



ONGOING COMPLIANCE MONITORING MANUAL

HUD Programs



Community Housing and Grants Management Division

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HUD Programs Ongoing Compliance Monitoring Manual

Date	Section	Description of Changes
9/19/2024		Throughout this manual, all pertinent sections have been updated to include NSP specific information. The standalone NSP compliance manual has been eliminated.
9/19/2024	1.01	Moved Definitions to create a glossary at the end of the manual
9/19/2024	1.02	Responsibilities section was removed and replaced with sections 1.07 through 1.09
9/19/2024	1.03	Periods of Affordability: added HOME-ARP and NSP
9/19/2024	1.04	Added new section on HOTMA applicability
9/19/2024	1.06	Added new section NDHFA staffing
9/19/2024	1.07	Added new section NDHFA Responsibilities
9/19/2024	1.08	Added new section Owner Responsibilities
9/19/2024	1.09	Records Retention section was moved to 1.08 "Owner Responsibilities"
9/19/2024	1.09	Added new section Management and On-Site Personnel Responsibilities
9/19/2024	1.13	Income and Rent Requirements: added NSP
9/19/2024	1.13	Income and Rent Requirements: added SRO information
9/19/2024	1.14	Rental Assistance updated to reflect 2024 HOME Guidance
9/19/2024	1.17	Utility Allowances updated to reflect 2024 HOME Guidance
9/19/2024	1.18	Updated Tenant Fees
9/19/2024	1.20	Updated Income Certification and Recertification to include NSP
9/19/2024	1.24	Updated VAWA language
9/19/2024	2.02	Added Citizenship clarification
9/19/2024	2.03	Student Eligibility updated to reflect HOTMA changes
9/19/2024	2.04	Determining Household Size updated to reflect HOTMA changes
9/19/2024	2.05	Annual Income updated to reflect HOTMA changes
9/19/2024	2.06	Assets updated to reflect HOTMA changes
9/19/2024	2.07	Updated verification methods to incorporate HOTMA changes and included "Means-tested" verification method
9/19/2024	2.14	Adjusted Gross Income for Over-Income Households - updated to reflect HOTMA changes
9/19/2024	2.17	Added Tenant Fraud definition and correction measures
9/19/2024	2.18	Added Owner Fraud definition and correction measures
9/19/2024	3.01	Updated Fees
9/19/2024	3.04	Physical Inspections and Tenant File Reviews updated to reflect NSPIRE and clarify processes.
9/19/2024	3.10	Added Section Sample and Mandatory Forms
9/19/2024	4.0	Added new section HOME-ARP
1/01/2025		Updated attachments

Minor formatting, wording, or grammatical changes are not identified in this list. In addition to the items below, all website links referenced in the manual have been validated and updated where appropriate.

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ATTACHMENT A - Income and Income Exclusions Resource Sheet

ATTACHMENT B - Assets, Asset Exclusions, and Limitation on Assets Resource Sheet

ATTACHMENT C - NSPIRE HCV/PBV Inspection Checklist

SECTION 1—PROGRAM INFORMATION AND REGULATIONS

North Dakota Housing Finance Agency (NDHFA) administers the HOME Investment Partnerships Program (HOME), the HOME American Rescue Plan (HOME-ARP), the National Housing Trust Fund (HTF) Program, and the Neighborhood Stabilization Program (NSP). It is the responsibility of NDHFA to monitor the continuing compliance of units that have received funding through these programs in accordance with the Department of Housing and Urban Development (HUD) programs, regulations contained as follows:

- HOME funds, 24 CFR Part 92
- HOME-ARP funds, HUD Notice CPD-21-10
- HTF funds, 24 CFR Part 93
- NSP funds, Catalog of Federal Domestic Assistance number 14.228 (Housing and Economic Recovery Act of 2008, Section 2301 (b) and Wall Street Reform and Consumer Protection Act of 2010, Section 1497)

It is also NDHFA’s responsibility to ensure that property owners retain the housing units as affordable throughout the period of affordability. Any violation of the requirements could result in acceleration of the repayment of funds.

1.01 Purpose of the Compliance Manual

The publication of this manual is for convenience only and is to be used only as a supplement to existing laws and rules. This manual is not intended to be a comprehensive guide to HUD programs. This guide is designed to assist owners who have opted to use one or more of these programs to plan and maintain compliance with the regulatory requirements associated with the utilization of these funds in multifamily properties.

Unless a provision is noted as being program specific, the provisions of this guide apply to HOME, HTF, and NSP. The HOME-ARP program, as a general rule, follows the HOME program requirements. However, there are special requirements for the HOME-ARP program that are specified in Section 4 of this manual.

Noncompliance by the owner may result in serious financial consequences. If NDHFA or HUD determines that any provision of this guide conflicts with the federal regulations that dictate these programs, the federal regulations will govern.

Your use or reliance upon any of the provisions contained in this manual does not, expressly or impliedly, directly or indirectly, suggest, represent or warrant that the user will be in compliance with the requirements of the HUD programs. Owners and property managers are responsible for understanding regulatory requirements of these programs and the various other notices and publications from HUD regarding administration of the programs.

This guide may be superseded without notice by changes in income determinations under 24 CFR Part 5 of the Section 8 program and technical revisions in the HOME, HTF, and/or NSP programs. This guide provides information related only to HOME, HTF, and NSP. Properties may be subject to additional requirements due to other funding streams. Owners are responsible for complying with all applicable requirements.

NDHFA hereby disclaims any and all responsibility of liability which may be asserted or claimed arising from reliance upon the procedures and information in this manual. Owners and managers are urged to consult with attorneys and/or accountants that specialize in the HUD programs in the administration of their HUD-funded developments.

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

HOME

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

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

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

HTF

All HTF-assisted units are subject to a minimum 30-year affordability period, which begins at project completion. Rent and income requirements must be maintained during the entire period of affordability. Owners should refer to the LURA, Written Agreements and loan documents to determine the specific terms and conditions that govern their property.

NSP

NSP follows the same program rules prescribed by HUD’s HOME program and require that a land use restriction agreement or deed restriction be placed on NSP-assisted properties dictating affordability in the manner described in the above table, unless NSP loan terms dictate a longer term of affordability.

1.04 Housing Opportunity Through Modernization Act of 2016 (HOTMA)

Section 102 of HOTMA redefines income and asset calculations and verification requirements and is applicable to certifications effective on or after 1/1/2024. This manual has been updated to include HOTMA provisions, including requirements from the HOTMA final rule and HUD Notice H 2023-10 / PIH 2023-27 “Implementation Guidance: Sections 102 and 104 of the Housing Opportunity Through Modernization Act of 2016.”

NDHFA will note HOTMA related non-compliance issues identified in calendar year 2024 and will require necessary corrective action. However, NDHFA will not impose penalties for HOTMA-specific issues during calendar year 2025.

