COMPLIANCE MANUAL

Housing Incentive Fund

NORTH DAKOTA housing FINANCE AGENCY

Community Housing and Grants Management Division

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Una traducción al español de este documento está disponible a pedido.

EQUAL HOUSING OPPORTUNITY

This Housing Incentive Fund Compliance Manual has been completely rewritten and reformatted from the previous (2016) version. The changes are too numerous to list individually. Please read the manual in its entirety. Pay particular attention to Section 2: Qualification of Applicants and Section 3: Compliance Monitoring Procedures as these processes and procedures have been described in much more detail than the previous version. These changes are effective as of October 2024.

Summary of Changes

Date	Section	Description of Changes
12/12/2024	2.10	Clarification of student status
1/01/2025		Updated attachments

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ATTACHMENTS

SECTION 1: PROGRAM INFORMATION AND REGULATIONS

The Housing Incentive Fund (HIF) provides financial assistance for the development of new multifamily rental units for the benefit of low- and moderate-income households. Initially authorized by the North Dakota Sixty-second Legislative Assembly, the program was amended and expanded during the Sixty-third Legislative Assembly.

1.01 Purpose of the HIF Compliance Manual

This manual is a training and reference guide for the ongoing compliance monitoring of projects funded by the North Dakota Housing Finance Agency (NDHFA) through HIF. It is intended to answer questions regarding the procedures, rules, and regulations that govern NDHFA's compliance monitoring of HIF-funded projects. The manual should be used in conjunction with, and as a supplement to, the HIF Allocation Plan document.

1.02 Resources and Materials

NDHFA publishes compliance materials, forms and income and rent guidelines on its website at www.ndhfa.org. 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 indicates mandatory versus optional forms. If on-site management uses forms other than those provided, care should be taken to assure that the forms provide sufficient information to meet HUD 4350.3 income determination guidelines.

1.03 Period of Affordability

NDHFA will ensure long term affordability for HIF-restricted housing units by requiring that a land use restriction agreement or deed restriction be placed on HIF-assisted properties dictating affordability terms as agreed to by the project owner in the HIF loan closing documents. Typically, the term of affordability for HIF-restricted units will match the term of any private debt financing, with a minimum of 15 years.

1.04 Declaration of Land Use Restrictive Covenants (LURA)

The development owner and NDHFA must enter into an agreement pursuant to which the owner and any successors agree to meet the tenant income requirements and rent restrictions for the applicable period of affordability.

1.05 Electronic Signature

Per the N.D.C.C. Chapter 9-16, NDHFA will accept electronic records with electronic signatures from authorized individuals. Electronic documents must be printable, retainable, and stored electronically by NDHFA for their full life cycle. Owners and property managers are responsible for developing policies and procedures to ensure electronic signatures obtained meet requirements under the Uniform Electronic Transactions Act (UETA) and Electronic Signatures in Global and National Commerce Act (ESIGN).

1.06 NDHFA Staffing

The Community Housing and Grants Management Division administers HIF compliance monitoring for NDHFA. Questions regarding compliance monitoring should be directed to NDHFA's Community Housing and Grants Management compliance staff at hfacompliance@nd.gov or by calling (701) 328-8080 or (800) 292-8621.

The compliance coordinator is the overall compliance lead and is responsible for Annual Restriction Reviews, Quarterly Vacancy Reports, compliance manual updates, migrating new projects from development to compliance, and oversight of the Emphasys Compliance Portal.

The compliance specialist is responsible for Tenant File Reviews, Physical Inspections, sending compliance notices to owners/managers, and monitoring follow-up compliance.

The administrative assistant is responsible for Annual Restriction Review data entry, tracking compliance fees, and assisting with other compliance tasks as needed.

1.07 NDHFA Compliance Responsibilities

Annual Restriction Review

NDHFA will conduct an annual review for each project to determine compliance with the income and rent restrictions defined in the project's LURA, as well as other requirements described in the LURA or the applicable Allocation Plan (AP.) The review will cover the previous calendar year (1/1 through 12/31.) For more information see section 3.03.

File Monitoring and Physical Inspections

All developments will be subject to tenant file monitoring and physical inspections once every three years. NDHFA will perform a file review and physical inspection for each development within two years of the last building being placed-in-service and at least once every three years thereafter. However, NDHFA reserves the right to monitor/inspect more frequently, with or without notification to the owner. Decisions to monitor/inspect more frequently may be based on tenant complaints or NDHFA's assessment that a project is high risk.

Physical Inspections- NDHFA staff will conduct a physical inspection to ensure that the development is suitable for occupancy per the NSPIRE inspection protocol. For more information see section 3.04.

Tenant File Reviews- Information to be reviewed will include, but is not limited to, annual Tenant Income Certifications, Income Questionnaire, documentation received to support those certifications (i.e., income and asset verifications), rent and utility allowance records, leases, tenant selection plans, etc. Owners must provide organized tenant files to NDHFA with documentation in chronological order. For more information see section 3.04.

NDHFA retains the right to perform a file review and/or physical inspection of any building and/or unit at any time during the Compliance and Extended Use Periods, with or without notice to the owner.

Suspension and Debarment

NDHFA may suspend or debar entities from participation in NDHFA programs if noncompliance issues are recurring or egregious, funds are misused, an entity engages in fraudulent activity, etc. Suspension or debarment from the program may not only affect the noncompliant award, but also other awards that the entity is currently associated with. Additionally, suspension or debarment affects future applications submitted to NDHFA.

Retain Records

NDHFA will retain all compliance records for no less than three years from the end of the calendar year in which they are received. NDHFA will retain records of noncompliance or failure to certify compliance for no less than six years.

Conduct Training

NDHFA will conduct or arrange compliance training and will disseminate information regarding the dates and locations of such training to its partners.

Possible Subcontracting of Functions

NDHFA may, in its sole discretion, decide to retain an agent or private contractor to perform some of the responsibilities listed above. Owners will be notified of the name and contact persons of the contractor.

1.08 Owner Responsibilities

Each owner has chosen to utilize HIF funding to take advantage of flexible debt financing. In exchange for this benefit, certain requirements must be met. Any violation of the requirements of HIF 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 sole responsibility of the owner.

Reporting and Compliance

Throughout all phases of development, lease-up, and operation it is the owner's responsibility to provide certain information to NDHFA within the requested timeframe. Required compliance submissions will be discussed further in compliance monitoring procedures.

Record Retention

The project owner agrees to maintain sufficient records in support of their ongoing compliance with HIF regulations. The project owner will make such records available for review by NDHFA upon request. The project owner must allow full access of all files to NDHFA and must retain all documents and records according to the retention requirements described in section 3.08.

Physical Compliance of the Project

The owner is responsible for ensuring the project is suitable for occupancy, compliant with local health, safety, and building codes, compliant with local and federal regulations, and compliant with the terms of the recorded LURA.

Program Compliance and Training

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 rules, regulations, and policies that govern the development.

Ongoing compliance training is a requirement and training certifications must not be more than one year old. Proof of training is required as part of the annual compliance monitoring.

Provide Pertinent Information to Management Agent and Any Subsequent Owners

To ensure compliance, the owner should provide the management agent with copies of at least the following documents: the HIF Final Application, the Extended Use Agreement, and the AP for the year the project was awarded credits.

If there is a change in management agent, the owner is responsible for providing all information and previous tenant files to the new management company. If there is a change in ownership, the existing/previous owner is responsible for providing all award documentation and previous tenant files to the new owner.

Due Diligence

The owner is ultimately responsible for compliance and proper administration of the program and all award requirements. NDHFA expects all owners and management agents to demonstrate "due diligence," hereby defined as the appropriate, voluntary efforts to remain in compliance with all rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies.

Due diligence also includes keeping up to date with NDHFA policies by reading current NDHFA Compliance Manuals, following NDHFA updates via memos published on NDHFA's website, and attending NDHFA-sponsored training when available.

Another way in which the management agent can demonstrate a commitment to due diligence is by establishing and maintaining a consistent file order. Consistent and well-organized files make it easier for management to recognize when documentation is missing and allow for easier reviews.

If noncompliance issues are discovered, NDHFA may ask the owner and management agent to demonstrate due diligence by showing that the proper internal policies and procedures are in place to prevent noncompliance from occurring/recurring. It is understood that mistakes may occur from time to time, but it is the responsibility of the owner and management agent to have policies in place to minimize and remedy these errors.

1.09 Management Agent and On-site Personnel Responsibilities

The management agent and all on-site personnel are responsible to the owner for implementing all program requirements. All staff authorized to lease units must be trained in all federal and state laws pertinent to property management as well as all HIF rules and regulations.

Timely submission of Required Reporting Documents

The management agent must provide information, as needed, to NDHFA and submit all required reports and documentation in a timely manner. Failure to submit these requirements by their deadline may result in the assessment of late fees. See section 3.01.

Annual Compliance Training

Management agents are required to complete annual compliance training. Fair housing training alone will not satisfy the requirements; training must be provided by an industry professional. The NDHFA-sponsored compliance training fulfills the requirement. If significant or repeated noncompliance issues are discovered during compliance monitoring activities, additional training may be required.

1.10 Changes in Management Agent or Contact Information

If the owner makes a change in the management agent, there is a change of staff within the existing management agent, or if there is a change in the contact information (email, mailing address, phone number) for the ownership entity or property management agent, NDHFA must be notified within 30 days. Owner must submit a Notification of Change in Contact Information (SFN 61658) and Designation of Authorized Representative (SFN 52845) to NDHFA.

Owners must review the Noncompliant Organization listing prior to enlisting a new property management agent; a property management agent on the Noncompliant Organization listing and may not be contracted to manage another property until they have corrected all noncompliance issues.

1.11 Transfer of Ownership

NDHFA must be notified prior to the sale, or transfer of ownership, of any project. NDHFA must evaluate the project's expected liens after the transfer to determine financial feasibility and the project's ability to comply with any applicable loan agreement(s) and/or LURA(s). If NDHFA is amenable to the ownership transfer, the new owner must complete and publicly record an assumption of the program's mortgage and acknowledge understanding and willingness to comply with the program's loan agreement and LURA. NDHFA will prepare and provide all necessary documents to complete this process prior to the sale. The transfer of ownership to an individual or entity on NDHFA's list of Noncompliant Organizations is prohibited.

