

# HOME and National Housing Trust Fund (HUD Programs)

## Ongoing Compliance Monitoring Manual



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## INTRODUCTION

North Dakota Housing Finance Agency (NDHFA) has administered the HOME Investment Partnerships Program since July 1, 2021, and the National Housing Trust Fund (HTF) Program since 2016. Properties developed using these program funds are subject to specific rules designed to ensure that they remain affordable throughout the required period of affordability. This guide is designed to assist Owners and their agents of HOME and HTF properties to plan and maintain compliance with the regulatory requirements associated with the utilization of these funds in multifamily properties.

It is the responsibility of NDHFA to monitor the continuing compliance of units that have received HOME funds in accordance with the Department of Housing and Urban Development (HUD) regulations contained in 24 CFR Part 92, and for units that have received HTF funds in accordance with HTF regulations contained in 24 CFR Part 93. It is also NDHFA's responsibility to ensure that property Owners retain the housing units as affordable throughout the period of affordability. The following procedures apply to all rental properties that have received funds under the HOME or HTF program. Any violation of the requirements could result in acceleration of the repayment of funds. Unless a provision is noted as "HOME Only" or "HTF Only," all provisions of this guide apply to both programs. Noncompliance by the Owner may result in serious financial consequences.

NDHFA's Planning and Housing Development Division is responsible for the performance of compliance monitoring which could include, but not be limited to, annual restrictions reviews, on-site reviews, tenant file reviews, health/safety/building code inspections, sending compliance notifications to Owners/managers, monitoring follow up compliance, and updating this manual and the associated forms. Questions regarding compliance monitoring should be directed to the division's compliance staff.

Successful operation of a HOME or HTF funded property is management intensive. The Owner is responsible for ensuring that the property is properly administered. Thorough understanding of program requirements and compliance monitoring procedures requires training. Owners should ensure that they know and understand the requirements of the financing and the compliance requirements, as failure to comply may have very serious consequences. NDHFA recommends Owners, management agents and site managers receive compliance training before certifying or leasing any assisted units. At a minimum, training should cover key compliance terms, determination of rents, tenant eligibility, file documentation, procedures for maintaining the required unit mix, reporting and records retention requirements, property condition standards, ongoing lead-based paint maintenance, and site visits. Continuing education each year, or at a minimum every other year, is strongly recommended to keep up with regulatory and procedural changes.

Referenced in the manual are forms for your use. The use of some forms is mandatory while the use of other forms is optional. Please pay particular attention to language within the manual that states which are required forms. **If on-site management uses forms other than those provided, care should be taken to assure that the forms use sufficient information to meet HUD 4350.3 income determination guidelines.**

This compliance guide has not been reviewed or approved by HUD and should not be cited or relied upon for interpretation of federal regulations. This guide can be accessed on [NDHFA's Compliance webpage](#).

For HOME, this guide should be used in conjunction with, and as a supplement to, 24 CFR Part 92. If NDHFA or HUD determines that any provision of this guide is in conflict with 24 CFR Part 92, 24 CFR Part 92 will govern.

For HTF, this guide should be used in conjunction with, and as a supplement to, 24 CFR Part 93. If NDHFA or HUD determines that any provision of this guide is in conflict with 24 CFR Part 93, 24 CFR Part 93 will govern.

This guide may be superseded without notice by changes in income determinations under 24 CFR Part 5 of the Section 8 program and technical revisions in the HOME or HTF Programs.

For more information, visit [HUD's HOME website](#) or [HUD's HTF website](#).

This guide provides information related only to HOME and HTF requirements. Properties may be subject to additional requirements due to other funding streams. Owners are responsible for complying with all applicable requirements.

## SECTION 1–COMPLIANCE OVERVIEW

### 1.01 Definitions

**Code:** The authority for HOME is found in the Code of Federal Regulation (CFR) at Title 24 CFR Part 92 and the authority for the HTF is found at Title 24 CFR Part 93.

**HOME-assisted unit:** Units within a HOME-assisted project which benefited from HOME assistance and are subject to income and rent restrictions as published by HUD.

**HOME Rents:** Every HOME-assisted unit is subject to rent limits designated to make rents affordable to low-income households. These maximum rents are referred to as “HOME Rents.” HUD annually publishes High and Low HOME Rents.

**HTF-assisted unit:** Those units within an HTF-assisted project which benefitted from HTF assistance and are subject to income and rent restrictions as published by HUD, generally at 30% of Area Median Income.

**HUD loan documents:** Those executed documents which detail the agreement between NDHFA and the Recipient of HOME and/or HTF funds. The loan documents may include, but may not be limited to, the Application, Financial Award, Written Agreement, Loan Agreement, Promissory Note, Mortgage, and the Land Use Restrictive Agreement.

**HUD-assisted project:** Any multifamily rental development which has received a funding award from HOME and/or HTF.

**Owner:** The Owner of a HUD-assisted development, the Owner’s designated agent or property manager.

**Period of affordability:** Units in projects receiving HUD assistance are required to maintain affordability for a specific period of time outlined in the Land Use Restrictive Agreements. For HTF this period must be least 30 years. For HOME it is determined on the average per unit of HOME dollars invested. These periods are known as “affordability period” or “compliance period.” A project funded by both HOME and HTF will have two separate periods of affordability to maintain.

**Recipient:** The entity, or its successor(s), which applied for and was awarded assistance from the HUD programs.

**Tenant:** An individual or family renting or occupying an assisted dwelling unit.

**UPCS:** The Uniform Physical Condition Standards is a standardized inspection code created by HUD to ensure subsidized housing is maintained in a condition which is decent, safe, sanitary and in good repair.

### 1.02 Responsibilities

The project’s **Owner is responsible for compliance.** Each Owner has chosen to utilize the HOME and/or HTF program to take advantage of its development assistance benefits. In exchange for the benefit of assistance, the Owner has made during the application and closing process acceptable assurances to NDHFA that it will comply with the requirements of the program(s) during the entire period which begins upon selection of the Owner’s project by NDHFA and ends upon the conclusion of the affordability period. Any violation of the requirements could result in corrective action, including the repayment of funds to NDHFA. Any and all financial consequences to the Owner as a result of noncompliance will be the responsibility of the Owner.

The Owner is responsible for ensuring that the development is properly administered. The Owner must make certain that the on-site management team is familiar with and complies with all appropriate HUD rules, regulations and policies that govern the development.

The project's Owner agrees to maintain sufficient records in support of their ongoing compliance with HUD regulations. The project's Owner will make such records, upon request, available for review by NDHFA. The project's Owner must allow full access of all files to NDHFA and must retain all documents and records for a period of 5 years or until any related review findings have been resolved, whichever is later.

**Electronic Signatures**

Per the [N.D.C.C. Chapter 9-16 Electronic Transactions](#), NDHFA will accept electronic records with electronic signatures from authorized individuals. Documents provided electronically must be capable of retention, able to be printed and stored electronically, by NDHFA for their full life cycle. Owners and property managers are responsible for developing policies and procedures to ensure electronic signature obtained meet requirements under the Uniform Electronic Transactions Act (UETA) and the Electronic Signatures in Global and National Commerce Act. (E-SIGN Act)

**1.03 Period of Affordability**

**HOME Only**

HOME-assisted units are rent and income restricted for varying lengths of time depending upon the average amount of HOME funds invested per HOME-assisted unit. Rent limits and income targeting requirements must be maintained during the Period of Affordability, which begins at project completion. Owners will be required to keep the property in compliance with HOME guidelines for the minimum number of years specified below.

<b>Rental Housing Activity</b>	<b>Average HOME Assistance per HOME Unit</b>	<b>Minimum Years</b>
Rehabilitation or acquisition and rehabilitation of existing housing per unit amount of HOME funds	Under \$15,000	5
	\$15,000 to \$40,000	10
	Over \$40,000 or any amount involving refinancing	15
New construction or acquisition of newly constructed housing	Any amount	20

Owners should refer to the Declaration of Land Use Restrictive Agreement (LURA), Written Agreements, and Loan documents to determine the specific terms and conditions that govern their property.

**HTF Only**

All HTF-assisted units are subject to a minimum 30-year affordability period, which begins at project completion. Rent and income requirements must be maintained during the entire period

of affordability. Owners should refer to the LURA, Written Agreements and Loan documents to determine the specific terms and conditions that govern their property.

#### **1.04 Income and Rent Requirements**

##### **HOME Only**

Owners should refer to the Land Use Restrictive Agreement (LURA) for project specific requirements. At minimum HOME requires certain income and rent restrictions which differ from initial occupancy to recertification.

Initial occupancy at project completion:

- Projects with 5 or more HOME-assisted units must have at least 20% of the HOME-assisted units initially occupied by families with annual gross incomes at or below 50% of Area Median Income (AMI) with rents at or below the Low HOME rent limits unless a greater percentage is specified in the Declaration.
- All other HOME-assisted unit must be initially occupied at or below 60% AMI and High HOME rent limits.

Recertification:

- Projects with 5 or more HOME-assisted units must maintain at least 20% of the HOME assisted units at 50% AMI and Low HOME Rents
- All other HOME units upon recertification or unit turnover may serve households up to 80% AMI and HIGH Home Rents.

##### **HTF Only**

All HTF-assisted units must be affordable to extremely low-income (ELI) renter households. ELI renter households mean families whose annual incomes do not exceed 30% of the AMI or the federal poverty line, whichever is greater, with adjustments for smaller and larger families, as determined by HUD.

For tenants who are ELI, their rent plus an allowance for tenant-paid utilities must not exceed the greater of 30% of the federal poverty line or 30% of the income of a family whose annual income equals 30% of AMI for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit.

#### **1.05 Rental Assistance**

Rents for units with Section 8 Housing Choice Vouchers (HCV), or similar state or federal tenant-based rental assistance subsidies **cannot** exceed the applicable rent limit for the unit. Rents charged must be comparable to units not receiving rental assistance (i.e., if the Owner charges less than the maximum HOME or HTF rent for non-voucher holders, it cannot charge a higher rent to voucher holders).

Families receiving rental assistance, including a Section 8 subsidy, must not be refused tenancy in a HOME- or HTF-assisted unit based solely on the fact that they receive rental assistance.

##### **HOME Only**

If a HOME-assisted unit receives **federal or state project-based rental assistance**, including project-based vouchers, and the unit is occupied by a very low-income (i.e., at or below 50% of AMI) household that pays a contribution towards rent not more than 30% of its adjusted gross income, the rents may exceed the HOME rent limit.

## HTF Only

If an HTF-assisted unit receives **federal or state project-based rental assistance** and the tenant pays a contribution toward rent of not more than 30% of the tenant's adjusted income, the maximum rent is the rent allowable under the federal or state project-based rental subsidy.

### 1.06 Changes in Annual Rent and Income

Each year throughout the period of affordability, NDHFA must notify property Owners of the updated HOME and HTF rent limits. HUD typically releases limits for HOME in April and for HTF in July. Within 30 days of receipt of the new rent limits, Owners must submit an **annual rent approval form** detailing the current rental structure and the proposed rental structure for the following year. Requests must include the current utility allowance.

In the event rent limits decrease for an area, or utility allowances increase, an Owner may be required to reduce the rent charged but will not be required to lower rents below those in effect at the time of project commitment.

As long as rents remain below the maximum allowed in each program, an Owner may impose a rent increase no earlier than one year from the date the project was completed and no more frequently than annually thereafter.

### 1.07 Fixed or Floating Units

Assisted units may be "fixed" or "floating" and are designated on a property-by-property basis. Fixed or floating units are designed at the time of project commitment in the written agreement and enumerated in the LURA.

**Fixed:** Designated units are identified by unit number and never change. Units in properties where all units are assisted are automatically considered fixed. Fixed units remain the same throughout the affordability period.

**Floating:** Designated units may change over time as long as the total number of comparable units in the property remains constant. If a property's LURA does not specify comparable floating units, then the units that were initially HOME or HTF qualified upon project completion will be used to determine comparable floating units.

Refer to 2.13 Maintaining the Unit Mix for more information.

### 1.08 Utility Allowances

HOME and HTF statutes and regulations establish rent limits for assisted rental units. These are gross limits that include contract rent plus a utility allowance for tenant-paid utilities. Owners are required to establish maximum monthly allowances for utilities and services, excluding telephone, and to update utility allowances annually.

## HTF Only

For HTF-assisted units, Owners may use the utility allowances for the Section 8 HCV program from the local housing and redevelopment authority or public housing agency (PHA) that administers HCVs in the area in which the property is located.

## HOME Only

HOME rules require Owners to use a project-specific utility allowance. Owners are **NOT** permitted to use the PHA's utility allowance for HOME-assisted units if HOME funds were

committed on or after August 23, 2013. If HOME funds were committed before August 23, 2013, Owners may continue to use the PHA's utility allowances.

The following methodologies will meet the regulatory requirements for a project-specific utility allowance and may be used for both HOME and HTF:

- Utility allowances must be implemented project-wide.
- A project may not use more than one utility allowance method for the project.

When determining which model to use, NDHFA recommends Owner's review HUD's guidance provided in [HOMEfires - VOL 13 No. 2, May 2016](#).