1.05 Electronic Signatures

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

1.06 NDHFA Staffing

The Community Housing and Grants Management Division administers HOME, HTF and NSP compliance monitoring for NDHFA. Questions regarding compliance monitoring should be directed to NDHFA's Community Housing and Grants Management Division 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, annual rent approvals, 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, 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 and other pertinent HUD program requirements. The review will cover the previous calendar year (1/1 through 12/31.) For more information see section 3.01.

File Monitoring and Physical Inspections

Physical Unit Inspections- NDHFA will perform a physical inspection for each development within 12 months the certificate of occupancy or equivalent is received for the final building/unit, then 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.

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

Tenant File Audits- 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 period, 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 non-compliant 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 Annual Owner Certifications and records for no less than three years from the end of the calendar year in which they are received.

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 the HUD program(s) to take advantage of development assistance benefits. In exchange for the benefit of assistance, the owner has made during the application and closing process acceptable assurances to NDHFA that it will comply with the requirements of the program(s) during the entire period which begins upon selection of the owner's project by NDHFA and ends upon the conclusion of the affordability period. Any violation of the requirements could result in corrective action, including the repayment of funds to NDHFA.

Any and all financial consequences to the owner as a result of noncompliance will be the responsibility of the owner.

Reporting and Compliance

The owner is responsible for compliance with HUD regulations. 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. Any and all financial consequences to the owner as a result of noncompliance, whether identified by NDHFA or the IRS will be the responsibility of the owner. Required compliance submissions will be discussed further in compliance monitoring procedures.

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, compliance with local and federal regulations and compliant with the terms of the recorded LURA.

The owner must keep all units in compliance with [NSPIRE](#) as and pertinent state and local building codes to ensure the units are decent, safe and sanitary at all times.

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women.

Before renting pre-1978 housing, owners must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Tenants must receive a federally approved pamphlet on lead poisoning prevention titled, "[*Protect Your Family from Lead in Your Home.*](#)" This disclosure must be documented.

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. See section 1.11 for more information.

Provide Pertinent Information to Management Agent and Any Subsequent Owners

To ensure compliance, the owner should provide the management agent with a copy of the LURA.

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.

Records Retention

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

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

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

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

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 applicable federal and state rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies.

Due diligence requires the establishment of internal controls, including but not limited to separation of duties, adequate supervision of employees, management oversight and review (such as internal audits), third party verifications of tenant income, independent audits, and timely recordkeeping.

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 tax credit 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 onsite 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 to all applicable HUD programs.
- 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 3.07).
- 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 compliance workshop fulfills the training requirements. 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 Non-Compliant Organization listing prior to enlisting a new property management agent; a property management agent on the Non-Compliant 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 HUD-funded 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 Non-Compliant 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.

1.13 Income and Rent Requirements

HOME

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

Initial occupancy at project completion:

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

- All other HOME-assisted units must be initially occupied at or below 60% AMI and High HOME rent limits.

Recertification:

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

HUD requires that the rents that are charged for HOME-assisted units be affordable to low and very low-income households. HUD provides **HOME rent limits** to define what is affordable.

High HOME Rents are the maximum rents that can be charged to low-income households. These are based on the *lesser of*:

- The Section 8 Fair Market Rents (FMRs) for existing housing; or
- Thirty percent of the adjusted income of a family whose annual income equals 65 percent of median income. (HUD-issued High HOME Rent)

Low HOME Rents are the maximum rents that can be charged to Low HOME rent units that are occupied by very low-income households. Low HOME Rents are based on one of the following:

- Thirty percent of the family’s monthly adjusted income; or
- Thirty percent of the annual income of a family whose income equals 50 percent of median income (the HUD-issued Low HOME Rent)

The HUD-issued HOME rent limits include utilities. When a tenant pays directly for utilities, the owner/manager must subtract a **utility allowance** to determine the maximum rent that can be charged for the unit. (see section 1.17)

HUD updates the HOME rent limits every year. If the rent limits go up and utility costs remain steady, the owner can raise rents accordingly. If the HOME rent limits go down or the utility costs go up, the owner may be required to decrease rents. The owner is never required to decrease rents below the initial rents approved by NDHFA, although market conditions may make it necessary to do so. NDHFA must approve all rent schedules for a property prior to lease-up as well as all rent increases during the affordability period.

Rent Limitations for SRO projects

- SRO Units with no food preparation nor sanitary facilities, or only one of the two:
 - If an SRO-unit has neither food preparation nor sanitary facilities, or only one, the rent may not exceed 75% of the Fair Market Rent (FMR) for a zero-bedroom (efficiency) unit.
 - Low HOME rent limits are not applied to these SRO projects, but for all projects with five or more HOME-assisted units the “Project Rule” still applies for income limits (i.e., at least 20% of the units must be occupied by households at or below 50% AMI).
 - SRO Units with both food preparation and sanitary facilities
- If an SRO-unit has **both** food preparation and sanitary facilities, then the rent limit depends on whether the unit is Low HOME (30%, 40%, or 50% AMI unit) or High HOME (60% or 80% unit), as described below.

- For Low HOME SRO units, the rent limit is set at the lesser of the HOME program zero-bedroom (efficiency) rent limit, 30% of the household's adjusted income, or the FMR for a zero-bedroom unit.
- For High HOME SRO units, the rent limit is set at the lesser of the HOME program zero-bedroom (efficiency) rent limit or the FMR for a zero-bedroom unit.
- For projects with five or more HOME-assisted units the "Project Rule" applies meaning that at least 20% of the units must be occupied by households at or below 50% AMI that are paying no more than the Low HOME rent limit.

HTF

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

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

NSP

All NSP-funded rental projects must meet a national objective of providing housing to households with low/moderate/middle income, defined as 120% or less of area median income (AMI), at initial occupancy. In addition, 25% of NSP-assisted units funded by NDHFA must be reserved for households at or below 50% AMI at initial occupancy. The agreement between NDHFA and the sub-recipient/developer will specify the number of units required to be set aside for households at 120% and at 50% AMI. NDHFA will conduct annual monitoring to ensure ongoing compliance with these tenant income restrictions.

NDHFA will require all sub-recipients/developers to use HUD published Fair Market Rents (FMRs) for their county as published by NDHFA. Rents for all NSP-assisted units must be at or below FMRs. In addition, units targeted for households at or below 50% AMI will be subject to rent restrictions based on the lesser of FMRs or 30% of 50% of AMI.

1.14 Rental Assistance

Tenant-Based

For units with Section 8 Housing Choice Vouchers (HCV), or similar state or federal **tenant-based** rental assistance subsidies, the sum of tenant paid rent, utility allowance, and rental assistance cannot exceed the applicable rent limit for the unit. Rents charged must be comparable to units not receiving rental assistance (i.e., if the owner charges less than the maximum HUD-issued rent limits for non-voucher holders, it cannot charge a higher rent to voucher holders).

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

Project-Based

The owner may charge rent up to the payment standard of the project-based rental assistance program when:

HOME

- The unit is designated as a Low HOME unit (50% AMI or below); AND

- The unit receives project-based rental assistance; AND
- Unit is occupied a very low-income household (household income at 50% AMI or below); AND
- Household does not pay more than 30% of its adjusted income for rent.