If the ownership transfer is approved by NDHFA, the following steps must be completed and/or provided:

- Notice of Intent to Transfer Ownership form (SFN 59468).
- Transfer Fee
    - $5000 if transfer is within five years of placed-in-service date.
    - $500 if transfer is beyond five years of placed-in-service date.
    - There is no fee for a partial change in the underlying organization of the ownership entity such as the replacement of the limited partner.

In addition, the following fully executed documentation must be received no later than 30 days after the transfer. Half of any transfer fee will be refunded after NDHFA has received all required transfer information and documentation.

For changes in an LLC Owner or Partnership's General Partner, submit the appropriate document(s):

- Copy of new owner's applicable Partnership Agreement or Operating Agreement.
- Copy of all organizational documents for all Owner-related entity(ies).

For a transfer which includes the sale of the project also provide:

- Copy of the Purchase Agreement
- Copy of the recorded deed transferring ownership of the real property to the new owner or copy of a Title Policy indicating ownership.
- Copy of the closing settlement statement showing sources and uses of funding.

NDHFA will conduct an on-site inspection and compliance review following a transfer of ownership to establish a "baseline" of the physical condition of the project and the state of tenant files and compliance documents.

1.12 Casualty Loss

The owner is responsible for reporting 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. Failure to do so may result in a repayment of HIF funds.

1.13 Vacant Units

Vacant low-income units must be made suitable for occupancy as soon as possible to allow for immediate occupancy of an eligible applicant. NDHFA will allow a reasonable period to clean a vacated unit or repair damages caused by a prior tenant. Reasonableness will be determined dependent on situational facts, but typically no more than 45 days. Units determined to be unsuitable for occupancy in a reasonable timeframe will be considered out of compliance.

1.14 Income Restrictions

HIF units may be income restricted to 140% of average median income (AMI), 80% AMI, 50% AMI or 30% AMI. Refer to your loan agreement and LURA for the specific income restrictions in place for your project.

1.15 Rent and Fees

All HIF-restricted units are subject to maximum allowable tenant-paid rent limits. A unit's specific maximum rent amount is determined based on the county in which the project is physically located and the bedroom count of the unit. Rent limits are published annually by NDHFA immediately following the publication of HUD's current fiscal year income limits.

Gross Rent

Gross rent is defined as the portion of rent paid by the tenant plus a utility allowance and any non-optional fees. Gross rent does not include rental assistance payments. The utility allowance is used to cover any utilities a resident is required to pay other than telephone, cable, or internet, unless the fee charged by the owner for telephone, cable or internet is not optional. Utility allowance procedures are described in detail in the utility allowance. Gross rent must not exceed the applicable maximum rent as listed on the income and rent table in effect for the county in which the property is located as of the date of household certification.

Rent Increases

Rent increases during term leases are prohibited.

Fees (In Addition to Rent)

Generally, fees for facilities or services may be charged to residents in addition to gross rent only if all the following statements are true:

- The facilities or services are optional.
- There is a reasonable alternative to using these facilities or services.

For example, if an owner offers washers and dryers in the units for an additional fee, an alternative such as laundry facilities at the building must be provided.

Allowable Fees Not Included in Gross Rent

- Application fees that do not exceed the actual out-of-pocket costs for checking tenant qualifications such as income, rental history, credit history and criminal history.
- Refundable fees such as security deposits.
- Late fees.
- Pet deposits, rents, and fees.
- Use of optional areas such as reserved parking, garage, or storage unit.

Allowable Fees Included in Gross Rent

- Month-to-month lease fees
- Renter's insurance premium: The owner is required to obtain proof of the insurance. The actual monthly premium must then be included as a mandatory fee in the gross rent calculation. Failure to include the actual premium could result in a tenant paying over the maximum gross rent and impact the unit's eligibility for HIF.

Any fees charged to the resident must be reasonable and in line with those charged by similar properties.

Disallowed Fees

The following fees may **not** be charged.

- Waiting list fees.
- Nonrefundable redecoration fees.
- Unit transfer fees/utility transfer fees.
- Fees for preparing a unit for occupancy.
- Deposits or monthly pet rent fees for service animals.
- Fees for work involved in completed the Tenant Income Certification or other program specific documentation, such as verifications.

If there is any question about whether a specific fee is allowed, contact NDHFA's compliance coordinator.

Overcharged Gross Rent

Gross rent, as previously defined in this section, may not exceed the maximum rent limit. In addition, charge-backs of concessions (for example, a move-in special) may not raise the gross rent above the maximum rent limit for any given month. In the event an owner overcharges gross rent, the affected unit is out of compliance. The noncompliance is corrected when the resident-paid rent plus utility allowance is adjusted and is less than or equal to the applicable maximum rent limit.

Further, NDHFA requires owners to refund excess charges to the resident within 15 days of the day the overcharged rent is discovered. The refund must be issued in a single payment or credit and NDHFA must receive verification the refund has been issued.

1.16 Utility Allowance Procedures

An allowance for the cost of any utilities, other than telephone, cable television or internet, paid directly by the tenant(s) and not by or through the owner of the building, is included in the computation of gross rent. The maximum rent paid by the tenant must be reduced by the utility allowance.

Public Housing Authority (PHA) Method

An owner may obtain a utility allowance from the PHA that has jurisdiction in the county in which the project is located. The estimate is obtained when the building owner receives, in writing, information from the PHA providing the estimated per-unit cost of the utilities for units of similar size and construction for the geographic area in which the building is located.

Engineer Method (Energy Consumption Model)

For a more accurate, project-specific utility allowance, an owner may hire a properly licensed engineer or a qualified professional to perform an energy and water and sewage consumption and analysis 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 building owner must have the calculations performed by a certified/licensed engineer or other state agency approved qualified professional. One of the requirements of using such an engineer/licensed professional is that the engineer is unrelated to the building owner. The data in this option is also limited to no more than the 12-month period ending no earlier than 60 days prior the implementation of the utility allowance. The building owner will bear all costs if this option is chosen.

Sub-Metering

Sub-metering measures tenants' actual utility consumption and tenants pay for the utilities they use. A sub-metering system typically includes a master meter, which is owned or controlled by the utility supplying the electricity, gas, or water, with overall utility consumption billed to the building owner. In a sub-metered system, building owners (or their agents) use unit-based meters to measure utility consumption and prepare a bill for each residential unit based on consumption. The building owners (or their agents) retain records of resident utility consumption, and tenants receive documentation of utility costs as specified in the lease.

Annual Updates

Utility allowances must be reviewed at least once each calendar year by the building owner 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 and utility allowances such as building updates and energy conservation measures. Building owners are required to maintain records of all utility data received.

1.17 Rent and Income Limit Publication

NDHFA publishes income and rent limits, based on area median income for developments receiving HIF funding. NDHFA will provide updated limits as made available by HUD. The owner is ultimately responsible for using the correct income and rent limits.

1.18 Unit Transfers

When a current qualifying household in a HIF unit transfers to another unit within the project, the newly occupied unit adopts the status of the vacated unit, and the vacated unit adopts the former status of the newly occupied unit. In other words, the two units swap their status with one another. The result is that the household simply transfers and is not required to be certified as a new move-in. However, a unit transfer TIC is required to document the changes regarding the rent, utility allowance, and set-aside.

1.19 Minimum Lease Terms

The initial lease for a HIF unit must be for a term of six months or longer. After the initial six-month term, renewal lease terms may be month-to-month.

1.20 Tenant Selection Plans

All developments must have a written Tenant Selection Plan that describes the HIF eligibility requirements and the screening policies implemented by management. NDHFA will review the Tenant Selection Plan during the pre-lease process as well as during tenant file reviews.

There are no state requirements in HIF regarding criminal or credit background checks, landlord references, or a minimum income necessary for occupancy. Implementation of these selection criteria is up to owner/management discretion, as long as the screening criteria are applied equally to all applicants and do not violate any Fair Housing or related regulations. Screening criteria must also comply with the requirements of any other funding sources.

Owners implementing criminal background checks must ensure that such screening policies do not violate Fair Housing. Tenant selection plans and screening criteria must be established in compliance with HUD's "Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate Related Transaction" notice issued on April 4, 2016. Per that notice, arrest records are not sufficient basis for denying an application. Conviction records may be used for tenant screening, but "a blanket prohibition on any person with any conviction record- no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then" is not permissible. Tenant selection policies must "accurately distinguish between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not" and must "take into account the nature and severity of an individual's conviction."

Additionally, there are no regulations governing citizenship requirements for HIF tenants. Since the Fair Housing Act does not prohibit discrimination based solely on citizenship status, owners may ask applicants to provide documentation of citizenship or immigration status as part of the screening process. If the owner chooses to implement such a policy, the screening criteria must be established in writing and applied in a uniform, nondiscriminatory fashion with caution to avoid any discriminatory impact based on Fair Housing protected classes- particularly race, color, or national origin. Owners should be aware that other housing programs (such as Section 8, other HUD programs, or RD programs) may have stricter citizenship requirements that must be followed if the project has additional funding sources.

Because many of these tenant selection criteria are left to the discretion of the owner, it is required that each development implements a written Tenant Selection Plan. This document must be made available to all applicants and tenants and will be reviewed by NDHFA during file reviews.

At a minimum, a Tenant Selection Plan must include the following:

A. Occupancy standards in effect (how many tenants can live in a unit based on size of the unit).

B. Program eligibility factors, including income limits and student status eligibility.

C. Any minimum income requirements imposed by management, if applicable. Minimum income requirements may not be applied to applicants with tenant-based rental assistance or for units with project-based rental assistance. While a minimum income requirement may be imposed, the tenant selection plan cannot require all applicants to be employed as this could have a disparate impact under Fair Housing.

D. Any citizenship requirements imposed by management or required by another funding source, if applicable.

E. Specifics on the information that is analyzed when performing credit checks, criminal background checks, and previous landlord references. Management should clearly spell out what findings constitute a rejection of application. Criminal background check policies must comply with the 2016 HUD Office of General Counsel guidance as described above.

F. Explanation of the application and waiting list process, including a process through which an applicant is notified in writing of rejection and can then choose to appeal the rejection decision.