1. **HUD Utility Schedule Model (HUSM):** The HUSM enables users to calculate utility schedules by housing type after entering utility rate information (tariffs). This model is based on climate and survey information from the U. S. Energy Information Administration of the Department of Energy, and it incorporates energy efficiency and Energy Star data. This model is allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(4)(D). The HUSM and use instructions can be [accessed on HUD User](#). The HUSM is available as either an Excel spreadsheet or is web-based [on HUD User](#).
2. **Multifamily Housing Utility Analysis:** In 2015, HUD published [Multifamily Notice H-2015-4](#) to provide instructions to Owners for completing the required utility analysis. This analysis is also used for the USDA Rural Housing Service program and allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(3). Owners may use the methodology from the notice, including the required baseline utility analysis, the optional factor-based utility analysis and the utility analysis sample size.
3. **Utility Company Estimate:** Per [26 CFR 1.42-10\(b\)\(4\)\(B\)](#), an Owner may establish a utility allowance based on estimates obtained from a local utility company for each of the utilities used in the project. IRS regulations state that the estimate must be obtained in writing and must be based on the estimated cost of that utility for a unit of similar size and construction for the geographic area in which the building containing the unit is located. The estimate must be provided on the utility company's letterhead, be dated and signed by a representative of the utility company, reference the property, and document that the estimate is based on 12 months of usage at the current utility rates for units of similar sizes and construction, including any applicable taxes and fees. In the case of deregulated utility services, the Owner may obtain an estimate from only one utility company. The utility company furnishing the estimate must offer utility services to the building in order for that utility company's rates to be used. The estimate should include all "component deregulated charges" for providing the utility service.
4. **Energy Consumption Model aka Engineer Model:** Per [26 CFR 1.42-10\(b\)\(4\)\(E\)](#), a utility allowance based on an energy and water and sewage consumption and analysis model prepared by a properly licensed engineer or a qualified professional. Regulations require that such professionals be independent from the Owner, and they specify the building factors that must be included in the model. At minimum, this consumption and analysis model must take into account the unit size, building orientation, design, materials, mechanical systems, building location and appliances. In order to use this method, the Owner must have the calculations performed by a certified/licensed engineer or other state agency approved qualified professional. The data in this option is also limited to no more than the 12-month period ending no earlier than 60 days prior to the 90-day period, defined later in this manual. The Owner will bear all costs if this option is chosen.

## Changing Methods

Owners may change the method used in order to most accurately calculate the utility allowances for a property. NDHFA must be notified of the proposed change. If the Owner selects the Energy Consumption Model, NDHFA must review the proposed allowance prior to use.

Allowable methods for utility allowance calculations are based on the funding the property has received. Some calculation methods are not allowed by certain funding types and are subject to change as revisions are made by the funding source. Owners are responsible for knowing the allowed method for each funding source and should check with NDHFA when trying to determine if a specific method can be utilized.

## Annual Updates

Utility allowances must be reviewed at least once each calendar year and updated, if necessary, based on current utility rates. These reviews must also take into consideration any changes to the building that affect energy consumption such as building updates and energy conservation measures. Owners are required to maintain records of all utility data received, estimates used, and notifications made to tenants and state agencies throughout the extended use period. Updated utility allowances should be incorporated into the gross rent calculation **within 90 days**.

If the Owner is using a utility allowance other than the PHA Schedule, the updated allowance estimates must also be **made available to all tenants** of the building at the beginning of the 90-day period. This can be accomplished by posting the new schedule in a common area or delivering them to each household by mail.

**Current utility allowances are required to be provided with a project's annual reporting and Owner certification.**

### 1.09 Records Retention

Owners must establish and maintain sufficient records to enable NDHFA and HUD to determine whether the project has met all HOME or HTF requirements and remains in compliance. Included should be records which:

- Demonstrate that each household is income eligible.
- Demonstrate the project meets affordability and income targeting requirements.
- Demonstrate that each lease for a HOME- or HTF-assisted rental unit complies with regulatory requirements.
- Document required inspections, monitoring reviews and audits, along with the resolution of any findings or concerns.
- Document equal opportunity and fair housing compliance.
- Contain racial, ethnic, and single head-of-household information of rental applicants.
- Demonstrate compliance with the affirmative marketing procedures and requirements.

All records must be retained in a secure location for the most recent 5 years. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues that arise from it, or until the end of the required period, whichever is later.

HUD and the Comptroller General of the United States and any of their representatives have the right of access to any pertinent books, documents, papers or other records of the Owner in order to make audits, examinations, excerpts and transcripts.

### 1.10 Tenant Fees

Owners may not charge tenants fees related to the project's obligation to comply with the requirements of the HOME or HTF program. In addition, Owners may not charge fees which are not customarily charged in the local rental housing market, such as laundry room access fees or parking fees. Owners may charge reasonable rental application fees to prospective tenants. Fees for services such as bus transportation or meals are allowable, as long as the services are voluntary, and the fees charged are for the services provided. An eligible tenant cannot be charged a fee for the work involved in completing the forms or documentation required for certifying eligibility, such as the Tenant Income Certification.

### 1.11 Leases

There must be a written lease between the tenant and the Owner that is for a period of not less than six months. The lease may NOT contain any of the following provisions:

- **Agreement to be sued:** agreement by the tenant to be sued, to admit to 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 take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The Owner may dispose of this personal property in accordance with North Dakota law.
- **Excusing Owner from responsibility:** agreement by the tenant not to hold the Owner legally responsible for any action or failure to act, whether intentional or negligent.
- **Waiver of notice:** agreement by the tenant that the Owner may institute a lawsuit without notice to the tenant.
- **Waiver of legal proceedings:** agreement by the tenant that the Owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant can present a defense or before a court decision on the rights of the parties.
- **Waiver of trial by jury:** agreement by the tenant to waive any right to a trial by jury.
- **Waiver of right to appeal court decision:** agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.
- **Tenant chargeable with cost of legal actions regardless of outcome:** agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.
- **Mandatory supportive services:** agreement by the tenant to accept supportive services that are offered.

An Owner may not terminate the tenancy or refuse to renew the lease of a tenant of a HOME- or HTF-assisted unit except for serious or repeated violations of the terms and conditions of the lease; for violation of an applicable federal, state or local law; or for other good cause. Good cause does not include an increase in the tenant's income. To terminate or refuse to renew tenancy, the Owner must serve 30-day advanced written notice upon the tenant specifying the grounds for the action and providing a specific period for vacating. Owners must also comply with applicable North Dakota tenant-landlord laws.

### 1.12 Income Certification and Recertification

The Owner must verify and certify tenant income eligibility\* at move-in and recertify at least annually thereafter. Every sixth year of the affordability period, income and income from assets must be verified again. Tenants must certify to their anticipated income, family size and composition. Third-party income verifications or other forms of supporting documentation must be obtained by the Owner and kept on file. Tenant files will be reviewed as part of the inspection process.

For properties with existing tenants receiving funds for rehabilitation, Owners may begin certifying tenant eligibility on or after the date of the written agreement. These initial certifications will precede the start of the affordability period, but as long as the Owner complies with requirements for annual recertification and applies the appropriate rules for increases in income at recertification to maintain the unit mix, the units will continue to be eligible at the start of the affordability period.

\*Effective August 23, 2013, certification of student eligibility at move-in is required.

See Section 2 for Qualification of Applicants requirements.

### 1.13 Target Population Set Aside Units

Projects that received points for Permanent Supportive Housing agree to set aside designated units which must be held for occupancy by the Target Population (i.e., members of the special needs selected by the applicant for points).

During initial lease-up, priority shall be given in the tenant screening process to income-qualified households in the Target Population. Units shall be set aside for qualified Target Population households until the earlier of such time as the Project's minimum Permanent Supportive Housing commitment has been met or for a period of 90 days from the placed-in-service date.

Once a unit occupied by a Target Population household is physically vacated, that unit shall be held for a minimum of 60 days for occupancy by another qualified Target Population household unless the Project otherwise already complies with the minimum Permanent Supportive Housing unit percentage pledged on the application and required under the LURA. Diligent efforts to market the available unit to the Target Population must be demonstrated during this time period. If after the 60-day period the unit is then leased to a household that is not within the Target Population and the Project does not otherwise meet the minimum required Permanent Supportive Housing unit percentage, the next subsequent available unit shall be set aside for and marketed to the Target Population for 60 days. This subsequent next-available-unit rule will continue to apply until the Project has once again met its Permanent Supportive Housing unit percentage.

### 1.14 Tenant Selection

The Owner must adopt and follow **written** tenant selection policies and criteria that:

- Limit the housing to income-eligible households.
- Are reasonably related to the applicants' ability to perform the obligations of the lease (i.e., to pay the rent, not to damage the housing, and not to interfere with the rights and quiet enjoyment of other tenants).
- Outlines the screening subtlety for tenancy criteria.
- Limit eligibility or give a preference to a particular segment of the population, if permitted in the written agreement with NDHFA.

- Do not exclude an applicant receiving tenant-based rental assistance because of the applicant's status as a recipient of such assistance.
- Provide for the selection of tenants from a waiting list in the chronological order of their application, insofar as is practicable.
- Give prompt written notification to any rejected applicant of the grounds for any rejection.

Other Considerations:

- On April 4, 2016, HUD's Office of General Counsel issued [guidance on criminal background screening](#), focusing attention on the ways in which even well-intentioned tenant selection policies can act as tools of exclusion. This guidance applies to all housing providers, including Owners of HOME properties.
- Owners should consult with an attorney to ensure their tenant selection plan complies with program requirements, the Fair Housing Act, and North Dakota Law.
- HUD issued its Final Rule on February 3, 2012, regarding Equal Access to Housing in HUD programs regardless of Sexual Orientation or Gender Identity. Owners may not inquire about the sexual orientation or gender identity of an applicant or occupant of HUD assisted housing for the purpose of determining eligibility or continued occupancy. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms.
- In accordance with the Violence Against Women Reauthorization Act of 2013, the selection criteria cannot deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault or stalking, if the applicant or tenant otherwise qualifies for admission. Owners may refer to the [HUD Handbook 4350.3 REV 1, Change 4, Chapter 4](#), on developing a tenant selection plan. NDHFA will review the Tenant Selection Plan as part of its inspection procedure.

### 1.15 Fair Housing and Affirmative Marketing

It is the policy of NDHFA to affirmatively further fair housing in all its programs so that individuals of similar income levels have equal access to NDHFA programs, regardless of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, familial status, gender identity or sexual orientation.

Fair Housing requirements include compliance with the Fair Housing Act and Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendment Act of 1988. Housing providers are expected to comply with the applicable statutes, regulations, and related policy guidance. Housing providers should ensure that admissions, occupancy, marketing and operating procedures comply with non-discrimination requirements.

In part, the Fair Housing Act makes it unlawful to, because of protected class status:

- Discriminate in the selection/acceptance of applicants in the rental of housing units.
- Discriminate in terms, conditions or privileges of the rental of a dwelling unit or services or facilities.
- Engage in any conduct relating to the provision of housing that otherwise make unavailable or denies the rental of a dwelling unit.
- Make, print or publish (or cause to make, print or publish) notices, statements or advertisements that indicate preferences or limitations based on protected class status.
- Represent a dwelling is not available when it is in fact available.

- Deny access to, or membership or participation in, associations or other services organizations or facilities relating to the business of renting a dwelling or discriminate in the terms or conditions of membership or participation.
- Engage in harassment or quid pro quo negotiations related to the rental of a dwelling unit.

NDHFA has a commitment to affirmatively further fair housing for individuals with disabilities by promoting the accessibility requirements set out in the Fair Housing Act, which establish design and construction mandates for covered multifamily dwellings and requires housing providers to make reasonable accommodations and to allow persons with disabilities to make reasonable modifications.

Housing providers are not permitted to refuse to lease a unit to, or discriminate against, a prospective resident solely because the prospective resident has a Section 8 HCV or other form of tenant-based rental assistance.

Owners must adopt and follow an Affirmative Fair Housing Marketing Plan for rental projects containing 5 or more HOME- or HTF-assisted housing units. More detailed guidance is available in the Affirmative Fair Housing Marketing Plan Guidance manual on [NDHFA's Compliance webpage](#). Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. If NDHFA's written agreement with the project Owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with 24 CFR Part 93.303(d)(3), the recipient must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project. Owners should see 24 CFR Part 93.350 for additional detail regarding the Affirmative Marketing requirements of the HTF program and 24 CFR Part 92.351 for the HOME program.