NOTE: The owner must use the HOME rent limits if project-based rental assistance is for a unit designated as a High HOME unit or for a household that is above 50% AMI.

HTF

- The unit receives project-based rental assistance; AND
- Unit is occupied an extremely low-income household (per HUD’s HTF Income Limits); AND
- Household does not pay more than 30% of its adjusted income for rent.

1.15 Income and Rent Limit Publication

Each year throughout the period of affordability, NDHFA must notify property owners of updated rent and income limits for HUD programs. HUD typically releases the limits in April through June. NDHFA will email a memo to owners and managers and will also publish with memo to the NDHFA website.

HOME and HTF only: Within 30 days of receipt of the new rent limits, owners must submit an annual [rent approval form](#) to NDHFA with the current rental structure and the proposed rental structure for the following year. See section 3.02 for more information on this process.

1.16 Fixed or Floating Units

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

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

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

Refer to section 2.12 Maintaining the Unit Mix for more information.

1.17 Utility Allowances

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

HTF Only

For HTF-assisted units, owners may use the utility allowances for the Section 8 HVC program from the local Public Housing Authority that administers HVCs in the area in which the property is located.

HOME only

HOME rules require owners to use a project-specific utility allowance. Owners are not permitted to use the PHA’s utility allowance for HOME-assisted units if HOME funds were committed on or after August 23, 2013. If HOME funds were committed prior to August 23, 2013, owners may continue to use the PHA’s utility allowance.

The following methods will meet the regulatory requirements for a project-specific utility allowance and may be used for all HUD-funded projects.

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

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

Project Specific Methodology

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

Changing Methods

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

Allowable methods for utility allowance calculations are based on the funding the property has received. Some calculation methods are not allowed by certain funding types and are subject to change as revisions are made

by the funding source. Owners are responsible for knowing the allowed method for each funding source and should check with NDHFA when trying to determine if a specific method can be utilized.

Annual Updates

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

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

Current utility allowances are required to be provided with the Annual Restriction Review and Tenant File Reviews.

1.18 Tenant Fees

Generally, fees for facilities or services may be charged to residents in addition to gross rent only 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, the cost of the washers and dryers must not be included in eligible basis and 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 areas not included in the eligible basis (i.e. reserved parking, garage, or storage unit).
- Lease break fees, except in the case of a VAWA request.

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 at move-in and at all annual recertifications. 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 tax credits.

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.
- Move-in fee that is not a refundable security deposit or application fee.
- Nonrefundable redecoration fees.
- Unit transfer fees/utility transfer fees.
- Fees for preparing a unit for occupancy.
- Fees for work involved in completing the Tenant Income Certification or other program specific documentation, such as verifications.
- Deposits or monthly pet rent fees for **service** animals.

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

1.19 Leases

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

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

An owner may not terminate the tenancy or refuse to renew the lease of a tenant of a HOME- or HTF-assisted unit except for serious or repeated violations of the terms and conditions of the lease; for violation of an

applicable federal, state or local law; or for other good cause. Good cause does not include an increase in the tenant's income. To terminate or refuse to renew tenancy, the owner must serve 30-day advanced written notice upon the tenant specifying the grounds for the action and providing a specific period for vacating. Owners must also comply with applicable North Dakota tenant-landlord laws.

1.20 Income Certification and Recertification

Recertification for HOME and HTF-assisted Units

Every sixth year of the affordability period, the owner agent must perform an income recertification for each low-income household and receive third-party documentation to support that certification. In other years, the owner agent may accept the household's self-certification of income. For example, a HOME project is closed out and begins its affordability period in 2023. 2023 is Year 1. 2028 is Year 6. In 2028, all tenants must have a full income recertification using source documentation as verification.

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

Recertification for NSP Units

The owner/agent must perform an annual household and rent update for each low-income household. An income recertification is not required.

For more information, see section 2.10.

1.21 Target Population Set Aside Units

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

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

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

1.22 Tenant Selection

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

- Limit the housing to income-eligible households.

- Are reasonably related to the applicants' ability to perform the obligations of the lease (i.e., to pay the rent, not to damage the housing, and not to interfere with the rights and quiet enjoyment of other tenants).
- Outlines the screening subtility for tenancy criteria.
- Limit eligibility or give a preference to a particular segment of the population, if permitted in the written agreement with NDHFA.
- Do not exclude an applicant receiving tenant-based rental assistance because of the applicant's status as a recipient of such assistance.
- Provide for the selection of tenants from a waiting list in the chronological order of their application, insofar as is practicable.
- Give prompt written notification to any rejected applicant of the grounds for any rejection.

Other Considerations:

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

1.23 Fair Housing and Affirmative Marketing

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

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

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

- Discriminate in the selection/acceptance of applicants in the rental of housing units.

- Discriminate in terms, conditions or privileges of the rental of a dwelling unit or services or facilities.
- Engage in any conduct relating to the provision of housing that otherwise make unavailable or denies the rental of a dwelling unit.
- Make, print or publish (or cause to make, print or publish) notices, statements or advertisements that indicate preferences or limitations based on protected class status.
- Represent a dwelling is not available when it is in fact available.
- Deny access to, or membership or participation in, associations or other services organizations or facilities relating to the business of renting a dwelling or discriminate in the terms or conditions of membership or participation.
- Engage in harassment or quid pro quo negotiations related to the rental of a dwelling unit.

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

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

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

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

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

to be made available for inspection by NDHFA to assess the results of the marketing efforts as part of the annual compliance review.

- Recipients must display the HUD fair housing poster, Form HUD-928.1, in all rental offices and locations where potential tenants may likely come to apply for housing. The poster(s) should be in the language(s) of likely potential applicants. Posters in various languages can be [downloaded from HUD’s website](#).
- Prior to HUD programs loan closing and at least once every five years, to describe and assess the effectiveness of the Recipient’s Affirmative Fair Housing Marketing Plan, Recipients must complete and submit to NDHFA the [Form HUD-935.2A, “Affirmative Fair Housing Marketing Plan – Multifamily Housing.”](#)

1.24 Violence Against Women Act

All HUD-funded projects must comply with the provisions of the Violence Against Women Reauthorization Act of 2013 and 2022 (VAWA). VAWA is legislation designed to improve criminal justice and community-based responses to domestic violence, dating violence, sexual assault and stalking in the United States.

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

Prohibited Denial/Termination

No applicant for or tenant of covered housing programs may be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

VAWA protections apply to all victims of domestic violence, dating violence, sexual assault and stalking regardless of sex, gender identity, or sexual orientation.

Lease Terms

The owner/manager shall ensure that an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as:

- A serious or repeated violation of a lease by the victim or threatened victim of such incident; or
- Good cause for terminating the assistance, tenancy or occupancy rights to housing of the victim of such incident.

