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DIVISION OF COMPLIANCE AND ADMINISTRATION

COMPLIANCE INFORMATIONAL GUIDE FOR HOME PROJECTS

As a recipient of federal *HOME* funds, the project owner is required to adhere to HUD HOME regulations and rules. These regulations can be found in the Code of Federal Regulations (CFR) under **24 CFR Part 92: HOME Investment Partnership Program (HOME):** https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title24/24cfr92_main_02.tpl All HOME funded projects must comply with these regulations. HUD also provides a "Compliance in HOME Rental Projects: A Guide for Property Owners" which can be found at https://www.hud.gov/sites/documents/19760_2009HOMERENTALPO.PDF Please note that this guide was last published in 2009. Since that time HUD issued what they refer to as the "final rule" in 2013. When using this guide as a reference it is advised that one also go to https://www.hudexchange.info/programs/home/home-final-rule/section-by-section-summary/ to check on for any changes in the area being consulted.

As the Participating Jurisdiction (PJ), Louisville Metro Government is responsible for ensuring that the project receiving funds stay in compliance with the HUD HOME rules and regulations. The project was funded for the purpose of providing affordable housing units to low income households. Following is an informational summary with relevant HUD HOME links that should be provided to those who have duties related to the property which include, but not limited to, contracted rental management companies and their staff, property managers and compliance personnel.

The Louisville Metro Division of Compliance and Administration (DCA) is the office that will be working with the owner and management company throughout the regulatory and mortgage agreement with regard to compliance requirements and mortgage and loan matters. The DCA office is located at:

444 South 5th Street, 5th Floor
Louisville, KY 40202

For Compliance and Reporting Requirements contact:

Marilyn Edwards at 574-3977 or marilyn.edwards@louisvilleky.gov

For Mortgage and Loan matters contact:

Krista Mohr at 574-8676 or krista.mohr@louisvilleky.gov

To assist the owner and management personnel with maintaining compliance with HUD HOME regulations following is a series of questions designed to answer each relevant area for this to be accomplished.

Where do we find our project commitments?

- An agreement was reached between the project developers and Metro Louisville when the project was initially funded via a Rental Funding Agreement (aka Loan Agreement or Development Agreement). This legal document is *not* recorded in the Jefferson County Clerk's Office (JCCO). In addition, a Regulatory Agreement was executed.

This document *is* recorded in the JCCO. These two documents specifically describe the following as it relates to compliance:

- ✓ Number of total units
- ✓ Number of HOME units
  - Number of HOME units to be Low or High units
  - If units are fixed or floating
    - Addresses of fixed units
  - Number of years project must maintain HOME units as affordable
    - This is known as the Period of Affordability (POA)
  - The number of one, two, three, etc. bedrooms within the project
  - If project is Single Room Occupancy (SRO)
  - If project consists of townhomes, duplexes, single family homes, apartments or a combination of
- ✓ Other funding sources i.e. Low-Income Housing Tax Credits (LIHTC), Project Based Section 8 (PBS8), etc. involved in project

What are Low HOME units?

- ➢ Household income at or below 50% Area Median Income (AMI)

What are High HOME Units?

- ➢ Household income at or below 80% AMI.
  - ✓ NOTE: Initial Occupancy must be at or below 60%

What are Fixed HOME Units?

- ➢ Specific addresses of units within the project designated as HOME units throughout the agreement and Period of Affordability (POA)

What are Floating HOME Units?

- ➢ Floating HOME Units may be any unit within the total number of project units; these units do not have specific addresses
  - ✓ Per agreement the HOME units must have the appropriate agreed upon mix of bedroom numbers

What is Period of Affordability (POA)?

- ➢ The POA is the amount of time the HOME units must be affordable per agreement

How is the POA determined?

- ➢ This is determined by federal regulation 24 CFR 92.252(e) as follows:

Activity	Amount of HOME Investment ***Per Unit***	Period of Affordability *
Rehabilitation or Acquisition of Existing Housing	Less than $15,000	5 years
Rehabilitation or Acquisition of Existing Housing	Between $15,000 - $40,000	10 years
Rehabilitation or Acquisition of Existing Housing	More than $40,000	15 years

Refinance of Rehabilitation Project	Any $ Amount	15 years
New Construction or Acquisition of New Housing	Any $ Amount	20 years

* In some situations, the POA may be longer; this is agreed upon during the initial funding phase

How do we know when the POA begins?