Owners are required to use affirmative fair housing marketing practices in soliciting renters, determining their eligibility, and concluding all transactions. Projects must comply with the following procedures for the affordability period:

- Recipients advertising vacant units must include the [Equal Housing Opportunity logo and/or slogan](#). Wherever a phone number is provided, there must also be a TDD/TTY phone number, or equivalent, provided. The Relay North Dakota TDD number is 1-800-366-6888, Voice Users 1-800-366-6889, and Spanish Users 1-800-435-8590. These services are free of charge. Advertising media may include newspapers, radio, televisions, brochures, leaflets, or a sign on the premises.
- Recipients will be required to solicit applications for vacant units from persons in the housing market who are least likely to apply for the HOME- or HTF-assisted housing without the benefit of special outreach efforts. In general, persons who are not of the race or ethnicity of the residents of the neighborhood in which the building is located shall be considered those least likely to apply. Special outreach efforts will include contacts with community action agencies, human service centers, and county social service offices.
- Recipients must maintain a file containing all marketing and outreach efforts (e.g., copies of newspaper ads, memos of phone calls, copies of letters, etc.). These records must be retained for 5 years and are to be made available for inspection by NDHFA to assess the results of the marketing efforts as part of the annual compliance review.
- Recipients must display the HUD fair housing poster, Form HUD-928.1, in all rental offices and locations where potential tenants may likely come to apply for housing. The

poster(s) should be in the language(s) of likely potential applicants. Posters in various languages can be [downloaded from HUD's website](#).

- Prior to HOME or HTF loan closing and at least once every 5 years, to describe and assess the effectiveness of the Recipient's Affirmative Fair Housing Marketing Plan, Recipients must complete and submit to NDHFA the [Form HUD-935.2A, "Affirmative Fair Housing Marketing Plan – Multifamily Housing."](#)

### **1.16 Violence Against Women Act**

All HOME- and HTF-assisted projects must comply with the provisions of the Violence Against Women Reauthorization Act of 2013 (VAWA). VAWA is legislation designed to improve criminal justice and community-based responses to domestic violence, dating violence, sexual assault and stalking in the United States.

VAWA protects victims of domestic violence, dating violence, sexual assault, or stalking, as well as affiliated individual(s), generally, from being denied housing assistance or being evicted as a result of an incident of domestic violence, dating violence, sexual assault, or stalking that is reported and confirmed.

The VAWA 2013 reauthorization enhances judicial and law enforcement tools to combat violence against women, improves services for victims, and strengthens the health care system's response to violence against women. It should be noted that the protections for VAWA covered violence include sexual assault, women, men, and people in same-sex relationships.

#### **Documentation Requirements**

- Notice of Tenant's Rights: VAWA 2013 requires covered housing providers to distribute a notice of applicant or tenant's rights at 3 points: upon denial of admission, upon admission or with a notice of eviction or subsidy termination.
- Model Emergency Plan: The emergency transfer plan communicates to your tenants your commitment to providing safeguards afforded by VAWA and explains the process for a tenant seeking assistance under VAWA.
- VAWA 2013 Lease Addendum: a lease addendum reiterating the lease is subject to the provisions of VAWA.
- Certification of Domestic Violence: a document that allows the tenant to communicate their request for relief under VAWA.
- Emergency Transfer Request: a document that can be utilized by a tenant seeking emergency transfer from their unit under VAWA.

NDHFA's VAWA policy manual is available the agency's [Compliance webpage](#).

### **1.17 House Rules**

Developing a set of house rules is a good practice. The decision about whether to develop house rules for a property rests solely with the Owner. NDHFA's or HUD's review or approval is not required. If house rules are listed in the lease as an attachment, then they must be attached to the lease. By identifying allowable and prohibited activities in housing units and common areas, Owners provide a structure for treating tenants equitably and for making sure that tenants treat each other with consideration. House rules are also beneficial in keeping properties safe and clean and making them more appealing and livable for tenants. They are also extremely beneficial if it becomes necessary to evict a tenant for inappropriate behavior. For more information on House Rules, refer to Chapter 6-9 of the [HUD Handbook 4350.3 REV 1, Change 4 Handbook](#).

### 1.18 Occupancy Standards

There is no federal regulation governing the number of persons allowed to occupy a unit based on size; however, there may be local ordinances regarding unit occupancy. It is important, though, to be consistent when accepting or rejecting applications. It is recommended that the Owner determine the minimum and maximum number of people that will be allowed to occupy each size unit and put that formula in writing as part of the **Tenant Selection Plan**. The Owner may refer to [HUD Handbook 4350.3 REV 1, Change 4, Chapter 3-23](#), regarding occupancy standards. By following the standards described, Owners can ensure that applicants and tenants are housed in appropriately sized units in a fair and consistent manner as prescribed by law.

### 1.19 Reserve Accounts

All properties will be required to maintain a replacement reserve account for the term of the HOME or HTF loan. The replacement reserve requirement for new construction properties and substantial rehabilitation properties, rehab exceeding \$30,000 per unit, designed for seniors will be no less than \$300 per unit per year, inflated at 3% annually. The requirement for all properties designed for families as well as rehabilitation developments with rehabilitation costs of \$30,000 per unit or less will be no less than \$350 per unit per year, inflated at 3% annually. This account shall be used only for capital improvements and the replacement of long-lived capital assets, not for routine maintenance and upkeep expenses. The replacement reserve shall be, and shall remain, an asset of the Project. It shall not be distributed to the Owner or any partner of the Owner at any time during or after the compliance period. Owners shall be required to provide NDHFA with a record of all activity in the replacement reserve account during the prior fiscal year in conjunction with submission of the Project's annual compliance monitoring materials.

All properties will also be required to establish and maintain, until the property has achieved a minimum of 5 years of stabilized operations, an operating reserve equal to a minimum of 6 months of projected operating expenses plus must-pay debt service payments and annual replacement reserve payments. This requirement can be met with an up-front cash reserve, a personal guarantee from the developer/general partner with a surety bond to stand behind the personal guarantee, or partnership documents specifying satisfactory establishment of an operating reserve. For purposes of HOME and HTF programs, "stabilized operations" is defined as occupancy of at least 90 percent of the units in the property for a period of at least 90 days.

Each reserve account identified in this section must be maintained in separate accounts maintained in a federally insured financial institution or the Bank of North Dakota. Reserve accounts must also be separate from the project's ordinary operating account.

### 1.20 Changes in Management and/or Owner Contact Information

NDHFA must be notified within 30 days whenever the Owner makes a change in the management agent or if there is a change in the contact Ownership entity, agent or property manager. Changes in Ownership must follow the requirements outlined under the Transfer of Ownership section in this manual. **Owners must review the Non-Compliant Organization listing.** A property management organization which is found to be substantially noncompliant will be placed on a Non-Compliance Organization listing and may not be contracted to manage another property until they have corrected all noncompliance issues.

### 1.21 Transfer of Ownership

Owners should contact NDHFA when considering a transfer of Ownership.

All anticipated transfers of Ownership should begin with the submission to NDHFA of a [Notice of Intent to Transfer Ownership form \(SFN 59468\)](#) with all necessary supporting documentation. The form must be completed and submitted **prior to** any transfer of title, change in partnership name, corporate name or status.

The fee for a transfer of Ownership within 5 years of the placed-in-service date is \$5,000. The fee for a transfer of Ownership beyond 5 years of the placed-in-service date is \$500. Half of the transfer fee will be refunded following NDHFA's receipt of all the required documentation. There is no fee required for a partial change in the underlying organization of the Ownership entity such as a replacement of the limited partner.

Submission to NDHFA of a Notice of Intent to Transfer form should be accompanied by the applicable fee, written notice from the seller to the buyer as to the requirements of the LURA, and written agreement by the potential buyer acknowledging and agreeing to abide by the requirements of the LURA.

In addition to the Notice of Intent to Transfer Ownership form, the following documentation must be submitted as available, but no later than 30 days after the transfer.

For Changes in Partnership Status, submit the corresponding document:

- Copy of amended or new Partnership Agreement.
- Copy of the Articles of Incorporation and By-Laws.
- Copy of the LLP/LLC Organizational Documents.

For Transfers of Ownership:

- Copy of the Purchase Agreement.
- Copy of the recorded Contract for Deed or Warranty Deed transferring the benefits and burdens of Ownership of the building(s) to the purchaser or a Title Policy indicating Ownership.
- Copy of the closing settlement statement showing sources and uses of funding.
- Also submit the corresponding document:
  - Copy of amended or new Partnership Agreement.
  - Copy of the Articles of Incorporation and By-Laws.
  - Copy of the LLP/LLC Organizational Documents.

## 1.22 Casualty Loss

The Owner is responsible to report any casualty losses of a building or individual unit(s) to NDHFA within 10 days of an incident. Furthermore, the Owner must submit a plan to NDHFA within 30 days that sets a timeframe for reconstruction or replacement of lost units.

## 1.23 Property Standards

The Owner must keep all units in compliance with [HUD's Uniform Physical Conditions Standards \(UPCS\)](#) and other pertinent state and local building codes to ensure the units are decent, safe and sanitary at all times.

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, Owners must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Tenants must receive a federally approved pamphlet on lead poisoning prevention titled, "[Protect Your Family from Lead in Your Home](#)." This disclosure must be documented.

## **1.24 Community Housing Development Organizations (CHDOS) - HOME Only**

All HOME program requirements are the same for CHDO projects as for other HOME programs. In addition, CHDOs must ensure that they continue to meet all pertinent guidelines specific to CHDOs, including the Ownership requirements in 24 C.F.R. § 92.300. Properties that are owned, developed or sponsored by CHDOs, must have a tenant participation plan to ensure that tenants are involved in the management and decision-making with respect to the property. CHDO properties must also have fair lease and grievance procedures.

Tenant participation in management decisions can be achieved in a number of ways. Two common options are:

- Involvement of a tenant association to act as a formal body to provide input for project management.
- Tenant election of a representative to act as a liaison with management.

### **CHDO Fair Lease and Grievance Procedure**

CHDOs must adhere to an approved fair lease and grievance procedure and provide a plan for, and follow a program of, tenant participation in management decisions. Fair lease and grievance procedures should be objective. They should clearly state:

- To whom a tenant should direct a complaint.
- Who will investigate and/or respond to the complaint.
- By when the tenant should expect to receive a response.

### **CHDO Proceeds**

The CHDO must use any CHDO proceeds which it is authorized to retain, for HOME-eligible or other housing activities to benefit low-income families, as required by 24 CFR 92.300(a)(2). A participating jurisdiction may use its own definition of "low-income" family. Examples of affordable housing activities which may be funded with CHDO proceeds include: emergency repairs, project operating costs and reserves, housing refinancing costs, CHDO operating expenses and homebuyer counseling. CHDO proceeds which are retained by a CHDO are not subject to the requirements of the HOME regulations, except for 24 CFR 92.300(a)(2). Thus, the Davis-Bacon Act, National Environmental Policies Act and Uniform Relocation Assistance and Real Property Acquisition Policies Act do not apply to the use of CHDO proceeds. However, because CHDO proceeds are derived from the expenditure of HOME funds, any activities which are funded with CHDO proceeds may not be contributed as match.

Written agreements with CHDO must specify whether proceeds may be retained by the CHDO or returned. CHDOs must retain records of first use of CHDO proceeds to identify what eligible activity the proceeds were used for. These records may be reviewed during monitoring.

If a CHDO is functioning in the capacity of a subrecipient, any funds generated from HOME assisted activity are program income and not CHDO proceeds.

## **SECTION 2–Qualification of Applicants**

Applicants for assisted units shall be advised early in their initial visit to the property that there are maximum income limits that apply. They shall also be made aware that the anticipated income of all persons expecting to occupy the unit must be verified and included on a Tenant Income Certification form prior to occupancy and that household income will be reviewed at recertification.

### **2.01 Eligibility Determination**

A fully completed rental application is critical to an accurate determination of eligibility. The information furnished on the application should be used as a tool to determine all sources of anticipated income and assets.

The Agency encourages the use of the **Resident Eligibility Application**. If management chooses to use their own application, it must solicit sufficient information to make an accurate determination of the household's total income and assets using HUD standards. It is recommended that unrelated persons complete separate applications.

After the household completes the application, the Owner must verify all income and assets. After all income and assets have been verified, the Owner must then complete the **Tenant Income Certification** (TIC). The TIC must be signed and dated by both the tenant(s) and the Owner, and a copy retained in the tenant file. Part VIII Program Type should be checked with the appropriate program unit designation. The TIC must be used for all move-ins. The TIC, along with the lease, is to be executed prior to move-in. All occupants (members age 18 and over) must, be certified, and be under lease and sign.

Any file documentation completed or obtained from a third party should be complete and accurate. Any corrections should be made by crossing out incorrect data, writing corrected information, and date and initial the correction. Correction fluids (white-out) are not permissible.

### **2.02 Student Eligibility Requirement - HOME Only**

Effective August 23, 2013, HOME assisted properties have additional eligibility requirements for students. The HOME program has adopted the Section 8 HCV program restrictions on student participation found at 24 CFR 5.612, which exclude any individual that is enrolled in a higher education institution and is not an "Independent Student" as defined in the Higher Education Act or has parents who, individually or jointly are not eligible on the basis of income. Student eligibility under the HOME program is different than the Low Income Housing Tax Credit program definition.

Each household member age 18 to 23 (or if under 18 and treated as head, co-head or spouse) in a HOME-assisted unit to which the student rule applies must complete, sign and date a [HOME Program Annual Student Certification](#) upon move-in and then annually during the HOME Affordability Period. This form and supporting documentation must be maintained in the tenant file along with the tenant income certification.

### **2.03 Determining Household Size**

Household members include all adults and children who live in the unit including foster children and foster adults.