G. Explanation of the transfer policies in effect.

H. Breakdown of any special preferences set aside at the project (e.g., units reserved for special needs populations) **including Essential Service Workers**.

I. Housing for Older Persons Act (if there is an age restriction on the project).

J. List of any other relevant items used in considering the household's eligibility for occupancy.

When creating a development's Tenant Selection Plan, the owner must be careful to follow nondiscrimination requirements including Fair Housing and the HUD guidance on criminal background checks, and applicable local occupancy standards.

With the exception of accessible units, all units should be leased on a first-come first-served basis with tenants selected in chronological order from the waiting list.

1.21 Essential Service Workers

An essential service worker (ESW) is an individual employed in one of the following categories:

- City government
- County government
- Tribal government
- State of North Dakota
- Public school district
- North Dakota National Guard
- Medical facility
- Childcare provider (not a home-run daycare)
- Grocer
- Farming operation
- Other employer as determined by NDHFA as an essential public service

HIF regulations require that property managers determine employment eligibility for applicants of HIF-restricted ESW units by obtaining written employment verification. Property managers may develop their own verification procedures provided that they collect source documentation, and that this documentation is sufficient for NDHFA to monitor program compliance.

A household residing in a HIF-restricted ESW unit, and which was determined eligible at the time of initial occupancy, is not subject to eviction from that unit solely because of a change in employment. However, the next available vacant unit in the project must be filled by an income-eligible ESW household.

1.22 Reasonable Accommodation and Modification Procedure

NDHFA strongly advises all owners to have a written policy describing how they will handle requests for reasonable accommodation and modifications. The main steps are outlined below. In this context, "owner agent" means the person receiving the request for a reasonable accommodation or modification, most likely the on-site management agent:

A. Resident or a family member or someone else acting on the resident's behalf makes a request for an accommodation or modification. A request can be made either orally or in writing. If this request is made orally, the owner agent should document the nature of the request and the date and time received.

B. Owner agent verifies the need only if (1) the disability is not obvious, (2) if unsure if the disability is permanent or temporary, and/or (3) if unsure how the request relates to the need (i.e., does not understand correlation between the person's needs and the request made). The form used to request verification cannot ask specific information about the nature of a person's disability. The purpose of verification is to verify that the person meets the Fair Housing Act definition of disability and that the requested accommodation or modification is necessary for that person's equal opportunity to enjoy and use the housing.

C. If verification supports the need, then the owner agent must take the necessary steps to provide the accommodation or modification. An undue delay is noncompliance and is treated in the same manner as a denial.

D. If verification does not support the need, then the owner agent should schedule an interactive meeting with the resident to request clarifications and attempt to achieve a mutually acceptable resolution of the issue. The owner agent should carefully explain the concerns or questions related to the request and, if applicable, why the request is being denied.

E. Document the tenant file with all related information.

1.23 Vacant Units

If a HIF unit in the project becomes vacant during the year, the owner must make reasonable attempts to rent that HIF unit, or the next available unit of comparable or smaller size, to income-qualifying tenants before any other units in the project are rented to tenants that do not income-qualify. Owners must also attempt to make the unit ready for occupancy within a reasonable time.

Attempts to lease the HIF units must be documented and the documentation kept on file for a minimum of three years.

1.24 Exception Requests

Properties may request an exception to allow an ineligible household to occupy a HIF unit on a case-by-case basis if the property is experiencing difficulty in finding households that meet both income and ESW requirements. Rent restrictions still apply to households who have received an exception.

NDHFA will not approve an exception of BOTH of the eligibility requirements (income and ESW) but will consider excepting one of the restrictions. For example, if you have an income eligible, non-ESW applicant, you may request an exception for the ESW restriction from NDHFA. If there is an over-income, ESW applicant, you may request an exception for the income restriction.

Approval of exception requests is not guaranteed. The owner or manager must supply the following information to NDHFA when requesting an exception:

- The overall vacancy rate of the project (HIF and market-rate units included)
- The length of vacancy for the specific unit for which the exception is requested

- Applicant information including:
  - Name of head of household
  - Number of household members
  - Annual income
  - Occupation
  - Anticipate move-in date
- Evidence of marketing efforts targeted at HIF eligible applicants

This information should be emailed to the NDHFA compliance coordinator, who will provide an approval or denial email as soon as possible. If approved, a copy of the email is to be kept in the tenant file for future file audits.

1.25 Employee Units

Units occupied by full-time resident managers or other full-time on-site employees that are necessary for the operation of the project are not considered residential rental units. The owner of a project with an employee unit may choose to require the employee to pay rent and utilities.

In a 100% HIF project, employee or common units no longer needed must be converted to HIF at the project's highest HIF restriction level.

1.26 Good Cause Eviction and Rent Increase Protection

Owners of HIF properties are prohibited from the following actions:

A. Evicting a household from a HIF unit or terminating their tenancy within the lease term other than for "good cause." The owner determines what "good cause" is in the lease. NDHFA recommends consulting legal counsel for further advice.

B. Increasing the gross rent of a HIF unit in a manner not permitted by HIF.

1.27 Reserve Accounts

All projects are required to maintain replacement and operating reserve accounts. Owners should refer to the loan agreement for specific reserve account guidance.

Replacement Reserve

The project will be required to fund a replacement reserve account, accounted for separately from the project's operational funds, in a federally insured financial institution or BND, to be adequately funded for the entirety of the project's affordability period.

The replacement reserve account cannot be used for operations, routine maintenance, or upkeep expenses. It is to be used for the replacement of short-lived capital assets including, but not limited to, the replacement of a roof, window(s), heating system, parking surfaces, and/or similar capital assets. Approval must be received from the agency prior to any decrease in the fiscal year-end's replacement reserve account's minimum balance.

The annual minimum contribution to the replacement reserve account is based on a per unit amount ($300 - $400/unit), refer to the applicable Allocation Plan and your loan agreement to determine the amount due per unit for the project. The minimum annual contribution to the replacement reserve account shall increase at a rate of 3% per year during the affordability period.

The replacement reserve should be funded monthly, but no less than annually.

Operating Reserve

At or prior to the issuance of any held-back funds, as described in the HIF Allocation Plan, the project must fully fund an operating reserve account, set aside in a federally insured financial institution or BND, to be adequately funded for the entirety of the project's affordability period. The initial funding balance of this account shall be an amount equal-to, or greater-than, the sum of two months of each: project's reasonable annual operating expenses and annual hard debt-service as determined by the Multifamily Application Exhibit A executed in conjunction with the HIF loan's closing. Refer to your loan agreement for your project's minimum operating reserve requirements.

Operating reserve funds are encouraged to be accounted for separately from other operational funds.

SECTION 2: QUALIFICATION OF APPLICANTS

Applicants for HIF units should be advised early in their initial visit to the property that there are maximum income limits that apply to the units. Management should explain to potential tenants that the anticipated income of all adult persons (and the unearned income of minors) expecting to occupy the unit must be verified prior to occupancy (with the exception of foster adults, foster children, and live-in aides.)

2.01 The Application

A fully completed 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 income and assets. NDHFA encourages the use of the sample Rental Application form. 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 4350.3 standards. It is recommended that roommates complete separate applications.

After the household completes the application, the owner/manager must verify all income and assets. After all income and assets have been verified, the owner/manager must then complete the Tenant Income Certification (TIC). The TIC must be signed and dated by both the tenant(s) and owner/manager and a copy retained in the tenant file. 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 in a HIF unit must be certified and under lease.

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 Leases and HIF Lease Rider

NDHFA's HIF Lease Rider is required to be incorporated into each lease as part of the initial lease packet and, if renewal leases are used, at renewal. Acceptable substitutes may include language within the lease or an owner-prepared lease addendum, either of which must contain similar language to the NDHFA-provided addendum and be approved by NDHFA prior to use. If leases are automatically renewed, a new lease addendum is not required because the original lease addendum tied to the original lease remains in effect.

2.03 Determining Household Size

The owner/agent must consider all individuals who will reside in the unit to determine the appropriate household composition and family size for purposes of occupancy standards and income limits.

According to HUD guidance, "household members" include all persons (adult and children) authorized to reside in the unit for the purpose of occupancy standards; "family members" are persons counted for income limit purposes as well as occupancy standards.

To this end, the following are considered household members for occupancy standards only. They are not included to determine the applicable income limit:

A. Foster children

B. Foster adults

C. Live-in aides and their children

D. Guests

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

A. Children temporarily placed in a foster care home away from the household and are expected to return.

B. Children present at least 50% of the time, as mandated by joint custody arrangements.

C. Children who are away at school but return to the household during school recesses.

D. Unborn children.

E. Children in the process of being adopted.

F. Family members temporarily absent due to military service or an out-of-state job assignment.

G. Children of deployed military personnel.

H. Family members in rehabilitation facilities or hospitals for a limited time period or longer.

I. 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.

2.04 Annual Income

Annual income is defined as the gross amount of earned and unearned income to be received by all adult family members (18 years of age and older, including full-time and part-time students) and the gross unearned income of minor family members during the 12 months following the date of certification or recertification.

The owner agent must generally use current circumstances to anticipate income. However, if information is available on known changes expected to occur during the year, the owner must use that information to determine the total anticipated income.

Whose income and assets are counted?

Family Members	**Employment Income**	**Unearned/Asset Income**
Head of Household	Yes	Yes
Spouse/Co-Head	Yes	Yes
Other Adult	Yes	Yes
Dependents (under age 18)*	No	Yes
Full-Time Dependent Student **	See Note Below	Yes
Temporarily Absent Member	Yes	Yes
Temporarily Absent Military	Yes	Yes
Member permanently living in hospital or nursing home***	See Note Below	See Note Below
Household Members		

Live-in Aide, foster children, foster adults, guest, co-signors, etc.	No	No

*Emancipated minors who are not head, spouse, or co-head are considered dependents.

**If a full-time student over 18 is a dependent of the household, only a maximum of $480 (adjusted by inflation) of earned income is included in annual household income.

***A household has the right to decide if a person permanently confined to a hospital or nursing home will be included as a household member. If the individual is included as a household member, their income must be certified and included, but they may not be designated as head, co-head, or spouse.