- The POA begins the day the project is "closed" out in the federal Integrated Disbursement and Information System (IDIS)
  - ✓ The project cannot be "closed" out until all funds are drawn and the HOME units leased
  - ✓ DCA staff will notify appropriate persons (owner, management company, etc.) when this has been completed

What are Lease Requirements? (see attachment #1 HOME PROGRAM/LEASE RIDER for complete listing) for complete federal regulation go to: https://www.ecfr.gov/cgi-bin/text-idx?SID=1699d461b7ed87e5430c7fabe7907f8a&mc=true&node=se24.1.92_1253&rgn=div8

- Metro must approve all leases before use
- Every tenant must have a written lease
- The term of the lease must be for at least twelve (12) months
- Notice to enter unit must provide forty-eight (48) hour notice unless it is an emergency per KRS (Kentucky Revised Statues):
  - ✓ KRS 383.615 Access – https://eforms.com/images/2015/10/kentucky-statute-383-615.pdf
- Violence Against Women Reauthorization Act (VAWA) - 24 CFR 92.359
  - ✓ Include lease addendum: HUD form 91067 (see Attachment #2)
- For full requirements and forms go to: https://www.hud.gov/program_offices/housing/mfh/violence_against_women_act For any building built prior to 1978, HUD's Lead Based Paint Notification form must be completed by tenant (see Attachment #3)
  - Must also provide the pamphlet, "Protect Your Family From Lead in Your Home" to those seeking residency; this can be found at the following link: https://www.epa.gov/sites/production/files/2017-06/documents/pyf_color_landscape_format_2017_508.pdf
    - Signed documentation is to be in tenant file that this was done

What are Lease Prohibitions? (see attachment #2 HOME PROGRAM/LEASE RIDER for complete listing) for complete federal regulation go to: https://www.ecfr.gov/cgi-bin/text-idx?SID=1699d461b7ed87e5430c7fabe7907f8a&mc=true&node=se24.1.92_1253&rgn=div8

- Agreement to be sued. Agreement by the resident 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 resident that the owner may take, hold, or sell personal property of household members without notice to the resident and a court decision on the rights of parties. This prohibition, however, does not apply to an agreement by the resident concerning disposition of personal property remaining in the housing unit after the resident has moved out of the unit. The owner may dispose of this personal property in accordance with state law.

- Excusing owner from responsibility. Agreement by the resident 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 resident that the owner may institute a lawsuit without notice of the resident.
- Waiver of legal proceeding. Agreement by the resident that the owner may evict the resident or household members without instituting a civil court proceeding in which resident can present a defense, or before a court decision on the rights of the parties.
- Waiver of jury trial. Agreement by the resident to waive any right to a trial by jury.
- Waiver of right to appeal court decision. Agreement by the resident to waive the resident's right to appeal, or otherwise challenge in court, a court decision in connection with the lease.
- Resident chargeable with cost of legal actions regardless of outcome. Agreement by the resident to pay attorney's fees and other legal costs even if the resident wins in a court proceeding by the owner against the resident. The resident, however, may be obligated to pay costs if the resident loses.

What is the Income Verification Process?

- The tenant application includes:
  - ✓ Names of all household members, age & relationship
    - Children in shared custody count as a household member
    - Foster Children/Adults or Live in Aides do *not* count as a household member
  - ✓ Any potential changes to household size
    - If incoming tenant is pregnant the fetus counts as an additional person in household (the property may not require documentation of pregnancy)
- Source Documentation to be used includes:
  - ✓ Per 24 CFR 92.203(a)(1)(i) – at least 2 months of source documentation
  - ✓ Paystubs
    - Best practice - 3 consecutive months
  - ✓ Bank Statements
    - Best practice - 6-month average balance
  - ✓ Award Letters
    - Annual letter provided by agency
- Third Party Verification is defined as/includes:
  - ✓ Verification sent directly to source, not through applicant
  - ✓ Applicant must sign Authorization to Release Information
  - ✓ Written documentation is preferred, but conversations with specific file documentation is acceptable
    - Must include who, what, when and how; should also send follow up communication via email reiterating what was disclosed
- What types of income are counted?
  - ✓ Wages (includes overtime, tips, bonuses, potential raises)
  - ✓ Social Security/Pensions
  - ✓ Unemployment
  - ✓ Child Support/Alimony

- ✓ K-TAP
- ✓ Income from Assets
  - Checking or Savings Account
  - Life Insurance
  - Retirement Accounts
- ✓ Regular Gifts
  - If someone outside of the household is providing the household money on a regular basis this is to be counted as income, for example: a mother not living in the unit provides the family $50 per month for groceries