There will be times when absent family members will be included as part of the household composition and for determining the applicable income limit for the household. Such family members include:

- Children temporarily placed in a foster care home.
- Children present at least 50 percent of the time, as mandated by joint custody arrangements.
- Children who are away at school but return to the household during school recesses.
- Unborn children.
- Children in the process of being adopted.
- Family members temporarily absent due to military service or an out-of-state job assignment.
- Family members in rehabilitation facilities or hospitals for a limited time period or longer.
- If a family member is permanently confined to a nursing home or hospital, the family makes the decision as to whether to include the permanently confined family member as part of the household's composition.

If it is determined that a family member is only temporarily absent from the home, their entire income must be counted as if they were living in the unit.

If the family decides that a person permanently confined to a hospital or nursing home will be included as a household member, he or she may not be designated as head, co-head or spouse.

You must count income of all family members approved as household members even if some are temporarily absent.

Some households may include persons who are not considered as family members for the purposes of determining household size and income eligibility, including:

- Live-in aides.
- Children of live-in aides.
- Guests.

These persons should not be counted as household members when determining household size, and their income, if any, is not included when calculating annual income.

A live-in aide is a person who:

- Is determined to be essential to the care and well-being of the person(s).
- Is not obligated for the support of the person(s).
- Would not be living in the unit except to provide the necessary supportive services.

### **Whose Income to Count**

Income for the following household members must be included:

- All adult members age 18 years and older.
- Emancipated minors residing with a family, other than head, spouse or co-head, would be considered a dependent.
- Household members, children and students who receive unearned income.
- Temporarily absent family members.
- Full-time students who are head, co-head or spouse, include all income.
- Full-time students who are age 18 and older and not head, co-head or spouse, include all unearned income and only the first \$480 of earned income.
- Full-time students under age 18, include only unearned income.
- Temporarily absent Active military members who are head, co-head or spouse.

## Whose Income to Exclude

Income, as described below, for the following household members must be excluded from household income calculations:

- Family members under the age of 18, including foster children, who receive earned income.
- Qualifying students who receive financial assistance.
- Full-time students who are age 18 and older and **not** head, co-head or spouse, exclude all but the first \$480 of earned income.
- Temporarily absent Active military members who are **not** head, co-head or spouse and who do not have a spouse or dependent in the unit.
- Family members who receive payments for the care of foster children and foster adults.
- Nonmembers including live-in aides and their children, guests and co-signors.

Household Members	Employment Income	Other Income – Unearned (including income from assets)
Head of Household	Yes	Yes
Spouse	Yes	Yes
Co-Head	Yes	Yes
Other Adults (includes foster adult)	Yes	Yes
Dependents (under 18)	No	Yes
Foster Child (under 18)	No	Yes
Full-Time Student (over 18)	See Note Below	Yes
Temporarily Absent Member	Yes	Yes
Member permanently living in hospital or nursing home	A household decision	A household decision
<b>Non-Household Members</b>		
Live-in Aide	No	No
Guest	No	No

\*The earned income of a full-time student 18 years old or older who is a dependent is excluded to the extent that it exceeds \$480.

## **2.04 Change in Household Composition**

If the household in an assisted unit later wishes to have an additional person move into the unit, the following steps must be taken prior to occupancy.

1. Tenant must complete a rental application and allow for verification of income and assets are required of the initial tenant.
2. The prospective tenant's income must be added to the current tenant's most recent certification or recertification and a determination as to whether the household is still within HOME or HTF income guidelines. This new certification is an "other cert." The effective date is the date the new household member moves in. In HOME-assisted only units, if the anticipated household income exceeds the guidelines, once the current lease expires and proper notice is given, the household must pay the lessor of 30 percent of adjusted income for rent up to the maximum LIHTC rent if the unit is also a LIHTC unit, or the rent amount payable under state or local law. IF the unit is floating, the new rent cannot exceed market rent for a comparable unassisted unit.

## **2.05 General Income Requirements**

The Part 5 definition of annual income is the gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period. Each of the bolded words or phrases in this definition is key to understanding the requirements for calculating annual income:

- **Gross amount:** For those types of income counted use the gross amounts before any deductions are taken.
- **Income of all adult household members:** The Part 5 definition of annual income contains income "inclusions," types of income to be considered, and "exclusions," types of income that are not considered (e.g., the income of minors).
- **Anticipated to be received:** An Owner manager must use a household's expected ability to pay, rather than past earnings, when estimating housing assistance needs.

## **2.06 General Verification Procedures (HTF CFR 93.151 HOME 24 CFR 92.203)**

At initial occupancy, annual income must initially be determined by examining source documents evidencing the household's annual income.

Required Number of Source Documents:

- **Employment Income:** Two months of source documentation or the most recent four consecutive pay stubs, which ever covers a greater time period (e.g., if paid weekly must collect eight paystubs. If paid monthly, must collect four months).
- **All other income:** At least two months of source information (e.g., interest statements, unemployment compensation or government benefits statements).

Verifications of income are valid for six months prior to the effective date of the certification.

## **Annual Income Recertification**

All households occupying a HOME- or HTF-assisted unit must be recertified at least annually from the date of occupancy. Annual income recertifications must be effective on or before the anniversary date of the previous certification. Owners may align recertification dates with other program certifications or recertify all households at one time during the year. However, if a period of 12 months passes without a recertification being completed for any HOME- or HTF-assisted unit, the unit is considered out of compliance.

Income and assets must be re-verified every sixth year of the affordability period. A self-certification of income and income from assets is acceptable in intervening years.

## **Verification Methods**

### **1. Review of Source Documents (Initial Occupancy or Annual Recertification)**

HOME and HTF regulations require that Owners determine income eligibility for applicants by examining source documents (e.g., wage statements or interest statements) as evidence of annual income. Owners may develop their own verification procedures if they collect source documentation and the documentation is sufficient for NDHFA to monitor program compliance.

Documents provided by the applicant (e.g., pay stubs or tax returns) may be most appropriate for certain types of income and can be used as an alternative to third-party verifications. Note, if a copy of a tax return is needed, the IRS Form 4506, "Request for Copy of Tax Form," must be completed and signed. Copies of documents should be retained in tenant files.

Although easy to obtain, a review of documents provided by the applicant may not provide all necessary information. For instance, an employed applicant's pay stubs may not provide sufficient information about the average number of hours worked, overtime, tips and bonuses. Therefore, the Owner may also need to contact the employer to accurately project annual income.

**Third-Party Verification:** Under this form of verification, a third party (e.g., employer, Social Security Administration or public assistance agency) is contacted to provide information to verify income. Although written requests and responses are generally preferred, conversations with a third party are acceptable if documented through a memorandum to the file that notes the contact person, information conveyed and date of call. In addition, an Owner may obtain third party written verification by fax, email or Internet. The Owner must make adequate effort to ensure the sender is a valid third-party source.

To allow Owners to conduct third-party verifications, most recommended forms include a written release from the household that authorizes the third party to release required information.

Third-party verifications are helpful because they provide independent verification of information and permit the Owner to determine if any changes to current circumstances are anticipated. Some third-party providers may, however, be unwilling or unable to provide the needed information in a timely manner.

Some third-party providers (e.g., banks) may charge a fee to provide the information. In such cases, the Owner should attempt to find suitable documentation (e.g., bank statements) without the third-party verification.

### **2. Self-Certification (Annual Recertification Only)**

Through the self-certification method, the household provides a written statement of the amount of the household's annual income and size along with a certification that the information is complete and accurate. The certification must state that source documents

will be provided upon request.

**Income source documents must be verified at least once every sixth year during the project's period of affordability (this does not mean the tenants sixth year of residency, but the project's period of affordability).**

**\*Units that receive project-based rental assistance must re-examine tenant income in accordance with project-based rental assistance rules.**

### **3. Certification by Other Programs (Annual Recertification Only)**

Through certification by other programs, the Owner obtains a written statement from the administrator of a government program under which the household receives benefits in which the annual income of the household is examined yearly. The statement must indicate the tenant's household size and state the amount of the annual household income or, alternatively, the statement must indicate the current dollar limit for ELI households for tenant's household size and state that the household's annual income does not exceed this limit.

#### **Other verification suggestions**

- Applicants should be asked to sign two copies of each verification form. The second copy may be used if the first request has not been returned in a timely manner.
- Income verification requests must be sent directly to and from the source, not through the tenant. It is suggested that a self-addressed, stamped envelope be included with the request for verification.
- When written verification is not possible prior to move-in, direct contact with the source will be acceptable to the NDHFA but must be followed up by written verification. The conversation should be documented in the applicant's file to include all the information that would be included in a written verification. The name and title of the contact, the name of the management representative accepting the information and the date must be included. The form, "Document Viewed or Telephone Information Received," may be used for documentation of a direct contact. By using this approach, the ultimate risk of admitting an ineligible tenant is borne solely by the Owner.
- The Owner should give the applicant the opportunity to explain any significant differences between the amounts reported on the application and amounts reported on third-party verification in order to determine actual income. The explanation should be documented in the tenant file.

Once annual income is calculated and verified by the Owner, the tenant household must sign a tenant income certification attesting to the truth and accuracy of the income information and calculations.

HOME and HTF regulations require that for purposes of determining eligibility for a HOME or HTF-restricted unit, the Owner must project a household's income in the future. To do so, a "snapshot" of the household's current circumstances is used to project future income. In general, unless there is verifiable evidence to the contrary, it should be assumed that today's circumstances will continue for the next 12 months (i.e., if a head of household is currently working for \$10.00 per hour, 40 hours per week, the Owner should assume that the family member will continue to do so for the next year. Thus, estimated earnings will be \$10.00 per hour multiplied by 2,080 hours or \$20,800 per year.)

This method should be used even when it is not clear that the type of income received currently will continue in the coming year, i.e., a family member has been receiving unemployment benefits of \$100 per week for 16 weeks at the time of income certification. It is unlikely that the family member will continue unemployment for another 52 weeks. However, because it is not known whether or when the family member will find employment, the Owner should use the current circumstances to anticipate annual income. Income would therefore be calculated as follows: \$100 per week x 52 weeks or \$5,200.

The exception to this rule is when documentation is provided which indicates that current circumstances are about to change (i.e., an employer might report that an employee currently makes \$10.00 an hour, but a negotiated union contract will increase this amount to \$12.00 an hour eight weeks from the date of initial occupancy). In such cases, income can be calculated based on the information provided. The calculation would be as follows.

- \$10.00/hour x 40 hours/week x 8 weeks = \$3,200
- \$12.00/hour x 40 hours/week x 44 weeks = \$21,120
- \$3,200 + \$21,120 = \$24,320 projected annual income

## 2.07 Income Inclusions and Exclusions (24 CFR 5.609 (b) and (c))

### Income Inclusions include:

1. The **full amount**, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
2. The **net income from operation of a business or profession**. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
3. **Interest, dividends and other net income** of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in Inclusion 2. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.
4. The **full amount** of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action). See Exclusion 13 for an exception.
5. **Payments in lieu of earnings**, such as unemployment, disability compensation, worker's compensation, and severance pay, except as provided in Exclusion 3.

6. **Welfare Assistance.**
  - a. Welfare assistance received by the family.
  - b. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance to be included as income shall consist of both:
    - i. The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities.
    - ii. The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.
7. **Periodic and determinable allowances** such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.
8. **All regular pay, special pay and allowances** of a member of the Armed Forces, **except** as provided in Exclusion 7.
9. For Section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph "financial assistance" does not include loan proceeds for the purpose of determining income.

**Note: This paragraph does not apply to a student who is living with his/her parents who are applying for or receiving Section 8 assistance.)**

**Income Exclusions include:**

1. Income from employment of children, including foster children, under the age of 18 years.
2. Payments received for the care of foster children or foster adults, usually persons with disabilities unrelated to the tenant family, who are unable to live alone.
3. Lump-sum additions to family assets, such as inheritances, insurance payments including payments under health and accident insurance and worker's compensation, capital gains, and settlement for personal or property losses, except as provided in Inclusion 5.
4. Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
5. Income of a live-in aide, as defined in 24 CFR 5.403.
6. The full amount of student financial assistance paid directly to the student or to the educational institution, see Inclusion 9 for students receiving Section 8 assistance.

7. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm).
8. Miscellaneous Income Exclusions:
  - a. Amounts received under training programs funded by HUD (e.g., training received under Section 3).
  - b. Amounts received by a person with a disability that are disregarded for a limited time for purposes of supplemental security income eligibility and benefits because they are set-aside for use under a Plan to Attain Self-Sufficiency (PASS).
  - c. Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (e.g., special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program.
  - d. Amounts received under a resident service stipend. A resident service stipend is a modest amount, not to exceed \$200 per month, received by a resident for performing a service for the Owner on a part-time basis that enhances the quality of life in the project. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiative coordination. No resident may receive more than one such stipend during the same period of time.
  - e. Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs, including training programs not affiliated with a local government, and training of a family member as a resident management staff person. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment training program.
9. Temporary, nonrecurring or sporadic income including gifts.
10. Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era (i.e., payments by the German and Japanese governments for atrocities committed).
11. Earnings in excess of \$480 for each full-time student 18 years or older, excluding the head of household and spouse.
12. Adoption assistance payments in excess of \$480 per adopted child.
13. Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts.
14. Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
15. Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home.
16. Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to housing Owners identifying the benefits that qualify for this exclusion.