Termination on the Basis of Criminal Activity & Bifurcation of Lease

No person may deny assistance, tenancy, or occupancy rights to an applicant or tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking. Notwithstanding the foregoing, the owner and/or manager may bifurcate a lease for the housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing. The owner and or manager must provide any remaining tenants with an opportunity to establish eligibility and a reasonable time to find new housing or to establish eligibility.

Confidentiality of Tenant Information Related to Domestic Violence, Dating Violence, Sexual Assault, or Stalking

The owner shall ensure that any information submitted to the staff, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking shall be maintained in confidence and may not be entered into any shared database or disclosed to any other entity or individual, except to the extent that the disclosure is:

- Requested or consented to by the individual in writing.
- Required for use in an eviction proceeding against any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking; or
- Otherwise required by applicable law.

Required Notices

HUD has developed, and may amend from time to time, notices of the rights of individuals under VAWA including the right to confidentiality and the limits thereof. The owner agrees to ensure that these notices are utilized and disseminated at the project as directed by HUD and/or NDHFA. See below for information on required forms.

Emergency Transfers

HUD has developed, and may amend from time to time, guidance regarding a model emergency transfer plan that allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another available and safe dwelling unit. The owner agrees to ensure that any guidance developed will be utilized as directed by HUD and/or NDHFA.

NDHFA mandates the use of the following VAWA forms for all projects subject to VAWA compliance.

- HUD 5380: Notice of Occupancy Rights Under VAWA. Must be provided at the following times, along with a copy of the HUD 5382:
 - At the time of initial admission; and
 - At the time of denial of tenancy; and
 - When termination / eviction notices are sent.
- HUD 5381: Model Emergency Transfer Plan. The owner must create a model plan specific to each project. The plan must be made available for review by tenants and by NDHFA.
- HUD 5382: Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. This form is to be used by tenants as a self-certification form. A copy must be attached any time the HUD 5380 is distributed.
- HUD 5383: Emergency Transfer Request. This form is used by tenants to request a transfer under VAWA.
- HUD 91067: VAWA Lease Addendum.

Forms are available on NDHFA's website at <https://www.ndhfa.org/index.php/compliance/vawa/>.

Nonretaliation Provisions (Added in VAWA Reauthorization of 2022)

An owner agent may not discriminate against any person because they have opposed any act or practice made unlawful by VAWA or testified, assisted, or participated in any VAWA-related matter.

Noncoercion Provisions (Added in VAWA Reauthorization Act of 2022)

An owner agent may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises VAWA protections, assists another person in exercising their VAWA protections, or participates in a VAWA investigation or enforcement activity.

Protection to Report Crimes from Home (Added in VAWA Reauthorization Act of 2022)

Owner agents, residents, guests, and applicants have the right to seek law enforcement or emergency assistance on their behalf or on the behalf of another person seeking assistance and shall not be penalized based on such requests for assistance or their status as a victim of criminal activity. Prohibited penalties include actual or threatened:

- Assessment of monetary or criminal penalties, fines, or fees
- Eviction
- Refusal to rent or renew tenancy
- Refusal to issue occupancy permit or landlord permit
- Closure of the property or designation of the property as a nuisance or similarly negative designation

1.25 House Rules

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

1.26 Occupancy Standards

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

1.27 Reserve Accounts

All HOME and HTF are required to maintain replacement and operating reserve accounts. Owners should refer to the Loan Agreement for specific reserve account guidance. Owners of NSP projects should check their Loan Agreement to determine if they are required to maintain one or both of these accounts.

Replacement Reserve Account

All HOME and HTF properties will be required to maintain a replacement reserve account for the term of the HUD loan. The replacement reserve requirement for new construction properties and substantial rehabilitation properties, rehab exceeding \$30,000 per unit, designed for seniors will be no less than \$300 per unit per year, inflated at 3% annually. The requirement for all properties designed for families as well as rehabilitation

developments with rehabilitation costs of \$30,000 per unit or less will be no less than \$350 per unit per year, inflated at 3% annually.

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.

Owners are required to provide NDHFA with a record of all activity in the replacement reserve account during the prior fiscal year in conjunction with submission of the Project's annual compliance monitoring materials.

Operating Reserve Account

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

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

1.28 Community Housing Development Organizations (CHDOS) - HOME Only

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

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

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

CHDO Fair Lease and Grievance Procedure

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

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

CHDO Proceeds

The CHDO must use any CHDO proceeds which it is authorized to retain, for HOME-eligible or other housing activities to benefit low-income families, as required by 24 CFR 92.300(a)(2). A participating jurisdiction may use its own definition of "low-income" family. Examples of affordable housing activities which may be funded with CHDO proceeds include emergency repairs, project operating costs and reserves, housing refinancing costs,

CHDO operating expenses and homebuyer counseling. CHDO proceeds which are retained by a CHDO are not subject to the requirements of the HOME regulations, except for 24 CFR 92.300(a)(2). Thus, the Davis-Bacon Act, National Environmental Policies Act and Uniform Relocation Assistance and Real Property Acquisition Policies Act do not apply to the use of CHDO proceeds. However, because CHDO proceeds are derived from the expenditure of HOME funds, any activities which are funded with CHDO proceeds may not be contributed as match.

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

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

SECTION 2—QUALIFICATION OF APPLICANTS

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

HUD regulations allow various methods of calculating annual income. However, NDHFA mandates that all owners use the methodology found in 24 CFR Part 5.609, as amended from time to time (often referred to as the “Section 8 methodology”).

For additional information on determining income eligibility, refer to the following resources:

- Chapter 5 of HUD Handbook 4350.3 *Occupancy Requirements of Subsidized Multifamily Housing Programs*.
*CAUTION: The current HUD Handbook has not been updated to include the streamlining rules or HOTMA updates, as listed below.
 - Section 1- Determining Annual Income
 - Section 3- Verification
 - Exhibit 5-1- Income Inclusions and Exclusions
 - Exhibit 5-2- Assets
 - Appendix 3- Acceptable Forms of Verification
- Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs: Final Rule 3/8/17
- Streamlining Administrative Regulations for Multifamily Housing Programs and Implementing Family Income Reviews Under the Fixing America’s Surface Transportation (FAST) Act: Final Rule 5/27/20
- *Technical Guide to Determining Income and Allowances for the HOME Program*
- Housing Opportunities Through Modernization Act of 2016 (HOTMA); Final Rule 2/14/23, Effective 1/1/24
- Notice H 2023-10 / Notice PIH 2023-27: Implementation Guidance: Sections 102 and 104 of the Housing Opportunity Through Modernization Act of 2016 (HOTMA)

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 must verify all income and assets. After all income and assets have been verified, the owner or 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 HUD-assisted 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 Citizenship

There are no citizenship requirements for HOME, HTF, or NSP projects. However, citizenship requirements may apply if the property received funding from another source or if the household receives rental assistance.

2.03 Student Eligibility Requirement

NOTE: HTF- and NSP-assisted units do NOT have student eligibility restrictions. HOME student requirements are different from those for the Low Income Housing Tax Credit (LIHTC) program and a resident seeking to qualify for a HOME unit that is funded by tax credits will need to qualify under both sets of rules.