➢ What is Income?
- ✓ Income includes
  - All earned and unearned compensation of household members 18 and older including full time students is to be counted
  - All earned and unearned compensation by temporarily absent family members; military personnel, students away at college, etc.
  - Any "anticipated" Income
    - When completing an income verification, the income is being "anticipated" for the next 12 months based on source documentation; for example, if a person has an average of 4 hours overtime in their wage documentation then those 4 hours would continue to be counted throughout the remainder of the year

➢ How is income determined?
- ✓ Use the "Part 5" Method found in 24 CFR 5.609 https://www.govregs.com/regulations/expand/title24_part5_subpartF_subjgrp19_section5.609 (the above bullets in "What types of income are counted" and "What is Income" is used in the Part 5 Method)
- ✓ Regular Income (employment, social security, etc.) + Income from Assets (interest income, dividends, etc.) = ANNUAL GROSS INCOME
  - When asset(s) produce(s) little or no income use "imputed" income based upon the case value of all assets, if total cash value of assets is greater than $5,000

➢ Are there resources to assist with determining income?
- ✓ HUD provides a "Technical Guide for Determining Income and Allowances for the HOME Program" which includes sample forms at:
  - https://www.hudexchange.info/resource/786/technical-guide-for-determining-income-and-allowances-for-the-home-program/

➢ How long is the income verification considered usable?
- ✓ Income verifications are good for a period of six (6) months
- ✓ All households must be income-eligible at move in

➢ Where can HOME Income Limits be accessed?
- ✓ https://www.hudexchange.info/programs/home/home-income-limits/
- ✓ The DCA office will also provide to property prior to the effective date of the income limits

What is Income Recertification?

- Income recertification is the annual act of verification of income for a tenant renewing a lease see 24 CFR 92.252(h),
  - ✓ Should be timed with lease renewals, *but*
    - should be performed prior to signing new lease
- Is Self-Certification or other documents allowed for recertification?
  - ✓ Tenant may self-certify or provide a written statement from another Government program e.g. tenant-based voucher, etc. however,
    - Property MUST recertify all tenants every 6th year during the POA using "source documentation" as described above in "What is the Income Verification Process" this includes:
      - Those who moved in the year before the property's beginning sixth year (in POA) would need a full resource documentation verification in their 2nd year of residency – Example: POA Start date is 05/17/18 year six (6) would then be 05/17/24; tenant moved in 06/01/23 and did a full resource verification, tenant would also have to do a full resource verification on 06/01/24 as that is the year the property is required to do one on every HOME tenant

Do tenants have to move if they are over income limits upon recertification?

- No, tenants never have to move if they become over income; however,
  - ✓ the project unit becomes "temporarily non-compliant" until a new tenant meeting income guideline is met if the property is "fixed" or until a unit is identified within the project of an income eligible tenant within other units if agreement is for "floating" units
    - the floating unit identified would need to have in tenant's file all the requirements under the HOME regulations; documented source income, etc.
- Refer to "Managing Rental Unit Mix Under HOME" matrix found at the following link:
  - ✓ https://adfa.arkansas.gov/media/file/HOME_how_to_manage_fixed_and_floating_units_chart.pdf

What are Rent Limits?

- Rent limits are the maximum rents that can be charged to an income-eligible tenant residing in a HOME "assisted unit"
  - ✓ If the HOME unit also has LIHTC, PBS8, etc. and/or has tenants with Tenant Based Voucher (Section 8) the property needs to ensure unit rent is charged accurately as rent may be different from the HOME rent limits
- Are Rent Limits Based on Income?
  - ✓ No, rent limits are not based on income; they are based on the rent limit set by HUD each year, with some exception, depending on type of other funding source within unit housing a HOME tenant

Where can HUD HOME rent limits be accessed?

- https://www.hudexchange.info/programs/home/home-rent-limits/
- The DCA office will also provide to property, prior to the effective date, the rent limits

How often may rent be increased?

- Before any rent increase is approved property must complete the "HOME Program – Annual Rent Approval Form" (see attachment #4) and submit to DCA
  - ✓ Approval must be obtained from DCA before any rent increase takes effect; must be approved sixty (60) days before any rent increase takes effect
  - ✓ Tenants must be given a full thirty (30) days' written notice before any rent increase takes effect

What is the Utility Allowance (UA)?