A. Nonrecurring income: Income that is not recurring is **not counted** as income. Examples of income that is considered nonrecurring and thus excluded include:

   1. Payments from the U.S. Census Bureau for employment lasting no longer than 180 days and not culminating in permanent employment.
   2. Direct federal or state payments for economic stimulus or recovery.
   3. Tax refunds or tax credits.
   4. Gifts for significant life events or milestones (holidays, birthdays, weddings, baby showers, etc.).
   5. Lump sum additions to net family assets, including lottery or contest winnings.
   6. Non-monetary, in-kind donations such as food, clothing, or toiletries received from a food bank or similar organization.
   7. Nonrecurring payments made to the family or to a third-party on behalf of the family to assist with utilities or eviction prevention.
   8. Security deposits to secure housing.
   9. Payments for participating in research studies (depending on the duration).
   10. Other general one-time payments.

B. Sporadic or seasonal income: The owner must use reasonable judgment to determine the most reliable method of calculating income in scenarios where income fluctuates, such as when income is received as an independent contractor, day laborer, or seasonal worker.

   1. A day laborer is defined as "an individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future."
   2. An independent contractor is defined as "an individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code federal income tax requirements and whose earnings are consequently subject to the Self-Employment tax."
      a. Individuals with "gig income", such as babysitters, rideshare or app-based delivery drivers, or others who earn income through any app, website, or digital platform, typically fall into the category of independent contractors.
   3. A seasonal worker is defined as "an individual who is: (1) hired into a short-term position (e.g., for which the customary employment period for the position is six months or fewer); and (2) employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the employer or industry." Examples include employment linked to holidays, agricultural seasons, lifeguards, ballpark vendors, snowplow drivers, etc.

Such income does not meet HUD's definition of "nonrecurring" and must be counted as income. If income cannot be determined using current information, the owner may anticipate income based on the actual income that was earned within the last 12 months prior to the income determination. However, the previous year's income should not be used if information is available that shows the situation has changed.

Note that income limits are based on *gross annual income, not adjusted annual income*. Allowances commonly used in some federal housing programs, like childcare allowance, elderly household allowance, dependent allowance, handicapped assistance allowance, medical deductions, etc., are not permitted to be subtracted from the household's gross annual income to determine income eligibility for HIF units.

Income Inclusions and Exclusions

Any income source specifically not excluded must be included. Please refer to 24 CFR 5.609 (b) and (c) (Attachment A) for specifics. You will find the most current version of this regulation on NDHFA's website.

2.05 Assets

Net Family Assets Defined

Net family assets are defined as the net cash value of all assets owned by the family (except necessary personal property and specifically excluded assets), after deducting reasonable costs that would be incurred to dispose of real property, savings, stocks, bonds, and other forms of investment.

There are three types of assets:

A. Real property is included in net family assets. Real property includes land or a home.

B. Necessary personal property is excluded from net family assets. Necessary personal property includes (1) items essential to the family for the maintenance, use, and occupancy of the premises as a home, (2) items necessary for employment, education, or health and wellness, (3) items that assist a household member with a disability or that may be required for a reasonable accommodation for a person with a disability, and (4) personal effected including items that are convenient or useful to a reasonable existence and that support and facilitate daily life within the home.

C. Non-necessary personal property includes bank accounts, other financial investments, luxury items, and other items not counted as necessary personal property. Non-necessary personal property is treated as follows:

   1. If combined value > $50,000 (adjusted by inflation) include in net family assets.

   2. If combined value < $50,000 (adjusted by inflation) exclude from net family assets, but actual income from the assets is still included as income.

   See Table F1 from HUD Notice H 2023-10/PIH 2023-27 (copied below) for examples of necessary personal property versus non- necessary personal property.

Necessary Personal Property	Non-Necessary Personal Property
• Car(s)/vehicles(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter) • Furniture, carpets, linens, kitchenware • Common appliances • Common electronics (e.g., radio, television, DVD player, gaming system) • Clothing • Personal effects that are not luxury items (e.g., toys, books) • Wedding and engagement rings • Jewelry used in religious/cultural celebrations and ceremonies • Religious and cultural items • Medical equipment and supplies • Health care related supplies • Musical instruments used by the family • Personal computers, phone, tablets, and related equipment • Professional tools of trade of the family, for example, professional books • Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities • Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment)	• Recreational car/vehicle not needed for day-to-day transportation (campers, motorhomes, travel trailers, all-terrain vehicles (ATVs) • Bank accounts or other financial investments (e.g., checking account, savings account, stocks/bonds) • Recreational boat/watercraft • Expensive jewelry without religious or cultural value, or which does not hold family significance • Collectibles (e.g., coins/stamps) • Equipment/machinery that is not used to generate income for a business • Items such as gems/precious metals, antique cars, artwork, etc.

The market value of an asset is its dollar value on the open market. The cash value of an asset is the market value minus reasonable expenses incurred to convert the asset to cash, including for example:

- Penalties or fees for converting financial holdings. Any penalties, fees, or transaction charges incurred when an asset is converted to cash are deducted from the market value to determine its cash value.
- Costs of selling real property. Settlement costs, real estate transaction fees, payment of mortgages/liens against the property, and any legal fees associated with the sale of real property are deducted from the market value to determine equity in real estate.

If an asset is not effectively owned by an individual, do not include it as a household asset. An asset is not considered “effectively owned” by an individual when the asset is held in the individual’s name but the asset and income it earns accrue to the benefit of someone else who is not a member of the family, and that other person is responsible for taxes on income generated by the asset.

NOTE: Some income sources (including benefits such as Social Security) are being paid onto special pay cards/prepaid debit cards instead of through direct deposit into a checking or savings account. These cards are included as assets and are verified in the same way as a checking or savings account. A current balance must be provided and included as an asset in addition to the benefit income being counted as income. This balance can be obtained through an online account service, a paper statement, or an ATM balance.

Disposed of Assets

Assets disposed of for less than fair market value are included as assets for a period of two years from the date of disposal. The amount to be included as an asset is the difference between the cash value of the asset and the amount that was actually received (if any) in the disposition of the asset. This rule only applies if the difference between the cash value and the amount received is greater than $1000.

Assets disposed of for less than fair market value as a result of foreclosure or bankruptcy or those lost through a separation or divorce settlement are not included in this calculation.

Jointly Owned Assets

If assets are owned by the household and one more individuals outside of the household, the owner agent must include the total value of the asset in the calculation of net family assets unless (1) the asset is specifically excluded, (2) the household can demonstrate that the asset is inaccessible to them, or (3) the household cannot dispose of any portion of the asset without the consent of another owner who refuses to comply. If the household has access to only a portion of the asset, then only that portion's value is counted in the calculation of net family assets.

If the household member is a beneficiary who is entitled to access the account's funds only upon the death of the account's owner, and may not otherwise draw funds from the account, then the account is not counted as an asset for the household.

Assets with Negative Equity

The value of real property or other assets with negative equity is considered $0 for purposes of calculating net family assets.

Excluded Assets

The following are excluded from net family assets. Any asset source not specifically excluded must be included in net family assets.

A. The value of necessary items of personal property.

B. The value of non-necessary items of personal property with a combined value < $50,000 (adjusted by inflation). However, actual income earned from such assets is still included as income.

C. The value of any account under a retirement plan recognized as such by the IRS, including Individual Retirement Accounts (IRAs), employer retirement plans such as 401(k) or 403(b) plans, and retirement plans for self-employed individuals.

D. The value of real property that the household does not have the effective legal authority to sell. Examples include co-ownership situations where one party cannot unilaterally sell the real property (including situations where one owner is a victim of domestic violence), property tied up in litigation, or inherited property in dispute.

E. Amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a household member arising out of law that resulted in a member of the family being a person with disabilities.

F. The value of any Coverdell education savings account under Section 530 of the Internal Revenue Code, the value of any qualified tuition program under Section 529 of the Internal Revenue Code, and the amounts in, contributions to, and distributions from an Achieving a Better Life Experience (ABLE) account under Section 529A of such code.

G. The value of any "baby bond" account created, authorized, or funded by the federal, state, or local government (money held in a trust by the government for children until they are adults).

H. Interests in Indian trust land.

I. Equity in a manufactured home where the family receives assistance under 24 CFR Part 982.

J. Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR Part 982, Family Self-Sufficiency accounts.

K. Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.

L. The full amount of assets held in an irrevocable trust.

M. The full amount of assets is held in a revocable trust where a member of the household is the beneficiary, but the grantor/owner and trustee of the trust is not a member of the household.

Subtraction of Federal Tax Refunds or Refundable Tax Credits

Amounts received in the form of a federal tax refund or refundable tax credit are excluded from net family assets.

If a tax refund was received during the previous 12-month period preceding the effective date of certification, then the amount of the refund must be subtracted from the total value of the account into which it was deposited. If the subtraction results in a negative number, the balance of the asset is considered $0. When calculating this amount, the owner agent must use the refund amount actually received, not an amount anticipated.

Asset Income

A. Actual Income from Assets

The income generated by an asset, such as interest or dividend payments. Actual income from assets is always included in annual income, regardless of whether the asset itself is included or excluded from net family assets, unless the income is specifically excluded.

B. Imputed Income from Assets

Imputed income must be calculated for specific assets (not all assets) when three conditions are met:

1. The value of net family assets exceeds $50,000 (adjusted by inflation).
2. The specific asset is not specifically excluded.
3. Actual asset income cannot be calculated for that specific asset.

If actual income from asset can be computed for some assets but not all, the owner agent must add up the actual income from assets for those assets where actual income can be calculated and then calculate imputed income just for those assets where actual income cannot be calculated.

4. Imputed income is calculated using the passbook rate.
5. HUD will calculate a new passbook rate each July.
    a. Find the current rate at: https://www.huduser.gov/portal/datasets/inflationary-adjustments-notifications.html.

Asset Inclusions and Exclusions

Please refer to 24 CFR 5.609 (b) and (c) (Attachment A) for specifics on asset inclusions and exclusions. You will find the most current version of this section on NDHFA's website.

2.06 General Verification Requirements

Generally, the HIF program uses HUD Handbook 4350.3, Chapter 5, for guidance in determining how to count and calculate income and assets.

Annual income is the gross income a family anticipates it will receive in the 12-month period following the effective date of the certification of income. The effective date at move-in is the date the household takes possession of the unit.