Updates will be published and distributed when necessary. The following is a list of income sources that qualify for that exclusion:

- a. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 [b]).
- b. Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058) (e.g., employment through AmeriCorps, Volunteers in Service to America [VISTA], Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions).
- c. Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626[c]).
- d. Income derived from certain sub marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e).
- e. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624[f]).
- f. Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552[b]. Effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 [29 U.S.C. 2931], e.g., employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs, career intern programs, AmeriCorps.
- g. Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L94-540, 90 Stat. 2503-04).
- h. The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408).
- i. Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu).
- j. Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056[f]), e.g., Green Thumb, Senior Aides, Older American Community Service Employment Program.
- k. Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.).
- l. Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721).
- m. The value of any child care provided or arranged or any amount received as payment for such care or reimbursement for costs incurred for such care under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q).
- n. Earned Income Tax Credit (EITC) refund payments received on or after January 1, 1991, including advanced earned income credit payments (26 U.S.C. 32[j]).
- o. Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433).
- p. Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637[d]).

- q. Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805).
- r. Any amount of crime victim compensation under the Victims of Crime Act received through crime victim assistance or payment or reimbursement of the cost of such assistance as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602).
- s. Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

## **2.08 Unemployed Zero Income Applicants**

If a household member is currently unemployed and claims no income from such sources as Social Security, pensions, income from assets, etc., the tenant must complete the **Certification of Zero Income and the Non-employed Affidavit**.

The income of unemployed household members, with regular income from any source such as Social Security, pension, recurring gifts, income from assets, etc., must be verified.

## **2.09 Calculating Annual Income**

Owners must assess all the facts underlying the income information collected. Below are some of the considerations Owners must take into account:

### **Pay Period**

- The Owner should determine the basis on which employees are paid (hourly, weekly or monthly, and with or without overtime). An employee who gets paid “twice a month” may actually be paid either twice a month (24 times a year) or every two weeks (26 times a year).
- An annual salary is counted as annual income regardless of the payment schedule. For example, if a teacher’s annual salary is \$30,000, this is the annual income regardless of whether the teacher is paid over a 9- or 12-month period.

### **Variations in Pay**

- For applicants whose jobs provide steady employment (e.g., 40 hours a week, 52 weeks a year), it can be assumed that there will only be slight variations in the amount of earnings reflected in monthly or bi-weekly pay stubs. In such cases, three consecutive months’ worth of income documentation is an appropriate amount upon which to base a projection of income over the following 12-month period.
- For those whose annual employment is less stable or does not conform to a twelve-month schedule (e.g., seasonal laborers, construction workers, teachers), Owners should examine income documentation that covers the entire previous twelve-month period. Such workers can experience substantial variations in earned income over the course of a year. As such, an examination of three months’ worth of income documentation may not provide an accurate basis upon which to project the applicant’s income over the following 12 months.

### **Sources of Earned Income**

- In addition to hourly earnings, Owners must account for all earned income. In addition to the base salary, this will include annual cost of living adjustments (COLAs), bonuses, raises, and overtime pay. In the case of overtime, it is important to clarify whether overtime is sporadic or a predictable component of an employee’s income. If it is

determined that an applicant has earned and will continue to earn overtime pay on a regular basis, Owners should calculate the average amount of overtime pay earned by the applicant over the pay period the Owner is using to calculate income eligibility. This average amount is then to be added to the total amount of projected earned income over the following 12-month period.

**Exhibit 2.1 Step-by-Step Methodology for Projecting Annual Income**

Steps	Instructions
Step 1: Collect appropriate income documentation.	Appropriate documentation includes pay stubs, third-party verification, bank statements (checking and/or savings), or certified copies of tax returns. (These can be acquired by submitting an IRS Form 4506, "Request for Copy of Tax Form.")
Step 2: Calculate the applicant household's projected income based upon documentation.	This calculation must include hourly wage figures, overtime figures, bonuses, anticipated raises, COLAs, or other anticipated changes in income. Other specific inclusions must also be reflected in the calculations, such as other eligible sources of non-wage income.
Step 3: Compare the amount of projected income against current HUD-published income limits.	Once the Owner has calculated the household's income, it must compare the household's final projected figure to HUD-published income limits. Households whose projected annual income is less than the current HTF income limit are eligible for an HTF-restricted unit.

Exhibit 2.1 provides a step-by-step explanation of the standard methodology for projecting annual income.

**2.10 Assets**

Assets, other than necessary personal items, are considered along with verified income in determining the eligibility of a household.

**Valuing Assets**

In computing assets, Owners must use the cash value of the asset, the amount the family would receive if the asset was converted to cash. Cash value is the market value of the asset less reasonable costs that were or would be incurred in selling or converting the asset to cash. NDHFA considers 10 percent as a reasonable basis for the costs of conversion.

Example: An applicant owns a home with a market value of \$30,000 and a loan against the home of \$18,000. The cash value of the asset would be \$30,000 less 10 percent less \$18,000 or \$9,000.

If assets are owned by more than one person, prorate the assets according to their percentage of Ownership. If no percentage is specified, prorate the assets evenly among all Owners.

## Asset Valuation Guidelines

Checking Account	Use the past six months' average balance.
Savings Account	Use the current balance.
Equity in Real Estate	Convert to and use the cash value
IRA or Keogh Accounts	If not withdrawing, use the cash value.
Retirement Accounts	While employed, use the amount that can be withdrawn without retiring or terminating employment. At retirement, add lump sum amounts to net family assets or add periodic distributions to annual income.
Jointly-owned Assets	Prorate according to the percentage of ownership. If no percentage is specified or provided by state or local law, prorate the assets evenly among all owners.

### Do Include:

1. Cash held in savings and checking accounts, safety deposit boxes, homes, etc.
2. Trusts: include the principal value of any trust available to the household. Do not include irrevocable trusts (i.e., ones that no household or family member can control).
3. Equity in rental property or other capital investments. Include the current market value less:
  - a. Any unpaid balance on any loans secured by the property.
  - b. Reasonable costs that would be incurred in selling the asset - penalties, broker fees, etc.
4. Stocks, bonds, treasury bills, certificates of deposits, money market funds, etc.
5. Individual Retirement and Keogh Accounts.
6. Retirement and pension funds.
  - a. While the person is employed, include only amounts the family can withdraw without retiring or terminating employment.
  - b. At retirement or termination of employment, if benefits will be received in a lump sum, include the benefits in Net Family Assets. If benefits will be received through periodic payments, include the benefits in annual income.
7. Lump sum receipts: include inheritances, capital gains, one-time lottery winnings, and settlements on insurance and other claims. (Do not count lump sum receipts that must be counted as income.)
8. Personal property held as an investment. Include gems, jewelry, coin collections, or antique cars held as an investment. (An applicant's wedding ring and other personal jewelry are not counted as an asset.)
9. Cash value of life insurance policies available to the individual before death.
10. Assets disposed of within two years before effective date of certification/recertification.
  - a. If the cash value of the disposed assets exceeds the actual amount the family received by more than \$1,000, include the whole difference between the cash

value and the amounts received. Do not include if the difference is less than \$1,000. Example: a couple gives \$2,000 to each of their three grandchildren and deeds a home to their son. The home has a cash value of \$40,000 and the son pay his parents \$12,000 for the home.  $(\$40,000 - \$12,000) + (\$2,000 \times 3) = \$34,000$  is counted as an asset until such time as the household can certify on an Income Certification that they did not dispose of any assets during the two years preceding the certification date. The \$12,000 paid by the son may also be counted as an asset, depending on what was done with the payment.

- b. **Do not** consider assets disposed of for less than fair market value as a result of a foreclosure, bankruptcy, or a divorce or separation agreement.

#### **Do Consider:**

1. Assets put into trusts.
2. Business assets disposed of for less than fair market value. (Business assets are excluded from net family assets only while they are part of an active business.)

#### **Do Not Include:**

1. Necessary personal property (e.g., clothing, furniture, cars, etc.).
2. Life insurance policies that do not have any cash value.

Assets that are part of an active business. A business does not include rental of properties that are held as an investment and are not a main occupation.

3. Assets that are not effectively owned by the applicant, i.e., when assets are held in an individual's name but the assets and any income earned accrues to the benefit of someone else or another person is responsible for income taxes incurred on income generated by the assets. For example, assets held pursuant to a power of attorney because one party is not competent to manage the assets or assets held in a joint account solely to facilitate access to assets in the event of an emergency.
4. Assets that are not accessible to the applicant and provide no income to the applicant. For example, a battered spouse owns a house jointly but because of the domestic situation receives no income from the asset and cannot convert the asset to cash.

### **2.11 Actual Income from Assets**

Assets can generate income, and for the purpose of determining an applicant's income, the actual income generated by the asset (e.g., interest on a savings or checking account) is what counts, not the value of the asset. The income is counted, even if the household elects not to receive it. For example, if an applicant elects to reinvest the interest or dividends from an asset, it is still counted as income.

As with other types of income, the income included in annual income calculation is the income that is anticipated to be received from the asset during the coming 12 months. Several methods may be used to approximate the anticipated income from the asset. For example, to obtain the anticipated interest on a savings account, the current account balance can be multiplied by the current interest rate applicable to the account. Alternatively, if the value of the account is not anticipated to change in the near future and the interest rate has been stable, a copy of the IRS 1099 form showing past interest earned can be used.

Checking account balances are considered assets. This rule is not intended to count monthly income as an asset, but rather is recognition that some households keep assets in their

checking accounts. To avoid counting monthly income as an asset, Owners should use the **average monthly balance over a six-month period as the cash value of a checking account.**

## Two Unique Rules

For most assets, calculating cash value and the income from the assets is straightforward. Special rules have, however, been established to address two circumstances – situations in which the assets produce little or no income and assets that are disposed of for less than fair market value.

**HUD does not allow the use of the Assets Under \$5,000 self-certification. Assets must be verified.**

1. When an Asset Produces Little or No Income. This rule assumes that a household with assets has an increased payment ability, even if its assets do not currently produce income. For example, a household that owns land that is not rented or otherwise used to produce income. Rather than require the household to dispose of the property, the rule requires that an “imputed” income be calculated based on a Passbook Rate that is applied to the cash value of all assets. **This rule only applies if the total cash value of all assets is more than \$5,000.** The following examples illustrate how imputed income from assets calculation is applied.

Example 1: The Cayhill family has \$6,000, average balance over six months, in a non-interest-bearing checking account. The Owner would include in annual income an amount based on the current Passbook Rate, two percent in this example. The calculation would be:  $\$6,000 \times .02 = \$120$ .

Example 2: The Shaw family has \$3,000, average balance over six months, in a non-interest-bearing checking account and \$5,500 in an interest-bearing savings account. The family reports and the Owner verifies \$150 interest on the savings account. The Owner would count the greater of the actual income from assets or the imputed income based on the Passbook Rate, two percent in this example, as shown below.

Imputed income ( $\$8,500 \times .02$ ) = \$170  
Actual income is \$150  
Included in annual income is \$170

Example 3: The Smiths have \$600, average balance over six months, in a non-interest-bearing checking account. No income from assets would be counted because the family has no actual income from assets and the total amount of all assets is less than \$5,000.

**Note: Check with NDHFA for the current Passbook Rate to utilize.**

2. When Assets are Disposed of at Less than Fair Market Value. Applicants who dispose of assets for less than fair market value (i.e., value on the open market in an “arm’s length transaction”) have voluntarily reduced their ability to afford housing. The Part 5 rules require, that any asset disposed of for less than fair market value during the two years preceding the income determination be counted as if the household still owned the asset. **The amount to be included as an asset is the difference between the cash value of the asset and the amount that was received, if any, in the disposition of the asset.**

Consider the following examples.

**Example 1: Mr. Jones cashed in stock to give a granddaughter funds for college in August 2015. The stock had a market value of \$4,500 and a broker fee of \$500 was charged for the transaction.**

**Market value of \$4,500  
Less broker's fee of \$500  
Cash value to be considered is \$4,000**

The \$4,000 in assets would be counted for any income determination conducted until August 2017 (looking forward two years from the time of disposal).

If Mr. Jones has no other assets, no income from assets would be included in annual income because the cash value of the asset is less than \$5,000. If other assets brought total assets to more than \$5,000, the imputed income calculation described previously would be required.

**Example 2: Mrs. Smith "sold" a piece of property to a family member for \$30,000 on July 1, 2016. The home was valued at \$75,000 and had no loans against it.**

**Market value of \$75,000  
Less actual settlement costs of \$3,000  
Less sales price of \$30,000  
Cash value to be considered is \$42,000**

The \$42,000 would be counted as an asset for any income determination conducted until July 1, 2018. The \$42,000 would be combined with the cash value of other assets, if any, and an imputed income calculation would be required.

Each applicant must certify whether an asset has been disposed of for less than fair market value. Assets disposed of for less than fair market value as a result of foreclosure or bankruptcy are not included in this calculation. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be less than fair market value if the applicant receives (or received) important consideration not measurable in dollar terms.

## **2.12 Comparing Annual Household Income to Published Income Limits**

Once household and income information has been established and verified, an Owner must compare the information to the appropriate HUD income limits to determine if the household is eligible for a HOME or HTF-restricted unit.