HOME Only

Effective August 23, 2013, HOME-assisted properties have additional eligibility requirements for students. The HOME program has adopted the Section 8 HCV program restrictions on student participation found at 24 CFR 5.612.

If a household contains an adult student enrolled in an institute of higher learning who is under age twenty-four (i.e., age 18-23), then the household must meet an exemption to qualify for HOME assistance. This is true whether the student is **full or part-time**.

If the student meets one of the following criteria, then the household is eligible:

1. Student is a dependent of the household.
2. Student is a veteran of the United States Military.
3. Student is married.
4. Student is a parent with dependent child(ren).
5. Student a person with a disability that was receiving Section 8 assistance prior to 11/30/05.
6. Student can prove independence from his or her parents based on the following:
 - a. Of legal contract age under state law, AND
 - b. Has established a separate residence from parents (not counting a dormitory or student housing) for at least one year, or meets the US Department of Education definition of

independent which includes an individual who was an orphan or ward of the state through age eighteen (18), is living with a legal dependent, or is a graduate or professional student, AND

- c. Is not claimed on parents' tax returns, AND
 - d. Parents must certify whether or not they provide financial assistance (this does not affect student eligibility but could affect income eligibility).
7. If none of the above applies, the household can qualify if the student's parents are income-eligible under the HOME income limits for the county in which they live.
- a. If the parents are divorced or separated, get a declaration from both parents.
 - b. If the parents refuse to provide declaration of income and/or statement of whether or not they provide financial assistance, then the household is not eligible.

Households that do not meet this requirement are not eligible to move into a HOME-assisted unit. If a household that is already occupying a HOME-assisted unit later becomes student ineligible, then that household is treated as an over-income household as described in section 2.12 of this manual.

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

2.04 Determining Household Size

The owner/management 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:

- Foster children
- Foster adults
- Live-in aides and their children
- 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:

- Children temporarily placed in a foster care home away from the household and are expected to return.
- Children present at least 50 percent of the time, as mandated by joint custody arrangements.
- Children who are away at school but return to the household during school recesses.
- Unborn children.
- Children in the process of being adopted.

- Family members temporarily absent due to military service or an out-of-state job assignment.
- Children of deployed military personnel.
- Family members in rehabilitation facilities or hospitals for a limited time period or longer.
- If a family member is permanently confined to a nursing home or hospital, the family makes the decision as to whether to include the permanently confined family member as part of the household’s composition.

2.05 Change in Household Composition

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

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

2.06 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
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* Emancipated minors who are not head, spouse, or co-head are considered a dependent.

**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.

Nonrecurring Income

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

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

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.

- 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.”
- 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.” Individuals considered “gig workers,” such as babysitters, landscapers, rideshare or app-based delivery drivers, and house cleaners, typically fall into the category of independent contractors.
- 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, prior year’s income should not be used if information is available that shows the situation has changed.

Student Financial Assistance

Treatment of student financial assistance depends on whether a household is receiving Section 8 assistance (HCV, PBV, or PBRA). To properly calculate student financial assistance, the owner agent must verify and calculate:

1. Actual covered costs,
2. Student financial assistance received under the Higher Education Act, and
3. Other student financial assistance, as defined below.

Actual Covered Costs

Actual covered costs include tuition, books, supplies, equipment to support students with disabilities, room and board, and other fees required by an institution of higher education. If the student is not the head of the household, co-head, or spouse, actual covered costs also include the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

Student Financial Assistance received under Section 479B of the Higher Education Act (HEA Assistance)

HEA assistance includes federal Pell Grants, Teach Grants, federal work study programs, federal Perkins Loans, student financial assistance received under the Bureau of Indian Education, Higher Education Tribal Grants, Tribally Controlled Colleges or Universities Grant Program, or employment training programs under Section 134 of the Workforce Innovation and Opportunity Act (WIOA).

Other Student Financial Assistance

- Other student financial assistance includes grants or scholarships received from such sources as the Federal government; a state, territory, Tribe, or local government; a private foundation registered as a 501(c)(3) nonprofit; a business entity such as a corporation, general partnership, LLC, LP, joint venture, business trust, public benefit corporation, or nonprofit; or an institution of higher education.
- Other student financial assistance does not include financial support provided in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded under Section 479 B of the HEA) or gifts from family or friends.
- Other student financial assistance may be paid directly to the student or to the educational institution on the student’s behalf.

Determining Student Financial Assistance Income for Households without Section 8 Assistance

The amount of student financial assistance to include as income is calculated as follows:

1. Actual covered costs MINUS amount of HEA Assistance = amount of actual covered costs exceeding HEA assistance (“X”)

- a. If “X” is negative, count the full amount of **other** student financial assistance as income
 - b. Otherwise, proceed to Step 2
2. Amount of **other** student financial assistance MINUS “X” = student financial assistance counted in income (“Y”)
- c. If “Y” is negative, student financial assistance income = \$0

Determining Student Financial Assistance Income for Households with Section 8 Assistance

If the household is receiving Section 8 assistance and the student is the head, co-head, or spouse **and is over the age of 23 with dependent children**, follow the rule above for non-Section 8 households.

If the student is the head, co-head, or spouse but is **age 23 or younger or does not have dependent children**, include as income any amount of student financial assistance (sum of amounts received under the Higher Education Act and other student financial assistance) in excess of actual covered costs.

Income Inclusions and Exclusions

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

2.07 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:

- Real property is included in net family assets. Real property includes land or a home.
- Necessary personal property (NPP) is excluded from net family assets. Necessary personal property includes:
 - Items essential to the family for the maintenance, use, and occupancy of the premises as a home.
 - Items necessary for employment, education, or health and wellness.
 - Items that assist a household member with a disability or that may be required for a reasonable accommodation for a person with a disability.
 - Personal effects including items that are convenient or useful to a reasonable existence and that support and facilitate daily life within the home.
- Non-necessary personal property (NNPP) includes:
 - Bank accounts and other financial investments.
 - Luxury items.
 - Other items not counted as necessary personal property.
- Non-necessary personal property is treated as follows:

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

Examples of Necessary and Non-Necessary Personal Property

Necessary Personal Property	Non-Necessary Personal Property
<ul style="list-style-type: none"> • Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter) • Furniture, carpets, lines, 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, phones, tablets, and related equipment • Professional tools of the 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). 	<ul style="list-style-type: none"> • 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 for 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 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 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 because 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.

- The value of necessary items of personal property.
- 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.
- 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.
- 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.
- 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.

- 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.
- 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).
- Interests in Indian trust land.
- Equity in a manufactured home where the family receives assistance under 24 CFR Part 982.
- Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR Part 982 Family Self-Sufficiency accounts.
- Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.
- The full amount of assets held in an irrevocable trust.
- The full amount of assets 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 received, not an amount anticipated.

Asset Income

1. 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.

2. Imputed Income from Assets

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

- The value of net family assets exceeds \$50,000 (adjusted by inflation)
- The specific asset is not specifically excluded; and
- 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.