To qualify residents, NDHFA's policy is to use the highest income (i.e., most conservative) scenario to determine household income. The maximum potential household income must be considered first to ensure the household qualifies for the unit. When maximum potential household income would put an applicant over the income limit, **and** there is credible documentation to confirm that the maximum estimate is unrealistic, a realistic amount that is less than the maximum potential may be used to qualify a household. Files should be well documented to reflect this scenario.

Methods of Verification

Owner agents must follow HUD's verification hierarchy*, which lists verification documentation from most acceptable to least acceptable. The owner agent must demonstrate efforts to obtain third-party verification prior to accepting self-certification, except in instances where self-certification is explicitly allowed (i.e., when net assets do not exceed $50,000 adjusted by inflation).

Level	Verification Technique	Ranking/Order of Acceptability
5	Upfront Income Verification (UIV) using non-EIV system- e.g., The Work Number, web-based state benefit systems, etc.	Highest
4	Written third-party verification from the source *provided by the tenant*- e.g., paystubs, bank statements, benefit letters, etc.	High
3	Written, third-party verification form	Medium- use if applicant or tenant is unable to provide Level 4 documentation
2	Oral, third-party verification	Medium
1	Self-certification (not third-party)	Low- use as last resort if unable to obtain any third-party verification or use when specifically permitted such as when net assets do not exceed $50,000 (adjusted by inflation)

**Adapted from Table J2: Verification Hierarchy from HUD Notice H 2023-10 / PIH 2023-7. Note: Level 6 EIV has been removed from this chart as it is not applicable to the HIF program.*

NDHFA looks for the following methods of verification, in order of preference:

A. **Third-party verification documents that are prepared by third parties and supplied by the household**

1. Earned Income: Defined as income or earnings from wages, tips, salaries, or other employee compensation and net income from self-employment.
    a. Upfront Income Verification (UIV) such as Equifax's Work Number.
    b. Paystubs: Minimum of the two most recent and consecutive. (Two months most recent and consecutive required for HOME units).
        i. Military Pay stubs are called Leave and Earning Statements (LES).
    c. Verification of Employment forms completed by the employer.

   d. Independent Contractors should provide an IRS "Schedule C" (profit or loss from business), W-1099, or earning statement from the web-based platform (gig income).

2. Unearned Income: Social Security, SSDI, SSI, pensions, veteran benefits, retirement accounts, unemployment, workers' compensation, TANF and any other "transfer (benefit) payment"
   a. Statement or benefits/award letter supplied by the household.
      i. The cost-of-living adjustment (COLA) should be factored in when anticipating household income. The COLA for veterans is equal to the COLA for Social Security (Veterans' COLA Act of 2023.) Find the current COLA at: https://www.ssa.gov/oact/cola/latestCOLA.html.
   b. Verification forms completed by third parties, when the above are not available.
   c. If a household member is not employed and receives unearned income the member must complete a Non-Employment Affidavit in addition to verification of the unearned income.
3. Child or Spousal Support
   a. HOTMA Implementation Guidance specifically states that "child support or alimony must be based on the payments received, not the amounts to which the family is entitled by court or agency orders. The actual amount received must be verified to annualize income. A copy of a court order or other written payment agreement may not be sufficient verification since that order would demonstrate the amount the household is entitled to, not the amount they are receiving."
4. Assets
   a. Financial statements, real estate listings, mortgage deeds, or similar documentation
   b. Verification forms completed by a financial institution when the above are not available or don't provide the necessary information.

B. **Public Housing Authority Verification of Household Income**

A Housing Choice Voucher (HCV) is a form of tenant-based Section 8 rental assistance provided by a local Public Housing Authority (PHA) to individual households. It is the gross income that is used before any adjustments that the PHA may make to calculate rent. If documentation is received by an owner/agent from the PHA stating the household's income and composition, the documentation is considered third party verification. The HUD 50058 certification form may be used as verification of income for HIF income certification. If it is not possible to obtain the 50058 from the PHA, a signed statement from the PHA indicating all household members and the household's gross annual income may also be used to verify income. There is a sample form for this purpose on NDHFA's website.

The 50058 only serves as verification of income. Other paperwork such as an application, student status paperwork, and a TIC must also be included in the file. Student financial assistance income is covered in the PHA verification of income. However, such verification does not address HIF student eligibility status. Separate student eligibility verification must still be obtained.

Because the HUD Form 50059 used for Section 8 Project Based Rental Assistance is not signed by a PHA representative, the *Form 50059 cannot be used as income verification*.

Furthermore, the HIF program cannot accept the Enterprise Income Verification (EIV) system used by Section 8 to verify income. EIV documentation must be kept in a separate file from the HIF verifications so that it is completely inaccessible to the NDHFA reviewer.

C. **Safe Harbor Income Determination for "Means-Tested" Assistance**

In lieu of conducting their own income calculation, the owner agent may rely on the income determination completed for another “means-tested” form of federal public assistance within the previous 12-month period. Approved “means-tested” programs are as follows:

1. Temporary Assistance for Needy Families (TANF)
2. Medicaid
3. Supplemental Nutrition Assistance Program (SNAP)- e.g., food stamps
4. Earned Income Tax Credit (EITC)
5. Low Income Housing Tax Credit (LIHTC)
6. Special Supplemental Program for Women, Infants, & Children (WIC)
7. Supplemental Security Income (“SSI”)
8. Other programs determined by HUD to have comparable reliability as announced through the Federal Register.

The owner agent must obtain a third-party verification from the applicable program administrator that indicates household size and includes all household members and provides the household’s annual income. This may be in the form of a benefit award letter from the relevant program/agency.

Such verification is valid if any of the following dates falls into the 12-month period prior to receipt of the verification by the owner agent:

1. Income determination effective date
2. Program administrator’s signature date
3. Family’s signature date
4. Report effective date
5. Other report-specific dates that verify the income determination date

If this verification is not available or the household disputes the verification, then the owner agent must conduct a traditional income verification and calculation.

D. **Self-Certification**

If third-party verification of income or assets has been substantially delayed or has been attempted to no avail, self-certifications made under penalties of perjury may be acceptable for minor issues or matters that don’t significantly affect eligibility.

For more information on specific verification types, see 4350.3 Appendix 3 (Acceptable Forms of Verification). https://www.hud.gov/sites/documents/43503a3HSGH.PDF

E. **Zero Income Applicants**

If a family member claims to have no income from any source, the member must complete a Certification of Zero Income.

Effective Term of Verification

Written verifications are valid for 120 days. Missing or incomplete information on the verification may be followed up by a phone call. After the 120-day time period, a new written verification must be obtained.

2.07 Calculating Annual Income

Owners must convert all verified incomes to annual amounts. To annualize full-time employment multiply:

- Hourly wages by 2080

- Weekly wages by 52
- Bi-weekly amounts by 26
- Semi-monthly amounts by 24
- Monthly amounts by 12

To annualize income from other than full-time employment multiply:

- Hourly wages by the number of hours the family expects to work annually.
- Average weekly amounts by the number of weeks the family expects to work.
- Other periodic amounts (e.g., monthly, bi-weekly, etc.) by the number of periods the family expects to work.
- If verification indicates a range of hours worked, calculate income based on the average hours worked.
- Do not use year to date to determine annual income.

Use an annual wage without additional calculations. For example, if a teacher is paid $24,000 a year, use $24,000 whether the payment is made in 12 monthly installments, 9 installments or some other payment schedule.

There is a wage calculation worksheet available on NDHFA's website in the sample forms section.

Asset Valuation Guidelines for Common Assets

- Checking and/or Savings Account: Use the current balance.
- Online Payment Apps (Velle, Venmo, PayPal, etc.): Use current balance.
- Equity in Real Estate: Convert to and use the cash value.
- IRA or Keogh 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.

2.09 Annual Recertification

All initial (move-in) tenant files must contain third-party documentation of family income, assets, student status and all other verification documents. Due diligence must be used when verifying initial eligibility.

The HIF program does not require annual recertification of income, assets or student status. However, if the project has other funding sources (LIHTC, HUD programs, project-based housing assistance, etc.) follow the recertification process for the applicable program(s).

Investors may still require annual recertifications. If this is the case, follow the recertification process for LIHTC projects found in the LIHTC compliance manual on NDHFA's website.

2.10 Leasing to Students

At the time of move-in, student status must be verified. If all household occupants are full-time students, the household is not HIF-eligible. The determination of student status as full- or part-time should be based on the criteria used by the educational institution the student is attending. Part-time student status should be verified with the educational institution. If one household member is a part-time student and all other household members are full-time students, the household is eligible. This definition includes students attending school online and/or in person.

An educational organization is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term “educational organization” includes elementary schools, junior and senior high schools, colleges, universities and technical, trade and mechanical schools. It does not include on-the-job training courses.

Exceptions:

There are exceptions to the full-time student rule:

A. A student receiving assistance under Title IV of the Social Security Act, (TANF). Verification would be a TANF award letter.

B. A student enrolled in a job training program receiving assistance under the Workforce Innovation and Opportunity Act (WIOA) of 2014 (which superseded the Workforce Investment Act of 1998, which superseded the Job Training Partnership Act of 1982) or under other similar federal, state, or local laws. Verification would be a copy of the assistance award letter.

C. The student was previously under the care and placement responsibility of the state agency responsible for administering a plan under Title IV of the Social Security Act (i.e. foster care). Verification would be a foster care paperwork from social services.

Or entirely by full-time students if such students are:

D. Single parents with children, all of whom are students, and such parents and children are not dependents of another individual and are not dependents of another individual other than a parent of such children. Verification would be a copy of the tax return or divorce decree.

E. Married and filing a joint return or are entitled to file a joint return. Verification would be a copy of their tax return or marriage certificate. This includes same-sex marriages, married in any state, that would meet the married and filing a joint return exception.

If the applicant indicates that he or she is a student, have the applicant sign the Student Certification form. If the applicant is a student and receiving Section 8 assistance also, have the applicant sign the Student Status and Financial Aid Verification form and send it to the educational institution to verify full- or part-time student status and financial aid for income purposes.