To determine eligibility, Owners must use a copy of the most recently published income limits, adjusted for family size and county. Current annual income limits for the HOME and HTF program are updated annually and posted on [NDHFA's Compliance website](#).

To compare a household's verified annual income to the HTF income limits, follow these steps:

1. Find the geographic area in which the project is located on the HTF Income Limits chart.
2. Find the column that corresponds to the actual number of persons in the household.

3. Compare the verified income of the household with the income limit for the applicable household size.

## **2.13 Maintaining Unit Mix and Increases in Household Income**

### **HOME Program Maintaining Unit Mix throughout the Period of Affordability**

Owners must take steps to maintain compliance with maintaining the total number of HOME-assisted as required in the written agreement and LURA.

A tenant's income is likely to change over time. If these changes occur during the period of affordability, the Owner must take steps to restore compliance with unit mix requirements. Temporary noncompliance is permissible, provided steps are taken as soon as practicable. These steps vary depending on if a project has fixed or floating units.

### **HOME Fixed Unit Properties**

Properties with fixed HOME-assisted units have specific units that are designated as HOME-assisted for the duration of the effective period. Owners must maintain these specific units as the HOME-assisted units. In a property with fixed HOME units, the designation of units as High HOME Rent units and Low HOME Rent units may need to change.

Maintaining the required number of HOME-assisted units, as well as High HOME Rent units and Low HOME Rent units, for properties with 5 or more HOME-assisted units is called complying with the **unit mix requirements**.

When an Owner recertifies a household's income, he or she may find that the tenant's income has increased. A household is considered "**over-income**" in the HOME Program when:

- The household occupies a High or Low HOME Rent unit and the household income increases over the current HOME low-income limit (80 percent income limit) for that family size, or
- The household occupies a Low HOME Rent unit, and the household's income increases above the current very low-income limit but does not increase above the low-income limit; that is, the household income is above 50 and below 80 percent of area median income.
- In HOME-assisted units that are also LIHTC units, a household is considered "over-income" when its income increases to 140 percent or more of the qualifying tax credit income for that unit.

When a household is over-income, the unit that the household occupies is considered **temporarily out of compliance** with HOME's occupancy and unit mix requirements. Temporary noncompliance due to an increase in an existing household's income is permissible as long as the Owner takes specific steps to restore the correct occupancy and unit mix in the property as soon as possible. When the household's income exceeds the low-income limit, its rent must also be adjusted.

When an Owner conducts the annual income recertification and finds that a household is over-income, the steps that it takes to restore compliance depend on whether the over-income household occupies a High HOME unit or a Low HOME unit. If the household occupies a Low HOME unit, the steps also depend on whether or not the tenant is low-income.

**If the over-income household occupies a High HOME Rent unit**, the property is temporarily out of compliance until the unit is vacated and can be rented to another low-income household. The Owner must raise the rent as soon as the lease permits, in accordance with the terms of the lease. The rent must be adjusted such that the household pays the lesser of:

- The rent amount payable under state or local law; or
- 30 percent of the tenant's monthly adjusted family income
- if the unit is an LIHTC unit, the rent must be at or below the amount allowed by the tax credit program.

The Owner cannot terminate the lease based on the household's increased income.

**If the household occupies a Low HOME Rent unit and its income increases over the very low-income limit**, but not over the low-income limit, the property is temporarily out of compliance until either: (1) a High HOME unit can be re-designated as a Low HOME unit, or (2) the unit is vacated and can be rented to another very low-income tenant household.

The unit occupied by the over-income household retains its designation as Low HOME until another unit can be re-designated as Low HOME.

When a High HOME unit in the property vacates, regardless of bedroom size, the unit must be re-designated as a Low HOME unit and rented to a very low-income household, at no more than the Low HOME Rent. Once a new Low HOME unit has been designated, the Low HOME unit that is occupied by the over-income household must be re-designated as a High HOME unit. At this time, the Owner can increase the tenant's rent up to the High HOME Rent limit, subject to terms of the lease.

**If the household occupies a Low HOME Rent unit and its income increases above the low-income limit**, the property is temporarily out of compliance and will continue to be out of compliance until the over-income tenant moves out and another income-eligible tenant household moves in.

The Owner must adjust the over-income household's rent as soon as the lease permits. The over-income tenant must pay the lesser of:

- The rent amount payable under state or local law; or
- 30 percent of the tenant's monthly **adjusted** family income.
- If the unit is an LIHTC unit, the rent must be at or below the amount allowed by the tax credit program.

The Owner cannot terminate the lease based on the household's income.

When a High HOME unit becomes available, regardless of bedroom size, it must be re-designated as a Low HOME unit. This unit must be rented to a very low-income tenant, at no more than the Low HOME Rent limit. Then, the unit that is occupied by the over-income tenant must be re-designated as a High HOME unit. Even though the unit is re-designated a High HOME unit, the tenant is over the low-income limit, so the property continues to be temporarily out of compliance.

**If there is more than one over-income household in the property** and both a Low HOME unit and High HOME unit are needed to restore unit mix compliance, the Owner should restore compliance with the Low HOME unit first.

## HOME Floating Unit Property

Properties with floating HOME-assisted units do not have specific units that are designated for the duration of the effective period. Instead, the total number of HOME-assisted and non-assisted units that are designated at the time of project commitment must stay the same throughout the effective period. The specific units that carry the HOME-assisted designations may change, or float, among comparable assisted and non-assisted units during this time. In a property with floating HOME units, unit mix is maintained by changing the unit designations when the next comparable unit becomes available. For example, if a property has an over-income tenant in a HOME-assisted unit, when the next non-assisted comparable unit becomes available, it is designated as HOME-assisted and rented to an income-eligible tenant. The unit occupied by the over-income tenant is re-designated as a non-assisted unit.

Maintaining the required number of comparable HOME-assisted units, as well as High HOME Rent units and Low HOME Rent units, for properties with 5 or more HOME-assisted units, is called complying with the **unit mix requirements**.

When recertifying a tenant's income, an Owner may find that the tenant's income has increased. A tenant is considered "over-income" when:

- The tenant occupies a HOME-assisted unit and the household income increases over the current HOME low-income limit for that family size, or
- The tenant occupies a Low HOME Rent unit, and the household's income increases above the current very low-income limit but is still below the low-income limit.
- In HOME-assisted units that are also LIHTC units, a tenant household is considered "over-income" when its income increases to 140 percent or more of the qualifying tax credit income for that unit.

When a tenant is over-income, the unit that the tenant occupies is considered **temporarily out of compliance** with HOME's occupancy and unit mix requirements. Temporary noncompliance due to an increase in an existing tenant's income is permissible as long as the Owner takes specific steps to restore the required unit mix in the property. The rents of the over-income tenants can be adjusted.

When re-designating units in a property with floating HOME-assisted units, Owners can choose to substitute a unit that is comparable to or larger than the original HOME-assisted unit, but generally cannot substitute one that is smaller. A smaller unit can be substituted only when doing so preserves the original unit mix. A larger unit is one that might be considered more preferable because of larger size, additional bedrooms or amenities. The goal is to maintain the same number and type of HOME-assisted units as were originally designated; therefore, if an Owner substitutes a larger unit it can later substitute an available unit that is smaller, when applicable, in order to restore the original unit mix.

**If an over-income household occupies a floating High HOME unit**, the Owner must adjust the rent of the over-income household so that it pays 30 percent of its monthly adjusted income as rent. The rent adjustment must be made as soon as the lease permits and in accordance with the terms of the lease. Note that, unlike the rule for properties with fixed HOME-assisted units, in a property with floating HOME units, a household is not required to pay more than the market rent for a comparable, unassisted unit in the neighborhood.

The next vacant, comparable, non-assisted unit must be designated as a High HOME unit. A comparable unit is one that is equal or greater in terms of size, number of bedrooms, and amenities. The Owner may not replace the unit with one that is smaller, unless doing so

preserves the original unit mix. The newly designated High HOME unit must be rented to a household whose income does not exceed the low-income limit, at a rent that does not exceed the High HOME Rent limit.

Once a comparable non-assisted unit is designated the new High HOME Rent unit, the unit with the over-income household is re-designated as a non-assisted unit. At this point, the Owner may adjust the household's rent without regard to the HOME rent requirements (although requirements from other funding sources may still apply). Rent increases are subject to the terms of the lease.

**If a tenant is low-income, but is not very low-income, and occupies a floating Low HOME unit**, the unit occupied by the over-income household keeps its designation as a Low HOME unit until a comparable unit can be substituted. The rent of the over-income household must not exceed the Low HOME rent limit while the unit is a Low HOME unit.

When the next High HOME unit in the property is vacated, it must be re-designated as a Low HOME unit and rented to a household whose income does not exceed the very low-income limit, at a rent that does not exceed the Low HOME Rent limit.

Once the new Low HOME unit is designated, the unit with the over-income household is re-designated as a High HOME unit. The household's rent may be adjusted to no more than the High HOME Rent limit, subject to the terms of the lease.

**If household's income is above the low-income limit and it occupies a Low HOME unit**, the next vacant, comparable, non-assisted unit must be designated as a Low HOME unit and rented to a household whose income does not exceed the very low-income limit, at a rent that does not exceed the Low HOME Rent limit.

Until a comparable Low HOME unit is designated, the unit that is occupied by the over-income household is considered a Low HOME unit that is temporarily out of compliance.

The rent of the over-income household in the original Low HOME unit must be adjusted as soon as the lease permits, and in accordance with the terms of the lease.

- Until a comparable Low HOME unit is substituted, the over-income tenant must pay 30 percent of the household's monthly adjusted income as rent.
- After a comparable Low HOME unit is substituted, the unit with the over-income household is re-designated as a non-assisted unit. The Owner may adjust the household's rent without regard to the HOME restrictions. Rent increases are subject to the terms of the lease.

Note, a household in a floating HOME unit whose income exceeds the low-income limit is not required to pay more than the market rent for a comparable, unassisted unit in the neighborhood.

If there is more than one over-income tenant in the property and both a Low HOME unit and High HOME unit are needed to restore unit mix compliance, the Owner should restore compliance with the Low HOME unit first.

### **HOME- Assisted units with LIHTC**

If the household income increases above the income limits, the household may continue to reside in the unit; but once their lease expires, the rent will be equal to the lesser of 30 percent of the household's adjusted income, up to the maximum LIHTC rent if the unit is also an LIHTC unit, or the rent amount payable under state or local law. If the unit is floating, the new rent

cannot exceed market rent for a comparable, unassisted unit. Households whose income exceeds the 80 percent AMI limit must not be permitted to move to any other HOME-assisted unit. **This includes student status for properties.**

### **HTF Over Income**

A household residing in an HTF-assisted unit, and which was determined income-eligible at the time of initial occupancy, is not subject to eviction from that unit solely because household income increased above 140% of applicable HTF income limits during recertification. HTF-assisted units continue to qualify as affordable housing despite a temporary noncompliance caused by increases to household income, so long as actions are being taken by the Owner to fill vacancies in such a manner as to correct the noncompliance as quickly as possible. Specifically, the next available vacant unit in the project must be filled by an income-eligible household so that the project as a whole remains in compliance with the affordability restrictions agreed upon in the HTF loan documents and LURA. This is referred to as the “next-available-unit rule.” The next-available-unit rule applies to any project that is not 100 percent HTF-assisted. HTF-assisted units must be floating, and not fixed to specific project units, in order to facilitate the next-available-unit rule. If any subsequent vacancy is filled with an over income tenant, the project is then considered to be out of compliance with the HTF program.

An Owner may not terminate the tenancy or refuse to renew the lease of a tenant of an HTF-assisted unit except for serious or repeated violations of the terms and conditions of the lease; for violation of an applicable federal, state or local law; or for other good cause. Good cause does not include an increase in the tenant’s income. To terminate or refuse to renew tenancy, the Owner must serve written notice upon the tenant specifying the grounds for the action and providing a specific period for vacating that is consistent with North Dakota law.

### **2.14 Adjusted Gross Income for Over Income Households – HOME Only**

When determining eligibility to occupy a HOME unit, the household's gross income must always be considered. However, if a tenant goes over the income guidelines after move-in, the Owner must raise the over-income household’s rent as soon as the lease permits in accordance with the terms of the lease (refer to Chapter 2 – Maintaining the Unit Mix). In certain circumstances, the rent for an over-income household may need to be adjusted such that the tenant pays 30 percent of the tenant’s monthly adjusted family income.

To determine adjusted income, the following allowances may be given.

- \$480 allowance for each **dependent**. A dependent may not be a head of household, co-head, spouse, foster child, foster adult, unborn child, a child who has not yet joined the family, or a live-in attendant. A dependent must be younger than 18, or a person with disabilities, or a full-time student of any age. It is not necessary for a member of the family to have legal custody of a dependent in order to receive the dependent deduction.
- Allowance for **child care expense**. This may not include child support payments or expenses for the care of a handicapped or disabled family member age 13 or older. Child care may only be deducted if the care enables a family member to attend school, work, or seek employment, there is no adult in the household capable of providing the care during these times, the amount deducted is reasonable, not paid to a family member living in the household, or is not reimbursed by any other person or agency.
- Allowance for **handicap assistance expenses**. The allowance is the lesser of:
  - The amount of these expenses which exceeds 3% of annual gross income, OR
  - The employment income adult members of the household earn because the handicap assistance is available.