- The UA is the amount approved to be deducted from the rent if the tenant pays directly for utilities by using one of the following methods:
  - ✓ Projects receiving a commitment of HOME funds on or after August 23, 2013 – *must* use HUD Utility Schedule Model (HUSM)
    - See the following for further information: https://files.hudexchange.info/resources/documents/HOMEfires-Vol13-No2-Guidance-on-How-to-Establish-Utility-Allowances-for-HOME-Assisted-Rental-Units.pdf
    - Projects committed before August 23, 2013 may also use this method
  - ✓ A utility allowance which has been approved by a separate funding agency (e.g. LIHTC or Project Based)
    - Provide written documentation from the funding agency approving the UA for DCA review and approval
  - ✓ Louisville Metro Housing Authority's (LMHA) utility schedule
    - This is posted every January by LMHA; DCA provides to each property
      - If the utility allowance has gone down, resulting in a higher rent which may be charged – the property must submit the rent increase following the guidelines as referenced above in "How often may rent be increased?"
      - If the utility allowance has gone up, resulting in a lower rent limit all new leases and lease renewals must reflect this new amount
      - Project funds committed on or after August 23, 2013 may NOT use this method
    - The LMHA utility schedule has different amounts depending on the type of structure e.g. single-family home, duplex, townhouse or apartment
- Does the property need DCA approval before implementing an updated UA?
  - ✓ All UA's must receive DCA approval before implementing an updated UA this can be done by:
    - Requesting approval when annual reporting is turned in to DCA
    - When LMHA post their new UA amounts in January
    - Submitting documentation when the other funding source has approved UA amount
    - Providing and requesting approval of a new HUSM
- What is the regulation that addresses UA?
  - ✓ Per 24 CFR 92.252(d)(1)

How does the UA affect rent limits?

- Maximum Net Rent INCLUDES Utility Allowance:

  - ✓ Rent Limit – Utility Allowance = Maximum Net Rent

If a unit has HOME and LIHTC which rent limits are applicable?

- ➢ If a unit has HOME and LIHTC the rent is the lesser of the two limits
  - ✓ This is applicable to both Low and High units

If a unit has HOME and Tenant Based Vouchers what rent amount is applicable?

- ➢ HOME units occupied by a household utilizing a Tenant Based Voucher <u>MUST NOT</u> exceed HOME rent limits
  - ✓ This is applicable whether the unit is considered Low or High
  - ✓ This is the case even if the Tenant Based Voucher shows LMHA has authorized more than the HOME rent limits when LMHA payment and tenant payment are added together
    - DCA works closely with LMHA and will notify LMHA that property is overcharging if the above is occurring
      - o Property would be considered non-compliant and would have to return any rent overcharges to LMHA and/or tenant
- ➢ Why can the property not charge what LMHA has agreed to pay?
  - Because tenant-based assistance is portable and does not provide a guaranteed income stream to the project, the underwriting of these projects is based upon rents no higher than the maximum HOME rents. If the Department permitted higher rents to be charged in HOME-assisted units occupied by tenant-based rental assistance recipients, there would be a duplicative subsidy. The HOME program would have provided a capital subsidy to reduce rents to a certain level (High and Low HOME rents), but the owner would be charging rents higher than the HOME rents with the additional amount being paid to the owner from another governmental source. The result would be a publicly funded windfall to the project owner with no additional affordability achieved for the low-income tenant. *HOMEfires – Vol. 3 No. 10, November 2001*

If a unit has HOME, LIHTC and Tenant Based Vouchers what rent amount is applicable?

- ➢ In this case the property would use the “Two Part Test” as follows:
  - ✓ Tenant Paid Rent plus Utility Allowance cannot exceed LIHTC Rent Limit, and
  - ✓ Tenant Paid Rent plus Utility Allowance plus the amount of the Housing Assistance Payment cannot exceed the applicable HOME rent (Low or High)
    - This is the case even if the Tenant Based Voucher shows LMHA has authorized more than the HOME rent limits when LMHA payment and tenant payment are added together
      - o DCA works closely with LMHA and will notify LMHA that property is overcharging if the above is occurring
        - Property would be considered non-compliant and would have to return any overcharges to LMHA and/or tenant

If the project has HOME and Project Based Section 8 aka PBS8 (e.g. Section 811, Section 202) units are HOME rents utilized or PBS8 rents?

- If the HOME unit is designated as <u>"Low"</u> HOME unit then the rent per the PRAC (Project Based Rent Assistance) may be used even if it is over the "Low" HOME rent limit
- If the HOME unit is designated as <u>"High"</u> HOME unit then the "lesser of" rule is applied between "High" HOME rent limit and the PRAC (Project Based Rental Assistance)

If the project has HOME, PBS8 and LIHTC units which rents are utilized?