2.11 Change in Household Composition

All household members must be certified and named on the lease. In the event the tenant in a HIF unit wishes to have an additional person move into the unit, the following steps must be taken:

A. If within the first six months of tenancy, owners or managers must certify the household as if it were a new move-in. This requirement does not apply in cases of natural changes such as birth, adoption, or death. The combined household income must be at or below the applicable move-in income for the new household size.

B. After the first six months of tenancy:

   1. The new tenant’s income is added to the income disclosed on the existing household’s original income certification. The combined income can be over the 140 percent limit as long as the next available unit is rented to a qualified household.

   In the event a household member vacates the unit, the unit will remain in the category as originally certified. Any changes in household composition should be documented in the tenant file.

A household may continue to add members as long as at least one member of the original low-income household continues to live in the unit. Once all the original tenants have moved out of the unit, the remaining tenants must be certified as new income qualified households unless the remaining tenants were income qualified at the time they moved into the unit.

2.12 Tenant Fraud

If fraud or misrepresentation of information is discovered while processing an application for residency, the applicant should be denied. Handling tenant fraud/misrepresentation becomes more problematic when discovered after the tenant has moved in. In this scenario, it may be determined that the household was never initially qualified and has been inappropriately occupying the unit. Fraud is considered material noncompliance with the lease and program requirements and is therefore grounds for termination of tenancy.

If tenant fraud/misrepresentation is discovered, proceed as follows:

A. Notify NDHFA that an incident of tenant fraud has been identified and provide a written explanation of what happened.

B. Begin the process of removing the fraudulent, unqualified household and replacing it with a qualified household. Every HIF lease should include language stating that providing inaccurate information regarding program eligibility is cause for termination of tenancy. Thus, the fraud becomes not only a violation of program rules but also a lease violation and grounds for eviction.

In order to reduce the number of instances of tenant fraud/misrepresentation, management should ensure that the forms used in tenant files address the seriousness of providing fraudulent information. All HIF leases should include language that fraud is grounds for eviction or non-renewal of a lease. Additionally, it is best practice to include language on other forms signed by the tenant/applicant stating that the forms are signed under penalty of perjury.

The following documentation may help the owner establish that tenant fraud/misrepresentation occurred:

A. Documentation proving the tenant was made aware of program requirements and prohibitions and did not follow those requirements such as signed lease documents and program agreements.

B. Documentation showing that the tenant intentionally misstated or withheld information including but not limited to:

   1. Evidence that false names or Social Security Numbers were used.
   2. Copies of falsified, forged, or altered documents.
   3. Proof that the tenant omitted material facts that were known to the tenant such as proof of income and assets sources that were not disclosed by the tenant.
   4. Admission by the tenant that information was falsified or omitted.

2.13 Owner Fraud

If NDHFA becomes aware of an apparent act of fraud by the owner, management company, or other entity involved with the management and compliance of a project, the project will be considered out of compliance and the following steps will be taken:

A. The entity will be placed on NDHFA's suspension list until further investigation is completed.

B. Other noncompliance penalties such as increased auditing, as outlined in section 3.06 may also apply.

2.14 Next Available Unit Rule

If a household is no longer eligible for HIF due to fraud, noncompliance, or a change in ESW status, the next available unit must be rented to a HIF-eligible household.

SECTION 3: COMPLIANCE MONITORING PROCEDURES

This section of the manual outlines NDHFA's procedures for monitoring projects that have received HIF funding. Remaining in compliance is solely the responsibility of the owner and is necessary to use and retain the funds allocated to the award.

Monitoring each development is an ongoing activity that extends throughout the affordability period. NDHFA will conduct compliance monitoring and take the appropriate steps when noncompliance is found.

3.01 Fees

Annual Compliance Monitoring Fee

An annual compliance monitoring fee is charged to all projects during the compliance period. The annual compliance fee is $50 per project plus $40 per HIF unit. Scattered site projects will be charged $50 per town or municipality plus $40 per set-aside unit. This fee will be reviewed periodically and may be adjusted accordingly.

Developments which are subject to annual compliance monitoring fees for other programs administered by NDHFA may be eligible for a reduction in their annual fee at the sole discretion of NDHFA.

Late Fees

A late fee may be imposed if required information is not submitted to NDHFA by the applicable due date.

- Quarterly Vacancy Report: $25 per day after the due date.
- Annual Restriction Review: The greater of $250 or 10% of the annual compliance fee will be charged if the compliance documents and/or compliance fees are not submitted by the deadline stated in the review notification.
- File Audit/Physical Inspection: $25 per day if documentation or responses are not received by the due date stated in the letters or notices from NDHFA, unless an extension is requested and approved prior to the due date.

Follow Up Inspection Fee

If NDHFA is required to reinspect the property due to noncompliance, management no show, or failure to properly notify the tenants of an inspection, a $250 reinspection fee plus actual costs for travel and per diem will be charged.

Noncompliance Fee

Noncompliance that continues after the correction period may be charged a fee of $25/day.

3.02 Quarterly Vacancy Reporting

Properties are required to report vacancy information on a quarterly basis. Property managers are provided with the report template for each specific project, and this template must be used to fulfill this requirement. This report is due by the 7th of the month following the end of the quarter. Late fees will apply. See section 3.01.

3.03 Annual Restrictions Review

NDHFA will perform an Annual Restrictions Review on every HUD-funded project. The review will cover the period 1/1-12/31 of the prior year. If a project was funded by more than one program (such as LIHTC or a HUD program), the reviews will be performed concurrently. NDHFA will email a notice for the Annual Restriction Review requirements to the property manager.

Required Documentation:

- Annual Rental Compliance Report (ARCR)

  - Use most current version, available on NDHFA's website.
  - The current utility allowance must be included on the worksheet and UA source documentation must be attached. If using the PHA utility allowance, provide a copy of the PHA document with the dollar amounts used to calculate your project's UA(s) circled or highlighted.
- Proof of sufficient property and liability insurance coverage with NDHFA listed as mortgagee.
- For projects that received points at initial 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.
- Such other information as may be requested in writing by NDHFA in its reasonable discretion.
- Copy of the most current HIF training certificate for the current manager.
- Compliance monitoring fee.

3.04 Physical Inspection and File Monitoring

NDHFA is required by regulation to monitor and physically inspect each project within two years of the placed-in-service date and at least once every three years thereafter. However, NDHFA reserves the right to inspect the files and/or physical units at any time at its discretion, with or without advance notice to the owner. Decisions to monitor/inspect more frequently may be based on tenant complaints or NDHFA's assessment that a project is high risk. A project may be deemed high risk based on compliance issues identified through the Annual Owner Certification, previous reviews, or inspections, or on financial issues identified through the annual financial review (if applicable).

The selection of the files and units will be a random sample that is not available to management/owner 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.

A file monitoring or physical inspection will include a review of 20% of the HIF units. However, NDHFA's auditor or inspector may, at their sole discretion, choose to expand the sample size. Circumstances warranting an expansion of the sample size could include, but are not limited to:

- Poor internal controls (significant risk of error).
- Multiple problems.
- Significant number of nonqualified units.
- Significant number of households that are not income qualified.
- Credible information from a reliable source suggesting problems exist.

Tenant File Reviews

NDHFA will conduct Tenant File Reviews once every three years. These reviews will generally be conducted remotely at NDHFA offices (this is referred to as a "Desktop Review.") However, NDHFA, in its discretion, may choose to do an on-site monitoring instead.

The owner agent will be notified in writing which unit files have been selected for review. Electronic copies of selected files and documentation must be submitted to NDHFA through the secure file link. The following items must be included with each tenant file.

The following items will be reviewed:

- Tenant Income Certification (signed)
- Worksheet used to calculate income
- Employment Income Verification (no less than 2 months of paystubs, if using)
- Asset verifications
- Application
- Lease
- Household demographics
- Move-in inspection
- Annual recertification documents (if applicable)
- Documentation for the receipt of applicable brochures (Fair Housing and Lead Based Paint)
- For tenants receiving tenant based or project based rental assistance, a copy of either the Housing Assistance Payment (HAP) contract and the current HAP Amendment from the PHA or a copy of the current HUD form 50058 or 50059, whichever is applicable. Tenant Income Certification and supporting documentation/verifications.

White out on any form is not acceptable. If a correction is necessary, a line should be drawn through the incorrect item and the correct item written next to it. Both parties must initial and date the change.

NDHFA will also request the following:

- Current rent roll which lists the current households at the time of the file review
- Current utility allowance
- Affirmative Fair Housing Plan
- Tenant Selection Policy
- Rent receivables for the most recent two months
- Tenant handbook
- Fee schedule

Physical Inspections

Inspections will be conducted according to the NSPIRE standards set forth by HUD. Inspectable areas include units, inside, and outside. An NSPIRE Inspection Checklist is included as Attachment B to this manual.

Prior to the physical inspection, NDHFA will notify the management agent/owner of the date and approximate time the inspection will take place. Reasonable notice of inspection is no more than fifteen days.

A management agent must be present and accompany the inspector throughout the entire inspection process. Provide the name and direct telephone number of the person accompanying the inspector prior to the inspection.

The manager must notify all households at least **24 hours prior** to the physical inspection. Prior to the day of inspection, provide NDHFA with a copy of the notice sent to the tenants. Also provide a list of the 504/ADA units (if applicable), a list of the current vacant units, and a list of any units with current infestations.

The inspector will need access to applicable certificates, such as fire extinguisher, elevator, boiler, and sprinkler inspections.

It is imperative that all units be available for interior and exterior inspections (vacant units, occupied units, and common areas inclusive). Selection of the units is random and at the discretion of the inspector; advance notice is not given as to which units will be inspected.

The units inspected will not necessarily be the same as the tenant files reviewed.

All vacant units will be inspected to ensure they are suitable for occupancy within a reasonable time frame (45 days.)

Maintenance staff may correct the following during the inspection:

- Missing/burnt out light bulbs
- Pilot lights
- Bathroom exhaust fans
- Items preventing a door from closing
- Electrical breakers
- Garbage disposal (reset)
- Unplugged appliances
- Water shut offs
- Outlet/light switch covers

It is recommended that your maintenance staff accompany the inspector with tools, a ladder, and the items necessary to make these minor repairs during the inspection.