- Allowance for **medical expenses**. This allowance is permitted only for those households whose head or spouse is age 62 or older, handicapped or disabled. If the household has no handicap assistance expenses, the allowance is limited to the total of medical expenses that exceed 3% of annual gross income. If the household also has handicap assistance expenses, the amount is limited to the amount by which the total of the two expenses exceeds 3% of gross income.
- \$400 allowance per household if the head or spouse is **age 62 or older, handicapped or disabled**.

## 2.15 Correction to Documents

Sometimes it is necessary to make corrections or changes to documents. NDHFA will not accept a document that has been altered with correction fluid or "white-out." When a change is needed on a document, the person making the correction must draw a line through the incorrect information, write or type the correct wording or number, and have all parties initial the change.

## 2.16 Tenant Files

Owners must maintain a tenant file for each assisted unit. All permanent documents must be kept together so they are accessible at each compliance review (income certification and supporting documentation, lease/addendum, etc.). Annual recertification information, including the tenant questionnaires, release forms, verifications, and annual inspection reports must be grouped together by year, with the most recent year placed on top of the documents for review.

The tenant files must contain the following:

- Resident Eligibility Application or equivalent form.
- Acceptable verifications of income and assets.
- Verification of student eligibility.
- Tenant Income Certification (initial certification and annual recertifications).
- Signed lease agreement, HOME/HTF Lease Addendum, HUD VAWA Lease Addendum.
- Lead-based paint acknowledgements (properties built pre-1978).
- All move-out files must also contain the following:
  - Written 30-day (or greater) notice to vacate (if not available – document in file).
  - Move-out inspection report (both parties signed and dated).
  - Security deposit refund (check number and date) or letter of intent to withhold security deposit within 14 days of move-out.
  - Itemized list of costs charged to tenant within 45 days.

## SECTION 3 – COMPLIANCE MONITORING PROCEDURES

NDHFA shall perform annual monitoring reviews for all projects funded by NDHFA with HTF funds. The monitoring review shall consist of a desk review of information provided by the Owner and/or a site visit and review of documentation at the project location. At a minimum, a site visit will be performed soon after project completion and at least once every 3 years thereafter. If a project contains funding from a federal program which requires tenant income and rent restrictions and project financial requirements at least as restrictive as the HTF program, NDHFA may accept proof of compliance during the annual review of such federal program to satisfy the HTF monitoring requirement.

### 3.01 Compliance Monitoring Fees

**Late Fee:** Developments making late payment or filing required annual reports late will be assessed a \$250 late fee.

**Follow Up Inspections:** If NDHFA is required to reinspect the property due to noncompliance, management no show, or failure to properly notify the tenants of an inspection, the development will be assessed a \$150 reinspection fee plus actual costs for travel and per diem will be charged.

### 3.02 Annual Restrictions Review

Annually projects must submit reports to allow NDHFA to review. The reporting period will be 01/01-12/31 of the prior year and are **due by February** of the following year. This annual date remains the same throughout the affordability period. Non-receipt of the reports by the due date will automatically trigger the filing of a notice of noncompliance.

The Owner is **required** to submit an Annual Rental Compliance Report and an Annual Owner Certification to NDHFA **each year of the affordability period** as defined in the LURA. Both HOME and HTF have separate reports and projects with multiple funding sources will need to submit a certification under each program.

#### Annual Rental Compliance Report

Each year of the period of affordability, the project Owner shall submit to NDHFA a completed Annual Rental Compliance Report. The report shall contain information about each income and/or rent restricted unit in the project as well as tenant information for those units. The report shall also contain information about each vacant unit in the project. The project Owner shall also submit a tenant income certification for each tenant household residing in a HOME- or HTF-assisted unit. NDHFA will perform a desk review of the information provided by the project Owner in order to determine areas for further examination. NDHFA will also consult other written data during the monitoring review, such as the multifamily application, financial award, loan documents, and documentation from previous monitoring.

#### Annual Owner Certification

Each year of the period of affordability, the Owner shall submit to NDHFA a completed Annual Owner Certification. With this document, the Owner certifies that the development meets the following:

#### HTF Certification

- The development continues to comply with all HTF regulatory requirements contained in 24 CFR Part 93.
- Each HTF-assisted unit is rent-restricted as defined in the LURA.

- The Owner has conducted an initial certification for each household in an HTF-assisted unit and is retaining documentation to support that certification.
- No tenants in HTF-assisted units were evicted or had their tenancies terminated other than for good cause, and no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under Code.
- All low-income units in the project are and have been for use by the general public and used on a non-transient basis.
- No finding of discrimination under the Fair Housing Act (42 U.S.C. 3601-3619) has occurred for this project. A finding of discrimination includes an adverse final decision by the HUD Secretary, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court.
- Each building in the project is and has been suitable for occupancy taking into account local health, safety and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low-income unit in the project.
- No request for protection under VAWA has been made by any tenant of this project.
- All common areas and facilities such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings where applicable.
- If a low-income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income.
- If the income of tenants of a low-income unit in any building increased above the limits allowed under the HTF program, the next available unit was or will be rented to residents having a qualifying income.
- There has been no change in the Ownership or management of the Project.
- There has been no project-based rental assistance added to the Project since placed-in-service.

### **HOME Certifications**

- The Project continues to comply with all HOME regulatory requirements contained in 24 CFR Part 92.
- The Owner has:
  - Received, upon initial occupancy, an annual Tenant Income Certification (TIC) from each resident of a HOME-assisted unit and documentation to support that certification.
  - Annually re-certified tenant eligibility for a HOME-assisted unit by receipt of a new TIC and supporting documentation or by receipt of a tenant self-certification.
  - Verified each tenant's income source documents at least once every six years.
- Each HOME-assisted unit in the Project has been rent-restricted under the LURA and under 24 CFR Part 92.
- No tenants in HOME-assisted units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent with respect to a HOME-assisted unit not otherwise permitted under 24 CFR Part 92.
- All HOME-assisted units in the Project are and have been for use by the general public and used on a non-transient basis.

- No claim of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619, has occurred for this Project. A claim of discrimination includes an adverse final decision by HUD, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616a(a)(1), or an adverse judgment from a federal court.
- Each building in the Project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or HOME-assisted unit in the Project.
- No request for protection under VAWA has been made by any tenant of this Project.
- All common areas and facilities, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings.
- If a HOME-assisted unit in the Project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income.
- If the income of tenants of a HOME-assisted unit in any building increased above the limit allowed under the HOME program, the next available unit was or will be rented to residents having a qualifying income.
- There has been no Project-based rental assistance added to the Project since placed-in-service.
- There has been no change in the Ownership or management of the Project.

#### **Other Required Annual Compliance Records**

- Statement of Mortgage Balances, showing that payments are current.
- Property Tax Statement showing taxes are paid and current.
- Bank statements for operating reserve and replacement reserve accounts as of the end of the project fiscal year.
- Proof of sufficient property and liability insurance coverage with NDHFA listed as mortgagee.
- Documentation to show the current utility allowance is being used (i.e., a copy of the PHA utility allowance table).
- For projects that received points at initial HOME or HTF application for pledging to provide permanent supportive services to special needs populations, an affidavit attesting to the supportive services provided to the project's population during the fiscal year must be provided by the provider(s) of such services.
- Compliance monitoring fees.
- Such other information as may be requested in writing by NDHFA in its reasonable discretion.

#### **3.03 Annual Rent Approval**

Each year throughout the period of affordability NDHFA must notify property Owners of the updated HOME and HTF rent limits. HUD typically releases limits in April for HOME and July for HTF. Within 30 days of receipt of the new rent limits, Owners must submit an **annual rent approval form** detailing the current rental structure and the proposed rental structure for the following year. Requests must include the current utility allowance.

In the event rent limits decrease for an area, or utility allowances increase, an Owner may be required to reduce the rent charged but will not be required to lower rents below those in effect at the time of project commitment.

As long as rents remain below the maximum allowed in each program, an Owner may impose a rent increase no earlier than one year from the date the project was completed and no more frequently than annually thereafter.

### **3.04 Financial Oversight**

Properties with HOME funds committed on or after July 2014 and all HTF properties are required to have financial oversight by NDHFA annually. Within 120 days of the project's fiscal year, NDHFA development officer will request the following.

- Completed [Property Expense Statement](#) (SFN 61073)
- Audited project-specific fiscal year ending Statement of Income and Expenses to verify/support financial information reported within the Property Expense Statement.
- Audited project-specific fiscal year ending Year-Over-Year Balance Sheet to verify/support annual change in all project asset, liability, and equity accounts.
- Expenses related to Replacement Reserves used during the fiscal year must further be documented.
- A certified calculation of the fiscal year's Hard-Debt Service Ratio and listing of all cash-flow distributions, in order of distribution.

### **3.04 On-site Inspection**

Consists of an inspection of all buildings in the development within twelve (12) months following the year the last building in the development was placed in service (project completion) and at least once every 3 years thereafter. On-site inspections include a physical inspection of property and review of the tenant income certifications (TIC), the documentation supporting the TIC, and the rent records for the tenants. NDHFA is required to review a random sampling of at least 20% of the tenant files and multi-family units. All vacant units will be inspected to ensure they are suitable for occupancy.

NDHFA will also request the following:

- Current Rent Roll.
- Current utility allowance.
- Affirmative Fair Housing Plan.
- Tenant Selection Policy.

The selection of the files and units will be a random sample that is not available prior to the review. The units inspected will not necessarily be the tenant files reviewed. Approximately 14 days prior to the inspection a notification letter will be sent to the Owner of the property.

### **3.05 Tenant File Review Procedures**

Based on the total number of HTF or HOME- assisted units in the development, on-site tenant file reviews will consist of 20% of the tenant files. If there are serious non-compliance issues the number of units sampled may increase.

The following items will be reviewed:

- Rental Application.
- Lease Agreement.

- Student Status Verification.
- VAWA Lease Addendum.
- Move-in Inspection signed by Owner and Tenant.
- Consent and Release forms.
- Tenant Income Certification and supporting documentation/verifications for both income and assets.
- Recertification documentation.

Corrections should be made to documents with a line drawn through the incorrect item, write in the correct item and have both parties initial and date the change. White out is not acceptable.

### **3.06 Physical Inspection Procedures**

NDHFA is required to enforce property standards which ensure the housing is decent, safe, sanitary and in good repair throughout the affordability period. At a minimum, the property standards include all inspectable items and inspectable areas specified by HUD's physical inspection procedures called UPCS (Uniform Physical Condition Standards).

Housing must be free of all health and safety defects. Any life-threatening deficiencies must be corrected immediately upon discovery.

Timely corrective and remedial actions must be taken by the Owner to address identified deficiencies. Correction can be verified by providing third party documentation including work orders and receipts. A follow-up on-site inspection may occur within 12 months, or within a reasonable timeframe established by NDHFA depending on the severity of the deficiency, to verify that all observed life-threatening and safety deficiencies have been corrected.

NDHFA will conduct physical inspections of HOME and HTF-assisted housing to determine compliance with these standards and will conduct such inspections every 1 to 3 years at its sole discretion. Properties which are found to have health and safety violations will be subject to a more frequent inspection schedule.

The manager is required to notify all households at least 24 hours in advance of the physical inspection. The selection of units is random and at the discretion of the inspector.

The property Owner must annually certify that each building in the project is suitable for occupancy, taking into account state and local health, safety, and other applicable codes, ordinances, requirements, and the UPCS. Owners should refer to the Minimum Housing Rehabilitation and Property Standards manual for further information.

#### **Uniform Physical Condition Standards (UPCS)**

Housing assisted with HOME and HTF funds and which are placed in service must follow property standards which include all inspectable items and inspectable areas specified by HUD based on its physical inspection procedures, known as the UPCS as prescribed by HUD pursuant to 24 CFR Part 5, subpart G. Any and all deficiencies identified during annual compliance monitoring site visits of HTF-assisted properties must be cured. NDHFA will monitor property condition standards using the same process and procedures as for the federal LIHTC program which does not employ a scoring protocol or grade levels of deficiencies; all identified deficiencies must be corrected.

Rehabilitation projects, including adaptive reuse, must address any and all deficiencies identified in this section as part of the project's scope of work so that, upon completion, all such deficiencies are cured. For projects which include acquisition and/or rehabilitation of occupied

housing, any life-threatening health and safety deficiencies, **identified in this section in ALL CAPS**, must be addressed and corrected immediately.

Housing must be decent, safe, sanitary and in good repair. Owners must maintain such housing in a manner that meets the physical condition standards set forth in this section in order to be considered decent, safe, sanitary and in good repair. These standards address the major areas of housing: the site, building exterior, building systems, the dwelling units, the common areas, and health and safety considerations.

- **Site:** The inspectable items related to Site, such as fencing and gates, retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, market appeal, storm drainage, walkways, and steps must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulation of trash, vermin or rodent infestation, or fire hazards.