Imputed income is calculated using the passbook rate.

- HUD will calculate a new passbook rate each July

Net Family Assets Scenario	Actual Income	Imputed Returns	Amount Included in Income
Assets of \$50,000 or less	Included	Not calculated	Actual income only
Exceeds \$50,000 and actual income can be computed for ALL assets	Included	Not calculated	Actual income only
Exceeds \$50,000 and NO actual income can be computed	N/A	Calculated using HUD passbook rate for all assets	Imputed returns for all assets
Exceeds \$50,000, but actual income can only be computed for some assets	Included for assets that can be computed	Calculated for any remaining assets where actual income cannot be computed	Actual income that can be computed AND imputed returns for all remaining assets that cannot be computed

Asset Inclusions and Exclusions

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

2.08 General Verification Requirements

HUD Programs use 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

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)
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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 programs referenced in this manual.

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.
 - Upfront Income Verification (UIV) such as Equifax’s Work Number (Level 5)
 - Paystubs: Two months recent and consecutive are required (Level 4)
 - Verification of Employment forms completed by the employer (Level 3)
 - Oral verification obtained from a third party (Level 2)

2. Unearned Income (Social Security, disability, pension, and other “transfer (benefit) payments.)
 - Statement or benefits/award letter supplied by the household (Level 4)
 - Verification form completed by third parties, when the above are not available (Level 3)
 - Oral verification obtained from a third party (Level 2)

NOTE: If a household member is not employed and receives SS, SSDI, Pensions, or other unearned income the member must complete a [Non-Employed Affidavit](#) in addition to verification of the unearned income.

3. Child or Spousal Support:
 - 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
 - Financial statements, real estate listings, mortgage deeds, or similar documentation
 - Verification form completed by a financial institution when the above are not available or doesn’t provide the necessary information.

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>.

Income Verified for a Rental Assistance Program

In lieu of conducting their own income calculation, the owner agent must accept an income determination that has already been made by a state or federal rental assistance program (tenant-based or project-based).

The owner agent must obtain from the public housing authority (PHA) or other rental assistance administrator a written statement that either:

- Indicates the household size and annual income; or
- Indicates the current applicable program income limit and affirms that the household’s annual income does not exceed that limit.
- Exception: For Housing Choice Vouchers or Project-Based Vouchers, HUD Form 50058 will be accepted instead of a separate statement from the PHA. Form 50058 counts as income verification but does not replace the TIC.

Once the owner agent receives this documentation, no other verification of income is required. However, verifications for other eligibility requirements such as student status must still be obtained, and the household must still complete a TIC and Income Questionnaire.

The owner agent must obtain traditional third-party verification if the PHA or other rental assistance administrator does not respond to requests or is unwilling to provide the necessary statement.

The HUD programs covered in this manual 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 other verifications so that it is completely inaccessible to NDHFA staff during audits or reviews.

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 (HOME Guide 3.2 E 5)

Owners/agents can use a prospective tenant household’s income eligibility determination for up to six months after the determination is made. If the tenant does not move in before six months have elapsed, the owners/agents must conduct a new income eligibility determination, based on a review of current source documents.

NOTE: If multiple deadlines apply, use the most restrictive. (LIHTC verifications are good for 120 days as opposed to six months.)

2.09 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: If not withdrawing, use cash value.
- Retirement Accounts: While employed, use the amount that can be withdrawn without retiring or terminating employment. At retirement, add lump sum amounts to net family assets or add periodic distributions to annual income.
- Jointly owned Assets: Prorate according to the percentage of ownership. If no percentage is specified or provided by state or local law, prorate the assets evenly among all owners.

2.10 Annual Income Recertification

Recertification for HOME and HTF-assisted Units

Every sixth year of the affordability period, the owner agent must perform an income recertification for each low-income household **and** receive third-party documentation to support that certification. In other years, the owner agent may accept the household's self-certification of income. For example, a HOME project is closed out and begins its affordability period in 2023. 2023 is Year 1. 2028 is Year 6. In 2028, all tenants must have a full income recertification using source documentation as verification.

The owner agent may choose one of three options when deciding when to perform annual recertifications.

1. Recertification may be performed at the anniversary date of the initial move-in certification, or
2. Recertification may be performed at lease renewal, or
3. Recertification may be performed on an annual schedule where all households are verified at the same time every year (for example, the owner may choose to annually recertify every existing household on January 1.)

For properties with existing tenants receiving funds for rehabilitation, owners may begin certifying tenant eligibility on or after the date of the written agreement. These initial certifications will precede the start of the

affordability period, but as long as the owner complies with requirements for annual recertification and applies the appropriate rules for increases in income at recertification to maintain the unit mix, the units will continue to be eligible at the start of the affordability period.

Recertification for NSP Units

The owner agent must perform an annual household and rent update for each low-income household. An income recertification is not required.

The owner agent may choose one of the same three options for listed above when deciding when to perform annual recertifications.

A recertification file for NSP units will only include the following documentation: a new Tenant Income Certification form and the renewal lease and applicable lease addenda. Verification of income and assets is not necessary at recertification for NSP. If the unit is also tax credit or HOME or HTF-assisted, those program recertification rules will apply.

2.11 Comparing Annual Household Income to Published Income Limits

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

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

2.12 Maintaining Unit Mix and Increases in Household Income

HOME Program Maintaining Unit Mix throughout the Period of Affordability

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

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

HOME Fixed Unit Properties

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

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

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

- The household occupies a High or Low HOME Rent unit and the household income increases over the current HOME low-income limit (80 percent income limit) for that family size, or

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

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

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

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

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

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

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

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

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

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

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

- The rent amount payable under state or local law; or
- 30 percent of the tenant's monthly **adjusted** family income.

- If the unit is an LIHTC unit, the rent must be at or below the amount allowed by the tax credit program.

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

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

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

HOME Floating Unit Property

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

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

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

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

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

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

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

The next vacant, comparable, non-assisted unit must be designated as a High HOME unit. A comparable unit is one that is equal or greater in terms of size, number of bedrooms, and amenities. The owner may not replace the unit with one that is smaller, unless doing so preserves the original unit mix. The newly designated High HOME unit must be rented to a household whose income does not exceed the low-income limit, at a rent that does not exceed the High HOME Rent limit.

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

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

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

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

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

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

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

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

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

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

HOME-Assisted units with LIHTC

If the household income increases above the income limits, the household may continue to reside in the unit; but once their lease expires, the rent will be equal to the lesser of 30 percent of the household's adjusted income, up to the maximum LIHTC rent if the unit is also an LIHTC unit, or the rent amount payable under state or local law. If the unit is floating, the new rent cannot exceed market rent for a comparable, unassisted unit. Households whose income exceeds the 80 percent AMI limit must not be permitted to move to any other HOME-assisted unit. This includes student status for properties.