After performing an on-site physical inspection, NDHFA will:

A. If a Critical Violation is found during the inspection, the inspector will tell the management agent/owner at the time of the inspection. If needed, a copy of a Critical Violations letter identifying all life- threatening or severe issues (per the NSPIRE severity classification) observed at the time of the inspection that require immediate corrections. All life-threatening or severe issues identified in the Critical Violations letter must be corrected within 24 hours and NDHFA must be notified of the completed corrections within 72 hours. Critical violations that are not corrected within 24 hours will be fined $250 per day, starting the first hour after the 24-hour correction period expires.

B. Send a copy of the inspection report to the owner and management company indicating a correction time frame per the NSPIRE severity classification. Life-threatening or severe issues must be corrected within 24 hours. Moderate severity issues must be corrected within 30 days. Low severity issues must be corrected within 60 days.

C. Request that all noncompliance issues be corrected within the time frame specified in the inspection report.

D. Request that legible copies of the proof of the corrections, in the form of work orders, receipts, and/or invoices, along with an owner-signed affidavit, be forwarded to NDHFA within the allotted time frame indicated in the inspection report.

E. Schedule a second inspection if necessary. NOTE: NDHFA will charge additional monitoring fees if NDHFA staff must return to a site for an additional physical inspection or file review. See section 3.01.

F. Review the supporting documents of correction for correlation with the inspection report.

G. Send correspondence indicating that no further corrective actions regarding the physical condition of the property are needed at this time or contact the owner via letter to identify which deficiencies still exist.

NDHFA must notify the owner of a HIF housing development in writing as soon as possible if NDHFA discovers on audit, inspection, review, or in some other manner that the development is not in compliance with NSPIRE standards.

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

3.03 Financial Oversight – HOME and HTF only

Properties with HOME or HTF funds are required to have financial oversight by NDHFA annually. Owners shall submit the following within 120 days of the project's fiscal year end:

- Completed Property Expense Statement (SFN 61073)
- Certified final project-specific fiscal year ending Statement of Income and Expenses
- Certified final project-specific fiscal year ending Year-Over-Year Balance Sheet
- Documentation of the use(s) of replacement reserves during the fiscal year
- Certified calculation of the fiscal year's repayment of HOME and/or HTF based on the terms of the project's respective loan agreement(s).
    - May include the calculation of the Hard-Debt Service Ratio
    - Listing of all cash-flow distributions, in order of distribution, for the cash-flows generated within the fiscal year

3.05 Correction Period

With the exception of severe or life-threatening issues, 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.

3.06 Noncompliance

If NDHFA does not receive the required documents by the due date or if NDHFA discovers on audit, inspection, review or in some other manner that the development is not in compliance, 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. Noncompliance that continues after the correction period may be charged a fee of $25/day and receive negative points on future applications.

Examples of Remedial Action

A. The status of the owners, managing agents, and or any general partners may be designated as "not in good standing" with NDHFA.

B. Change in management or site staff may be required.

C. Additional monitoring may be required.

D. Requiring full annual recertifications.

E. A professional consultant, at the owner's expense.

F. Required third party audits or approvals of files.

G. Required training for staff.

H. Suspension or debarment from participation in programs administered by NDHFA.

I. Legal action.

3.08 Record Keeping and Record Retention

Owners are required to keep monthly records, unless otherwise noted, for each qualified HIF building in the development showing the following information:

A. The total number of residential rental units in the building including the number of bedrooms and the size, in square feet, of each unit.

B. The number and percentage of residential rental units in the building that are dedicated for low-income usage, offices, and management units.

C. The rent charged on each residential rental unit in the building, including any utility allowance, as well as any additional charges to tenants. Documentation must include tenant ledgers, leases, and utility allowances as required by the Internal Revenue Service.

D. The number of occupants in each HIF unit and the household's student status.

E. The HIF unit vacancies in the building, marketing information and information that shows the rentals of the next available units.

F. Documentation for each HIF unit to support household eligibility. Documentation includes but is not limited to application, income and asset verifications, student status, and collection of household demographics including race, ethnicity, and disabled status.

G. Records demonstrating that any elections or pledges made on the HIF application, particularly those for which points were received, have been fulfilled for the compliance period.

Owners are required to keep all records for each building for six years beyond the due date (with extensions) for filing the federal income tax return for that year. Example: records for the 2006 tax year used to prepare the federal tax return, which was due April 15, 2007, must be retained until April 15, 2013. However, the records for the first year must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period for the building.

3.09 Sample and Mandatory Forms

NDHFA has made available all mandatory and sample forms on our website at www.ndhfa.org under the Compliance tab.

GLOSSARY

Actual Income from Assets: The income generated by an asset, such as interest or a dividend. This is counted as income even if the income is not received by the household, for example if the interest or dividend is automatically reinvested into the asset. When net family assets (cash value of all assets) are up to $50,000, the actual income from assets is always the income used. When net family assets exceed $50,000 then the actual income must be compared to the value of such assets based on the current passbook savings rate, as determined by HUD, and the higher amount is used for income determination.

Allocation Plan: The plan developed by NDHFA to set out the guidelines and selection criteria by which NDHFA allocates HIF funds.

Allowable Fee: A fee that may be charged to tenants. An allowable fee may or may not have to be included in the gross rent calculation, depending on whether the fee is for a service that is optional or mandatory.

Annual Household Income: The combined anticipated, gross annual income of all persons who intend to reside in a unit. Gross income is the amount of income before taxes or other deductions.

Annual Income: Total anticipated income to be received by a tenant from all sources including assets for the next 12 months.

Annual Income Recertification: Document by which the tenant recertifies his/her income for the purpose of determining whether the tenant will be considered low-income according to the provisions of the HIF program.

Applicant: A prospective tenant who has applied for residency at a development.

Application: Form completed by a person or family seeking rental of a unit in a development. An application should solicit sufficient information to determine the applicant's eligibility.

Area Median Income: The median income for a specific county, as published by HUD.

Assets: Items of value, other than necessary and personal items, that are considered in determining the income eligibility of a household.

Asset Income: The amount of money received by a household from items of value as defined in HUD Handbook 4350.3.

Assistance Animal: An animal that assists an individual with a disability. This term includes service animals and support animals. These animals are not treated as pets but rather as reasonable accommodations under Fair Housing.

Available Unit: A vacant unit that is not under any contractual agreement between the owner and a prospective resident. A unit is not available if an applicant has already signed a lease but has not yet moved into the unit.

Cash Value of Asset: The market value of the asset minus the reasonable expenses incurred to convert the asset to cash.

Casualty Loss: The loss of a unit due to fire, natural disaster, or other similar circumstance. A casualty loss is defined as "damage destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual.

Certification Year: The 12-month time period beginning on the date the unit is first occupied and each 12-month period commencing on the same date thereafter.

COLA: Cost of living adjustment increase for Social Security as announced by the Social Security Administration. For the latest COLA information, go to https://www.ssa.gov/oact/cola/latestCOLA.html.

Comparable Unit: A unit of the same size and number of bedrooms with similar amenities and features as another unit.

Compliance: The act of meeting the requirements and conditions specified under the law and the HIF program requirements.

Compliance Period: The time period for which a building must comply with the requirements set forth in the HIF LURA and loan agreement.

Correction Period: A reasonable time as determined by the authority for an owner to correct any violation as a result of noncompliance.

Current Anticipated Income: Gross anticipated income for the next 12 months as of the date of occupancy or recertification, including asset income.

Date of Acquisition: The date on which a building is acquired through purchase.

Debarment: A determined period of time, not to exceed 5 years, during which an affected person is prohibited from participating in an NDHFA programs.

Developer: Any individual and/or entity that develops or prepares a real estate site for residential use as an HIF development.

Development: Rental housing development receiving a HIF allocation.

Disabled (for Fair Housing purposes): For purposes of the Fair Housing Act, disability is defined as a person who has/is:

- A physical or mental impairment which substantially limits one or more of such person's major life activities.
- A record of having such an impairment.
- Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act).

Disposed of Asset: An asset disposed of for less than fair market value must be counted as a household asset when determining income if the difference between the fair market value and the amount received is greater than $1000.

Due Diligence: The appropriate, voluntary efforts to remain in compliance with all applicable HIF rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies. Part of due diligence is the establishment of internal controls, including but not limited to separation of duties, adequate supervision of employees, management oversight and review (internal audits), third party verifications of tenant income, independent audits, and timely recordkeeping. NDHFA expects all HIF developments to demonstrate due diligence.

Earned Income: Income from employment, including wages, salaries, tips, commission, bonuses, overtime pay, anticipated raises, and any other compensation. The earned income of all adult household members is included in the annual household income calculation. The earned income of minors (members under age 18) is not included.

Educational Organization: An institution that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried out. This term includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. This does not include on-the-job trainings courses but does include online educational institutions.

Effective Date of Tenant Certification: The date the Tenant Income Certification becomes applicable. For initial certifications, this date must be the move-in date of the household. For annual recertifications, this date must be the anniversary date of the move-in.

Effective Term of Verification: A period of time not to exceed 120 days. After this time, if the tenant has not yet moved in or been recertified, a new written third-party verification must be obtained. A verification document must be dated within the effective term at the time of Tenant's Income Certification.

Eligible Tenant: The current tenant(s) of the unit, so long as that tenant(s) is/are eligible to occupy the unit under the requirements of HIF program. This expressly includes a tenant whose income would not currently qualify under HIF, but who was qualified at the time of tenant's original occupancy of the unit.

Employment Income: Wages, salaries, tips, commission, bonuses, overtime pay, anticipated raises, and any other compensation for personal services from a job.

Fair Market Value: An amount which represents the true value at which a property could be sold on the open market.

Fixed Income Source: Fixed income sources are defined by HUD as "periodic payments at reasonably predictable levels." Fixed income sources can be verified using the Streamlining Rule. Fixed income sources include the following:

- Social Security payments, including Supplemental Security Income (SSI) and Supplemental Disability Insurance (SSDI).
- Federal, state, local, and private pension plans.
- Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts.
- Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

Foreclosure: A foreclosure is a legal procedure occurring when an owner defaults on a loan and the lender takes legal action because the property was used as security for the loan. As a result, the property is sold to recover the debt. Alternately, an owner may deed the property directly to the lender in a "transaction in lieu of foreclosure" in full or partial satisfaction of the mortgage debt.