- If the HOME unit is designated as <u>"Low"</u> HOME unit then the rent per the PRAC (Project Based Rent Assistance) may be used even if it is over the "Low" HOME rent limit
    - ✓ Note: this is the same as if the property only had HOME and PBS8
- If the HOME unit is designated as "High" then the "two part" rule applies:
    - ✓ Tenant Paid Rent plus Utility Allowance cannot exceed LIHTC Rent Limit, and
    - ✓ Tenant Paid Rent plus Utility Allowance plus the amount of the Housing Assistance Payment cannot exceed the applicable HOME rent

What is the difference between Tenant Based Vouchers and PBS8?

- Tenant Based Vouchers **travel** with the tenant; **voucher not connected to unit**
- PBS8 assistance is a designated unit and does not have tenants with **Tenant Based Vouchers**

Will the property have physical inspections?

- The property will have physical inspections either annually, every other year or every other third year based on *total number of units, not just HOME units*, within project as follows:
    - ✓ 26 or more units
        - Every year
    - ✓ 5-25 units
        - Once every two (2) years
    - ✓ 1-4 units
        - Once every (3) years
- How many HOME units will be inspected?
    - ✓ DCA policy requires
        - 20% of HOME units to be inspected and/or a minimum of one unit in each building that contains a HOME unit;
        - Each inspection shall include a minimum of five (5) HOME assisted units
        - All HOME units will be inspected if five (5) or less HOME units
            - Note: large properties with multiple buildings may require more than the 20% inspection total of HOME units, for example:
                - Property has one hundred (100) total units with twenty (20) of those being HOME units. Therefore, twenty percent (20%) of the 20 would normally be a total of five (5) inspections (cannot inspect less than five units). However, property has 10 buildings and each of those buildings contain two (2) HOME units totaling twenty (20) HOME units; in this scenario ten (10) inspections must occur as

each of the buildings contain a HOME unit resulting in ten (10) inspections.

Is the property required to have an Affirmative Fair Housing Marketing Plan (AFHMP)?

- ➢ If the property has more than five (5) HOME units, the property is required to have an AHFMP
  - ✓ Go to the following link for more information and form: https://www.hudexchange.info/resource/4716/affirmative-fair-housing-marketing-plan-form/
  - ✓ The property is to have the AHFMP logo on all leases and paperwork
  - ✓ The property is to display an AHFMP poster in a common area

Is the property required to have a Tenant Selection Plan?

- ➢ The property is to have a tenant selection plan
  - ✓ Go to the following link for more information: https://www.hud.gov/sites/documents/43503C4HSGH.PDF

Does the project have to maintain Louisville Metro as an "additional interest" on insurance property and liability insurance policies?

- ➢ Yes, see Metro HOME Loan Insurance Requirements (Attachment #5)
  - ✓ This includes liability and building replacement coverage

Annual reporting was mentioned earlier, when does that occur and what does it involve?

- ➢ Covers Metro's fiscal year from July 1 through June 30
  - ✓ Tenant specific reports will concentrate on who was living in the property on June 30 of each year
- ➢ Reports are due no later than July 31 with the following documents
  - ✓ Unit Compliance Report (UCR)
  - ✓ Audited Financials
  - ✓ HUD Utility Schedule Model (HUSM) (*if applicable)*
  - ✓ HOME Compliance Certification
  - ✓ Affirmative Fair Housing Marketing Plan *(if applicable)*
  - ✓ Current Operating Budget (per property's fiscal year)
  - ✓ Proof of Insurance
  - ✓ Lease Template
  - ✓ Current Rent Roll for all units

What types of monitoring will the property have throughout the POA?

- ➢ There are three types of monitoring as listed below:
  - ✓ On site
    - This includes, but not limited to, review of:
      - o Tenant files
      - o Affirmative Fair Housing logo
      - o Fair Housing Poster
      - o Lease
      - o Tenant Selection policy

- ✓ Desk
  - This includes annual review of report documents and other documents as deemed necessary and appropriate by DCA staff
- ✓ Financial
  - Per 24 CFR 92.504(d)(2), Asset Management team will perform an annual financial review of all HOME funded projects within the period of affordability which have 10 or more HOME-assisted units which received a commitment of HOME funds on or after the effective date of the regulation, July 24, 2014
  - Reserve Accounts
  - Audit

This document is intended as a resource guide for those projects about to lease units to ensure such enters the Compliance component, of their project legal agreements and POA, in compliance. Past experience has shown compliance staff that many projects begin their tenure out of compliance. Please contact the Asset Management Coordinator, listed on the first page, for any questions related to the contents of this informational resource guide. Thank you and we look forward to a productive working relationship with all involved to continue serving those in need of affordable housing and those committed to providing such in the community.