HOME-only without LIHTC - Adjusted Gross Income for Over-Income Households

When determining eligibility to occupy a HOME unit, the household's gross income must always be considered. However, if a tenant goes over the income guidelines **after move-in**, the owner must raise the over-income household's rent as soon as the lease permits in accordance with the terms of the lease (refer to Chapter 2.12 – Maintaining the Unit Mix). In certain circumstances, the rent for an over-income household may need to be adjusted such that the tenant pays 30 percent of the tenant's monthly adjusted family income.

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

Dependent Deduction

\$480 allowance for each **dependent** (adjusted annually for inflation)

- A dependent is:
 - Under 18 years of age
 - A person with disabilities
 - A full-time student of any age
- A dependent can never be:
 - Head of household
 - Co-head or spouse of the head of household
 - A foster child or foster adult
 - An unborn child
 - A child who has not yet joined the household
 - A live-in aide

NOTE: When more than one household shares custody of a child and both live in assisted housing, only one household at a time can claim the dependent deduction for the child. The household with primary custody or with custody at the time of the annual recertification receives the deduction. If there is a dispute about which household should claim the dependent deduction, the owner should refer to available documents such as copies of court orders or an IRS return showing which household has claimed the child for income tax purposes.

Childcare Deduction

Anticipated expenses for the care of children under age 13 (including foster children) may be deducted from annual income if all the following are true:

- The care enables a family member to attend school, work, or seek employment,

- There is no adult in the household capable of providing the care during these times,
- The amount deducted is reasonable,
- The amount is not paid to a family member living in the household,
- Is not reimbursed by any other person or agency.

Childcare expenses must not exceed the amount earned by the household member made available to work during the hours for which the childcare is paid.

While a household member is at school or looking for work, the childcare expense is not limited.

Childcare attributable to the work of a dependent full-time student (who cannot be the head, spouse, or co-head) is limited to not more than the dependent deduction.

Childcare payments made on behalf of a minor who is not living in the unit cannot be deducted.

This may not include child support payments or expenses for the care of a handicapped or disabled family member aged 13 or older

Disability Assistance Expense Deduction

Each household member who is a person with disabilities is entitled to a deduction for unreimbursed, anticipated costs for “attendant care” and “auxiliary apparatus”, to the extent the expenses are reasonable and necessary for any household member 18 years of age or older (who may or may not be the member who is the person with disabilities) to be employed.

The deduction is the amount that exceeds 10% of the household’s annual income but may not exceed the total income received by the household members who are enabled to work. (For households receiving this deduction as of 1/1/2025, please see “Phased in Relief” under “Hardship Exceptions to Medical Expense Deductions below.)

Auxiliary apparatus includes wheelchairs, ramps, adaptations to vehicles, service animals, etc., but only if these items directly permit the disabled person or another household member to work.

- The cost to maintain the apparatus or service animal is considered a disability expense.

Medical and Health Expense Deduction

This allowance is permitted only for those households whose head or spouse is age 62 or older, handicapped or disabled. If the household is eligible for a medical expense reduction, owners must include the unreimbursed medical expenses of all household members.

- Medical expenses include all expenses the household anticipated incurring during the 12 months following the re/certification that are not reimbursed by an outside source, such as insurance.
- The owner may use the ongoing expenses the household paid in the preceding 12 months to estimate anticipated expenses.
- The medical expenses deduction is that portion of total medical expenses that exceed 10% of the annual income. (For households receiving this deduction as of 1/1/2025, please see “Phased in Relief” under “Hardship Exceptions to Medical Expense Deductions below.)
- If a household is making regular payments on a bill for past one-time medical expense, those payments are included in anticipated medical expenses. However, if a household received a deduction for the full amount of a medical bill, the household cannot continue to count that bill even if it has not yet been paid in full.

- If the household has no handicap assistance expenses, the allowance is limited to the total of medical expenses that exceed 3% of annual gross income. If the household also has handicap assistance expenses, the amount is limited to the amount by which the total of the two expenses exceeds 3% of gross income.
- \$525 allowance per household (adjusted annually for inflation) if the head or spouse is **age 62 or older, handicapped or disabled**

Hardship Exemptions to Medical Expense Deductions

- Phased in Relief - If a household previously had a deduction for medical expenses over 3% of their income, the threshold increase will happen in phases:
 - 1st year: deduct eligible expenses over 5% of the family's income
 - 2nd year: deduct eligible expenses over 7.5% of the family's income
 - 3rd year: deduct eligible expenses over 10% of the family's income
- General Financial Hardship – If the household is struggling to pay rent but doesn't qualify for an interim review, they may qualify for a general hardship exemption due to a small decrease in income, a change in the household size, or increased medical expenses. This exemption is available at any time.
 - Reduce the threshold to 5% of the family's income
 - Ends when hardship ends of 90 days, whichever comes first
 - May request a 90-day extension

HTF Over-Income

- A household residing in an HTF-assisted unit, and which was determined income-eligible at the time of initial occupancy, is not subject to eviction from that unit solely because household income increased above 140% of applicable HTF income limits during recertification. HTF-assisted units continue to qualify as affordable housing despite a temporary noncompliance caused by increases to household income, so long as actions are being taken by the owner to fill vacancies in such a manner as to correct the noncompliance as quickly as possible. Specifically, the next available vacant unit in the project must be filled by an income-eligible household so that the project as a whole remains in compliance with the affordability restrictions agreed upon in the HTF loan documents and LURA. This is referred to as the "next-available-unit rule." The next-available-unit rule applies to any project that is not 100 percent HTF-assisted. HTF-assisted units must be floating, and not fixed to specific project units, in order to facilitate the next-available-unit rule. If any subsequent vacancy is filled with an over-income tenant, the project is then considered to be out of compliance with the HTF program.
- An owner may not terminate the tenancy or refuse to renew the lease of a tenant of an HTF-assisted unit except for serious or repeated violations of the terms and conditions of the lease; for violation of an applicable federal, state or local law; or for other good cause. Good cause does not include an increase in the tenant's income. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action and providing a specific period for vacating that is consistent with North Dakota law.

2.15 Correction to Documents

Sometimes it is necessary to make corrections or changes to documents. NDHFA will not accept a document that has been altered with correction fluid or "white-out." When a change is needed on a document, the person

making the correction must draw a line through the incorrect information, write or type the correct wording or number, and have all parties initial the change.

2.16 Tenant Files

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

The tenant files must contain the following:

- Resident Eligibility Application or equivalent form.
- Acceptable verifications of income and assets.
- Verification of student eligibility.
- Tenant Income Certification (initial certification and annual recertifications).
- Signed lease agreement, HOME/HTF Lease Addendum, HUD VAWA Lease Addendum.
- Lead-based paint acknowledgements (properties built pre-1978).
- All move-out files must also contain the following:
 - Written 30-day (or greater) notice to vacate (if not available – document in file).
 - Move-out inspection report (both parties signed and dated).
 - Security deposit refund (check number and date) or letter of intent to withhold security deposit within 14 days of move-out.
 - Itemized list of costs charged to tenant within 30 days per NDCC 47-16-07.1.