Foster Adult: An adult, usually with a disability that makes them unable to live alone, who is unrelated to the tenant family but has been placed in their care. Foster adults are not counted as household members when determining household size and the applicable income limit. A foster adult's income and asset sources are not included in household income.

Foster Children: Foster children are in the legal guardianship or custody of the state or foster care agency but are cared for by foster parents in their home under a foster care arrangement with the custodial agency. Foster children are not counted as household members when determining household size and the applicable income limit. A foster child's income and asset sources are not included in household income.

Full-time Student: Any tenant or applicant who is, was, or will be a full-time student at an educational organization for parts of five calendar months (may or may not be consecutive) during the calendar year. Full-time status is defined by the educational organization in which the student is enrolled.

Full-time Student Household: A household in which all tenants/applicants are full-time students.

Good Cause Eviction: HIF households cannot be evicted or have their tenancy terminated without "good cause," generally considered material violation of the lease. The actions that constitute good cause for eviction or termination of tenancy must be given to the tenant in writing at the time of occupancy, preferably in the lease, as well in the property's Tenant Selection Criteria. Exceeding the 140% limit is not considered good cause for eviction.

Gross Income: See Annual Household Income. Also, income before taxes or other deductions.

Gross Rent: The sum of tenant-paid rent portion + utility allowance + any non-optional fees. The total gross rent must be at or below the applicable rent limit for the unit to be in compliance. Rental assistance payments are not included in Gross Rent.

Guest: A visitor temporarily staying in a HIF unit with the consent of the household. Guests are not treated as household members when determining household size and the applicable income limit, and their income is not included in annual household income calculations.

Household: The individual, family, or group of individuals living in a unit.

Imputed Income from Assets: The estimated earnings of assets held by a household using the potential earning rate (passbook rate) established by HUD. Find the current passbook rate here:
https://www.huduser.gov/portal/datasets/inflationary-adjustments-notifications.html.

Income Limits: The maximum income as published by HUD used for determining household eligibility for low-income units. Income limits are based on family size and will vary depending on the applicable AMI set-aside restriction.

Inspection: A review of a development made by NDHFA or its agent, including an examination of records, a review of operating procedures, and a physical inspection of units.

Lease: The legal agreement between the tenant and the owner which delineates the terms and conditions of the rental of a unit.

Lease Rent: The actual rent charged to the household by the owner, as defined in the lease. The tenant-paid rent may never exceed the maximum allowable rent, or the applicable HUD published rent limit. Also referred to as "tenant-paid rent."

Live-in Care Attendant/Live-in Aide: A person who resides with one or more elderly, near elderly, or disabled persons. To qualify as a live-in care attendant, the individual (1) must be determined to be essential to the care and well-being of the tenant, (2) must not be financially obligated to support the tenant, and (3) must certify that he/she would not be living in the unit except to provide the necessary supportive services.

A live-in care attendant for an HIF tenant should not be counted as a household member for purposes of determining the applicable income limits, the income of the attendant is not counted as part of the total household income, and the live-in aide should not be listed on the TIC.

LURA: The written and recorded agreement between NDHFA and the owner restricting the use of the development during the term of the Extended Use Period. Formally called the Declaration of Land Use Restrictive Covenants.

Management Company: A firm authorized by the owner to oversee the operation and management of the development and who accepts compliance responsibility.

Manager's Unit: Unit occupied by the full-time resident manager considered a facility reasonably required for the benefit of the project. If the unit is considered an "exempt" area, the manager does not have to be income qualified. The same rule applies for units reserved for maintenance or security staff.

Market Value of Asset: The dollar value of an asset on the open market.

Maximum Allowable Rent: The maximum amount that an owner is permitted to actually charge for rent. Maximum allowable rent is determined by taking the applicable rent limit and subtracting the utility allowance for tenant-paid utilities and fees for any other non-optional charges. May also be referred to as the maximum chargeable rent or net rent.

Mixed-Income Project: A project with both HIF and market-rate units.

NDHFA: North Dakota Housing Finance Agency

Next Available Unit Rule: If a household is removed from a HIF unit due to fraud, noncompliance, or change in ESW status, the next available unit of comparable or smaller size in the same building must be rented to a qualified low- income household.

Noncompliance: The period of time that a development, specific building, or unit is ineligible for HIF because of failure to satisfy program requirements.

Noncompliant Organization List: NDHFA's list of organizations that have outstanding compliance issues and are not working toward correction of those issues. These entities are not permitted to submit applications for development assistance, be a part of any application considered for funding under any NDHFA program or be hired to manage any project under any NDHFA program.

Non-optional Fee: A fee charged for services/amenities that are mandatory (i.e. services that are required as a condition of occupancy). A fee may be charged for non-optional services, but the fee must be included in the gross rent calculation.

Optional Fee: A fee charged for an extra service or amenity that is selected by a tenant. If the service or amenity is truly optional (i.e. it is not a condition of occupancy that the tenant accepts the service), then a fee may be charged without being included in the gross rent calculation.

Owner: Any individual, association, corporation, joint venture, or partnership that owns a HIF development.

Passbook Rate: The HUD approved rate for imputing assets. Find the current passbook rate here: https://www.huduser.gov/portal/datasets/inflationary-adjustments-notifications.html.

Placed-in-service Date: For new construction, the placed-in-service date is generally the date a building receives its certificate of occupancy. For acquisition, the placed-in-service date is the date of acquisition.

PHA: Public Housing Authority.

Protected Class: One of the groups specifically protected by the Fair Housing Act and/or the North Dakota Housing Discrimination Act. The protected classes in North Dakota are race, sex, national origin, marital status, disability, religion, color, age (40 years or over), familial status (presence of children under age 18, being pregnant or securing custody of a minor), receipt of public assistance, and status as a domestic violence victim.

Reasonable Accommodation: A change, exception, or adjustment in rules, policies, practices, or services when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Under the Fair Housing Act, an owner must allow reasonable accommodation unless doing so will be an undue financial burden or fundamentally alter the nature of the provider's operations.

Reasonable Modification: A change to the physical structure of the premises when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Under the Fair Housing Act, an owner must allow a reasonable modification at the expense of the tenant, unless the change is one that should have already been included in order to comply with design and construction accessibility standards, in which case the owner will be responsible for paying for the modifications.

Referral Agreement: A development that includes units set-aside for special needs populations must enter into a Referral Agreement with a qualified organization that will provide services to the special needs population. The owner must agree to: (1) set aside a number of units for the special needs population and (2) notify the qualified organization when vacancies of the set-aside units occur at the development. The qualified organization must agree to: (3) refer qualified households to the development and (b) notify households of the vacancies of the set-aside units at the development.

Rent Limit: The NDHFA published maximum amount that can be charged for a HIF unit, including a utility allowance and any non-optional fees.

Section 8: Section 8 of the United States Housing Act of 1937, as amended.

Self-certification: A signed affidavit from a tenant or applicant used to clarify information or to provide information that cannot be verified through third-party or second-party documents.

Set-aside: Shall mean and require that units designated as "set-aside" for a specific population may be used only for the identified population and for no other. If qualified tenants in the designated population are not available, the unit(s) must remain vacant. HIF units will all be set-aside at the 30%, 80%, or 140% rent and income limit and may additionally be set-aside for special needs populations.

Special Needs Populations: Tenants with special needs include individuals or families who:

- Suffer from serious or persistent mental illness.
- Suffer from substance use disorders.
- Have disabilities, including intellectual, physical, or developmental.
- Are experiencing long-term homelessness or are at significant risk of long-term homelessness.
- Are justice-involved.
- Are frail elderly, defined as those 62 years of age or older, who are unable to perform one or more "activities of daily living" without help. Activities of daily living comprise walking, eating, bathing, grooming, dressing, transferring, and home management activities. Assisted living, or projects serving a similar purpose, are not eligible under HIF.

SRO Unit: Single Room Occupancy Unit, defined as single room that may or may not have food prep and sanitary facilities.

Student: Any tenant or applicant who is, was, or will be a full-time student at an educational organization for parts of five calendar months (may or may not be consecutive) during the calendar year. Full-time status is defined by the educational organization in which the student is enrolled.

Suspension: An indefinite but temporary status assigned to an affected person making it ineligible to apply for additional funding until such a time that the suspension status is revoked. Suspension is generally invoked for failure to meet federal and/or state compliance obligations and reporting requirements. Other considerations leading to suspension could include but are not limited to fraudulent activity, financial health concerns, and poor record of past performance. Unlike debarment, suspension is not for a set amount of time and can generally be revoked as soon as NDHFA's concerns, and any identified issues have been resolved.

Tenant: Any person occupying the unit.

Tenant-paid Rent: The actual rent charged to the household by the owner, as defined in the lease. The tenant-paid rent may never exceed the maximum allowable rent, or the applicable HUD published rent limit. Also referred to as the "lease rent."

Tenant/Unit File: Complete and accurate records pertaining to each dwelling unit, containing the application for each tenant, verification of income and assets of each tenant, the annual Tenant Income Certification for the household, utility schedules, rent records, all leases and lease addenda, etc. Any authorized representative of NDHFA or the Department of Treasury shall be permitted access to these files.

Third-party Verification: A verification document submitted to management by a third-party entity in order to disclose information about the income or asset sources or other eligibility factors of an applicant or tenant. Third-party verifications must be sent to and received directly from the third-party source, not through the tenant or applicant. An example of third-party verification is an employment verification form completed by the employer.

Transient Use: An HIF unit is considered to be in transient use and is therefore out of compliance if the initial lease term is less than six months.

Unearned Income: Income from assets and benefit sources such as Social Security. The unearned income of all household members (regardless of age) is included in the calculation of annual household income.

Utility Allowance: An allowance representing the average monthly cost of tenant-paid utilities for a particular unit size and type. Utility allowances include costs of heat, unit electricity, gas, oil, water, sewer, and trash service as applicable. Utility allowances do not include the costs of telephone, cable television, or internet services. The utility allowance is added to tenant-paid rent and any other non-optional charges when determining the gross rent for a unit. The total gross rent for a unit (utility allowance inclusive) must be at or below the applicable published rent limit.

Verification: Information from a third-party or second-party source that is collected in order to corroborate the accuracy of information about the income and/or assets or other eligibility factors of an applicant or tenant.