Examples of observable deficiencies for inspectable items related to Site include, but are not limited to, the following:

- Fencing and Gates, both security/safety and non-security fences and gates: damaged, falling, or leaning; holes; and missing sections.
  - Grounds: erosion; rutting areas; overgrown or penetrating vegetation; ponding or poor site drainage.
  - Mailboxes/Project Signs: missing or damaged.
  - Market Appeal: graffiti or litter.
  - Parking Lots/Driveways/Roads: Cracks; ponding; potholes; loose material; settlement or heaving.
  - Play Areas and Equipment: Damaged or broken equipment; deteriorated play area surface.
  - Refuse Disposal: Broken or damaged enclosure; Inadequate outdoor storage space.
  - Retaining Walls: Damaged, falling, or leaning.
  - Storm Drainage: Damaged or obstructed.
  - Walkways/Steps: Broken or missing handrail; cracks; settlement; heaving; spalling; exposed rebar.
- **Building Exterior:** Each building on the site must be structurally sound, secure, habitable, and in good repair. The inspectable items related to Building Exterior, which includes each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

Examples of observable deficiencies for inspectable items related to Building Exterior include, but are not limited to, the following.

- Doors: Damaged frames, threshold, lintels, or trim; damaged hardware or locks; damaged surface (holes, paint, rusting, glass); damaged or missing screen, storm or security door; deteriorated or missing caulking or seals; missing door.
- FIRE ESCAPES: BLOCKED EGRESS OR LADDERS; VISIBLY MISSING COMPONENTS.
- Foundations: Cracks or gaps; spalling; exposed rebar.
- Lighting: Broken fixtures or bulbs.

- Roofs: Damaged soffits or fascia; damaged vents; damaged or clogged drains; damaged or torn membrane; missing ballast; missing or damaged components from downspout or gutter; missing or damaged shingles; ponding.
  - Walls: Cracks or gaps; damaged chimneys; missing or damaged caulking or mortar; missing pieces, holes, or spalling; stained, peeling, or needs paint.
  - Windows: Broken, missing, or cracked panes; damaged sills, frames, lintels, or trim; damaged or missing screens; missing or deteriorated caulking, seals, or glazing compound; peeling or missing paint; SECURITY BARS PREVENT EGRESS.
- **Building Systems:** The inspectable items related to Building Systems, which includes each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, roof exhaust system, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

Examples of observable deficiencies for inspectable items related to Building Systems include, but are not limited to, the following.

- Domestic Water: Leaking central water supply; missing pressure relief valve; RUST OR CORROSION ON HEATER CHIMNEY; IMPROPER ANGLE OF OR DISCONNECTED FLUE ON WATER HEATER; water supply inoperable.
  - Electrical System: Blocked access or improper storage; burnt breakers; evidence of leaks or corrosion; frayed wiring; MISSING BREAKERS OR FUSES; MISSING OUTLET COVERS.
  - Elevators: Not operable.
  - Emergency Power: Auxiliary lighting inoperable; run-up records/documentation not available.
  - Fire Protection: Missing/disabled/painted/blocked/capped sprinkler head; missing, damaged, or expired extinguishers.
  - HVAC: Boiler or pump leaks; fuel supply leaks; general rust or corrosion; MISALIGNED CHIMNEY OR VENTILATION SYSTEM.
  - Roof Exhaust System: Roof exhaust fan(s) inoperable.
  - Sanitary System: Broken, leaking, or clogged pipes or drains; missing drain, cleanout, or manhole covers.
- **Dwelling Units:** Each Dwelling Unit within a building must be structurally sound, habitable, and in good repair. All inspectable items of the dwelling unit (e.g., the unit's bathroom, call-for-aid (if applicable), ceiling, doors, electrical systems, floors, hot water heater, HVAC, kitchen, lighting, laundry area, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

Examples of observable deficiencies for inspectable items related to the Dwelling Units include, but are not limited to, the following.

- Bathroom: Bathroom cabinets damaged or missing; lavatory sink damaged or missing; plumbing has clogged drains or faucets or leaking faucet or pipes; shower or tub is damaged or missing; ventilation or exhaust system is absent or inoperable; water closet or toilet is damaged, clogged or missing.
- Call-for-Aid (if applicable): Inoperable.
- Ceiling: Bulging, bucking, or leaking; holes, missing tiles, panels, or cracks; peeling or missing paint; water stains, water damage, mold or mildew.

- Doors: Damaged frames, threshold, lintels, or trim; damaged hardware or locks; damaged or missing screen, storm or security door; damaged surface, including holes, bad paint, rusting, broken glass, or rotting; deteriorated or missing seals on the entry door; missing door.
  - Electrical System: Blocked access to electrical panel; burnt breakers; evidence of leaks or corrosion; frayed wiring; GFI inoperable; MISSING BREAKERS OR FUSES; MISSING COVERS.
  - Floors: Bulging or buckling; hard floor covering damage; missing flooring tiles; peeling or missing paint; rotten or deteriorated subfloor; water stains, water damage, mold, or mildew.
  - Hot Water Heater: MISALIGNED CHIMNEY OR VENTILATION SYSTEM; inoperable unit or components; leaking valves, tanks, or pipes; pressure relief valve missing; rust or corrosion.
  - HVAC System: Convection or radiant heat system covers missing or damaged; inoperable system; MISALIGNED CHIMNEY OR VENTILATION SYSTEM; noisy, vibrating, or leaking system; rust or corrosion.
  - Kitchen: Cabinets are missing or damaged; countertops are missing or damaged; dishwasher or garbage disposal is inoperable; plumbing has clogged drains, leaking faucets, or pipes; range hood or exhaust fans are inoperable; excessive grease buildup; range or stove is missing, damaged, or inoperable; refrigerator is missing, damaged, or inoperable; sink is damaged or missing.
  - Laundry Area: Dryer vent is missing, damaged, or inoperable.
  - Lighting: Missing or inoperable fixture.
  - Outlets/Switches: Missing outlet or switch; MISSING OR BROKEN COVER PLATE.
  - Patio/Porch/Balcony: Baluster or side railings damaged.
  - SMOKE DETECTOR: MISSING OR INOPERABLE.
  - Stairs: Broken, missing, or damaged steps or handrail.
  - Walls: Bulging or buckling; damaged wall surface; damaged or deteriorated trim; peeling or missing paint; water stains, water damage, mold, or mildew.
  - Windows: Cracked, broken, or missing panes; Damaged window sill; Missing or deteriorated caulking, seals, glazing; Inoperable or not lockable; Peeling or missing paint; SECURITY BARS PREVENT EGRESS.
- **Common Areas:** The Common Areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.

Examples of observable deficiencies for inspectable items related to the Common Areas include, but are not limited to, the following. Common Areas include Basement, Garage, Carport, Closet, Utility or Mechanical Room, Community Room, Halls, Corridors, Stairs, Kitchens, Laundry Room, Lobby, Office, Patio, Porch, Balcony, Restrooms, Storage Areas, Pedestrian or Wheelchair Ramps, Pools and Related Structures, Trash Collection Areas, or Other Community Spaces.

- Missing or damaged balusters or side railings.
- Cabinets missing or damaged.

- Call-for-Aid system (if applicable) inoperable.
  - Ceiling: Holes, missing tiles or panels, cracks; peeling or missing paint; water stains, water damage, mold, or mildew; bulging or buckling.
  - Chutes: Damaged or missing components.
  - Countertops: missing or damaged.
  - Dishwasher or garbage disposal inoperable.
  - Doors: Damaged frames, threshold, lintels, or trim; damaged hardware or locks; damaged surface (holes, paint, rust, glass); damaged or missing screen, storm, or security door; deteriorated or missing seals on entry door; missing door.
  - Dryer Vent: Missing, damaged, or inoperable.
  - Electrical: Blocked access to electrical panel; burnt breakers, evidence of leaks or corrosion; frayed wiring; MISSING BREAKERS; MISSING PLATES OR COVERS; inoperable GFI; missing or broken outlets, switches, or cover plates.
  - Fencing: Damaged or not intact.
  - Floors: Bulging or buckling; floor covering damaged; missing flooring or tiles; peeling painted surface; rotten or deteriorated subflooring; water stains, water damage, mold, or mildew.
  - Graffiti
  - HVAC: Convection or radiant heat system covers missing or damaged; general rust or corrosion; inoperable unit or system; MISALIGNED CHIMNEY OR VENTILATION SYSTEM; noisy, vibrating, or leaking.
  - Lavatory Sink: Damaged or missing fixture.
  - Lighting: Missing, damaged, or inoperable fixture.
  - Mailbox: Missing or damaged.
  - Plumbing: Clogged drains; leaking faucet or pipes.
  - Range Hood/Exhaust Fans: Excessive grease buildup; inoperable.
  - Range/Stove: Missing, damaged, or inoperable.
  - Refrigerator: Missing, damaged, or inoperable.
  - Shower/Tub/Sink: Damaged or missing.
  - SMOKE DETECTORS: MISSING OR INOPERABLE.
  - Stairs: Broken, damaged, or missing steps or handrail.
  - Ventilation/Exhaust system inoperable.
  - Walls: Bulging or buckling; damaged surface, peeling or missing paint; damaged or deteriorated trim; water stains, water damage, mold, or mildew.
  - Water Closet/Toilet: Damaged, clogged, or missing.
  - Windows: Cracked, broken, or missing panes; damaged windowsill; inoperable or missing lock; missing or deteriorated caulking, seals, or glazing; peeling or missing paint; SECURITY BARS PREVENT EGRESS.
- **Health and Safety Concerns:** All areas and components of the housing must be free of health and safety hazards. The inspectable areas related to Health and Safety include, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, general hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have handrails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have proper certifications of such (see 24 CFR part 35).

For projects which include acquisition of occupied housing, life threatening deficiencies in areas of health and safety must be addressed and corrected immediately. Life threatening health and safety deficiencies are identified below by ALL CAPS.

Examples of observable deficiencies for inspectable items related to Health and Safety include, but are not limited to, the following.

- Air Quality: Mold and/or mildew observed; PROPANE, NATURAL GAS, OR METHANE GAS DETECTED; Sewer odor detected.
  - ELECTRICAL HAZARDS: EXPOSED WIRES; OPEN PANELS; WATER LEAKS ON OR NEAR ELECTRICAL EQUIPMENT.
  - Elevator: Elevator is misaligned with floor by  $\frac{3}{4}$  inches or more.
  - Emergency Fire Exits: EXITS BLOCKED OR UNUSABLE; missing exit signs.
  - Flammable or Combustible Material: Improperly stored and secured.
  - Garbage and Debris: Present indoors or outdoors.
  - General Hazards: Sharp edges; tripping; unsafe or missing handrails.
  - Infestation: Insects, rats, mice, or other vermin.
- **Compliance with State and Local Codes:** These physical condition standards do not supersede or preempt state and local codes for building and maintenance with which HTF-assisted housing must comply. HTF-assisted housing must continue to adhere to those codes.

NDHFA recommends using preventative maintenance and maintaining a maintenance schedule at all developments.

### **3.07 Review of Ongoing Lead-based Paint Maintenance (24 CFR 35.1355)**

All borrowers with properties built before 1978 that have not been verified as lead free by a lead inspection must institute ongoing maintenance of painted surfaces and safe work practices as part of regular building operations. This includes a visual inspection of lead-based paint annually and at unit turnover, repair of all unstable paint, and repair of encapsulated or enclosed areas that are damaged.

**Ongoing maintenance records.** Borrowers must keep ongoing maintenance records and records of relevant building operations for use during reevaluations.

Borrowers and their maintenance personnel must be trained in ongoing lead-based paint maintenance or must contract with a qualified individual or company to perform ongoing maintenance. Ongoing maintenance of lead-based paint must be conducted only by individuals who have completed a HUD- approved course on lead safe work practices, are licensed lead workers or lead supervisors, or are working under the direction of a licensed lead supervisor.

### **3.08 Correction Period**

The Owner has an opportunity to correct noncompliance within 30 days from the date of the notice. An extension of up to six months may be granted by NDHFA for good cause as determined by NDHFA

### **3.09 Quarterly Reporting**

In addition to the annual items listed in this section, Owners of HTF-assisted properties must provide NDHFA, on a quarterly basis, an **HTF Quarterly Report**, showing the total number of vacancies and the total number of households on the waiting list.

### **3.10 Non-Compliance**

If NDHFA does not receive the required certifications by the due date or if NDHFA discovers on audit, inspection, or review, or in some other manner that the development is not in compliance with the Code, NDHFA will notify the Owner within 30 days.

The Owner will have an opportunity to supply missing certifications or to correct noncompliance within a specified correction period.

If a recipient is determined to have used HOME or HTF funds in a manner that is materially in violation of the either program or of any requirements or conditions under which the funds were provided, the recipient must reimburse NDHFA for such misused amounts and return to NDHFA any such amounts that remain unused or uncommitted for use. The reimbursement is in addition to any other remedies that may be available under law. Repayment is required if affordability is violated.

Unresolved findings of non-compliance will result in a progressive level of sanctions that may include:

- Additional reporting requirements.
- Suspension of further HUD funding.
- Additional special conditions.
- Replacement of property management.
- Default of the HOME or HTF loan and recapture of funding.
- Termination of future NDHFA funding.
- Legal action.