ monitors projects annually with file review and conducts on-site inspections every three years after initial monitoring
- Monitoring letter issued to cite non-compliance and require corrective actions
- PJ is liable to repay HOME funds if project fails to remain in compliance and complete the affordability period
- PJ must document oversight and monitoring of projects throughout the affordability period

# LIHTC Non-Compliance

- HFA reviews owner compliance certifications annually. HFA must conduct records reviews at least once every three years.
- Owner given notice to correct the deficiency(ies). Correction period no more than 90 days
- HFA notifies IRS by issuing IRS Form 8823 indicating whether noncompliance has been corrected, or whether it remains uncorrected
- Owners have up to three years to fix uncorrected noncompliance and submit documentation of the correction to the tax credit allocating agency
- IRS provides owners with incentives to find and correct noncompliance as quickly as possible
- LIHTC Equity investors typically also monitor compliance in order to avoid economic impact of tax credit reduction(s)

# Joint Compliance for HOME/HTF and LIHTC

- Rent and occupancy reports issued can be reviewed as a part of annual compliance efforts for all programs
- On-site staff visits can be completed by same team but each program will need to ensure standard documents include required compliance elements for each program
- PJs and LIHTC allocating agencies may share monitoring results and information related to potential red flags
- Non-compliance corrective actions may need to be a joint effort

# Resources

## HUD Exchange HOME Main Page

<https://www.hudexchange.info/programs/home/>

## eBuilding HOME

<https://www.hudexchange.info/trainings/building-home/>

## COVID-19 Income Form

<https://www.hudexchange.info/programs/home/covid-19/#income-determination>

## HOME Income Limits

<https://www.hudexchange.info/manage-a-program/home-income-limits/>

## HOME Income Forms

<https://www.hudexchange.info/programs/home/topics/income-determination/>

## Determining Income Webinar June 2018

<https://www.hudexchange.info/trainings/courses/determining-income-for-the-home-program-session-1/2532/>

## HOME Rent Limits

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

## HUD Exchange Listserv

<https://www.hudexchange.info/maillinglist/>

# Helpful Resources (cont.)

## Four Year Completions

<https://www.hudexchange.info/resource/5964/notice-cpd2001-four-year-completion-requirement-for-home-assisted-projects/>

## Next Available Unit /140% of Income and above:

<https://www.nhlp.org/resources/lihtc-admissions-rents-grievance-procedures/>

## HOME Fires

### HOME Monitoring Fee

<https://www.hudexchange.info/resource/5700/homefires-vol-14-no-2-guidance-on-establishing-a-home-monitoring-fee/>

### HOME Utility Allowances

<https://www.hudexchange.info/resource/5034/homefires-vol-13-no-2-guidance-on-how-to-establish-utility-allowances-for-home-assisted-rental-units/>

# Helpful Resources (cont.)

## HOME Written Model Guidebooks

Compliance in HOME Rental Projects: A Guide for PJs:

[https://files.hudexchange.info/resources/documents/ComplianceinHOMERentalProjects\\_GuideforPJs.pdf](https://files.hudexchange.info/resources/documents/ComplianceinHOMERentalProjects_GuideforPJs.pdf)

Compliance in HOME Rental Projects: A Guide for Owners:

[https://files.hudexchange.info/resources/documents/ComplianceinHOMERentalProjects\\_GuideforPropertyOwners.pdf](https://files.hudexchange.info/resources/documents/ComplianceinHOMERentalProjects_GuideforPropertyOwners.pdf)

HUD 1780-CPD, Technical Guide for Determining Income and Allowances for the HOME Program:

<https://www.hudexchange.info/resource/786/technical-guide-for-determining-income-and-allowances-for-the-home-program/>

## CPD Income Eligibility Calculator

<https://www.hudexchange.info/incomecalculator/>

## User Manual

[https://files.hudexchange.info/resources/documents/CPDIncomeEligibilityCalculator\\_User\\_Manual.pdf](https://files.hudexchange.info/resources/documents/CPDIncomeEligibilityCalculator_User_Manual.pdf)

## Part 5 Income Inclusions and Exclusions

<https://www.hudexchange.info/resource/5180/part-5-section-8-income-inclusions-and-exclusions/>