2.17 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 at recertification. 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:

- Notify NDHFA immediately that an incident of tenant fraud has been identified and provide a written explanation of what happened.
- Begin the process of removing the fraudulent unqualified household and replacing it with a qualified household. Every 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 try and 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. As mentioned above, all tax credit leases should include language that fraud is grounds for eviction or non-

renewal of a lease. Additionally, it is a 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:

- 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.
- Documentation showing that the tenant intentionally misstated or withheld information including but not limited to:
 - Evidence that false names or Social Security Numbers were used.
 - Copies of falsified, forged, or altered documents.
 - Proof that 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, and
 - Admission by the tenant that information was falsified or omitted.

2.18 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:

- The entity will be placed on NDHFA's suspension list until further investigation is completed.
- If warranted, NDHFA will debar the entities involved.
- If warranted, NDHFA will recapture funds.

Other noncompliance penalties such as increased auditing (see section 3.09) may also apply.

SECTION 3 – COMPLIANCE MONITORING PROCEDURES

This section of the manual outlines NDHFA's procedures for monitoring, in accordance with federal regulations. 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 is required by regulation to conduct compliance monitoring and to take the appropriate steps when noncompliance is found.

3.01 Annual Restrictions Review

NDHFA will perform an Annual Restrictions Review on every HUD-funded project. The review will cover the period 01/1-12/31 of the prior year. If a project was funded by more than one HUD program and/or LIHTC, 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

1. Use most [current version](#), available on NDHFA's website.
2. Current Utility Allowance must be included on the worksheet and Utility Allowance source documentation must be attached.

Annual Owner Certification (HOME and HTF only)

If a project has both HOME and HTF, an Annual Owner Certification must be completed for each program. HUD's monitoring provisions require the owner to certify at least annually that the project meets the following:

HTF Annual Owner Certification

- The development continues to comply with all HTF regulatory requirements contained in 24 CFR Part 93.
- Each HTF-assisted unit is rent-restricted as defined in the LURA.
- The owner has conducted an initial certification for each household in an HTF-assisted unit and is retaining documentation to support that certification.
- No tenants in HTF-assisted units were evicted or had their tenancies terminated other than for good cause, and no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under Code.
- All low-income units in the project are and have been for use by the general public and used on a non-transient basis.
- No finding of discrimination under the Fair Housing Act (42 U.S.C. 3601-3619) has occurred for this project. A finding of discrimination includes an adverse final decision by the HUD Secretary, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court.
- Each building in the project is and has been suitable for occupancy taking into account local health, safety and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low-income unit in the project.
- No request for protection under VAWA has been made by any tenant of this project.
- All common areas and facilities such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings where applicable.
- If a low-income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income.
- If the income of tenants of a low-income unit in any building increased above the limits allowed under the HTF program, the next available unit was or will be rented to residents having a qualifying income.
- There has been no change in the ownership or management of the Project.
- There has been no project-based rental assistance added to the Project since placed-in-service.

HOME Annual Owner Certification

- The Project continues to comply with all HOME regulatory requirements contained in 24 CFR Part 92.

- The owner has:
 - Received, upon initial occupancy, an annual TIC from each resident of a HOME-assisted unit and documentation to support that certification.
 - Annually re-certified tenant eligibility for a HOME-assisted unit by receipt of a new TIC and supporting documentation or by receipt of a tenant self-certification.
 - Verified each tenant's income source documents at least once every six years.
- Each HOME-assisted unit in the Project has been rent-restricted under the LURA and under 24 CFR Part 92.
- No tenants in HOME-assisted units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent with respect to a HOME-assisted unit not otherwise permitted under 24 CFR Part 92.
- All HOME-assisted units in the Project are and have been for use by the general public and used on a non-transient basis.
- No claim of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619, has occurred for this Project. A claim of discrimination includes an adverse final decision by HUD, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616a(a)(1), or an adverse judgment from a federal court.
- Each building in the Project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or HOME-assisted unit in the Project.
- No request for protection under VAWA has been made by any tenant of this Project.
- All common areas and facilities, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings.
- If a HOME-assisted unit in the Project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income.
- If the income of tenants of a HOME-assisted unit in any building increased above the limit allowed under the HOME program, the next available unit was or will be rented to residents having a qualifying income.
- There has been no Project-based rental assistance added to the Project since placed-in-service.
- There has been no change in the ownership or management of the Project.

Other Required Annual Compliance Documentation

- Statement of Mortgage Balances, showing that payments are current.
- Property Tax Statement showing taxes are paid and current.
- Bank statements for operating reserve and replacement reserve accounts as of the end of the project fiscal year.
- Proof of sufficient property and liability insurance coverage with NDHFA listed as mortgagee.

- Documentation to show the current utility allowance is being used (i.e., a copy of the PHA utility allowance table).
- For projects that received points at initial 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.

3.02 Annual Rent Approval

Each year throughout the period of affordability, NDHFA must notify property owners of updated rent and income limits for HUD programs. HUD typically releases the limits in April through June. NDHFA will email a memo to owners and managers and will also publish with memo to the NDHFA website.

HOME and HTF only: Within 30 days of receipt of the new rent limits, owners must submit an annual [rent approval form](#) to NDHFA with the current rental structure and the proposed rental structure for the following year.

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

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

3.03 Financial Oversight

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.

3.04 Physical Inspection and File Monitoring

NDHFA will perform a physical inspection for each development within 12 months the certificate of occupancy or equivalent is received for the final building/unit, then at least once every three years thereafter. The initial file monitoring will occur within the same calendar year as the initial inspection. 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.

The monitoring and inspection sample size will be determined as follows:

- For projects with one to four assisted units, 100% of the assisted units will be monitored/inspected.

- For projects with more than four assisted units, at least 20% of the assisted units, but no fewer than four units, will be monitored/inspected. For physical inspections, at least one assisted unit in each building will be inspected.
- All vacant units will be inspected to ensure they are suitable for occupancy.

NDHFA reserves the right to inspect or monitor at any time at its discretion, with or without advance notice to the owner. Decision to 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 annual restrictions or financial reviews or previous inspections.

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

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 onsite 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
- VAWA Lease Addendum
- Household Demographics
- HOME Student Certification (HOME only)
- Move-in Inspection
- Annual Recertification documents
- 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.

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
- VAWA Emergency Transfer Plan
- Tenant Handbook
- Fee Schedule

Physical Inspections

Inspections will be conducted according to the NSPIRE standards set forth by HUD for HOME, HTF, and NSP projects in 92.251 as they may be amended. 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 15 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 onsite physical inspection, NDHFA will:

1. 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 will be issued. 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.
2. 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.
3. Request that all noncompliance issues be corrected within the time frame specified in the inspection report.
4. 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.
5. 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
6. Review the supporting documents of correction for correlation with the inspection report.
7. 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.
8. NDHFA must notify the owner of a HUD-funded 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.
9. NDHFA recommends using preventative maintenance and maintaining a maintenance schedule at all developments.

3.05 Review of Ongoing Lead-based Paint Maintenance (24 CFR 35.1355)

All borrowers with properties built before 1978 that have not been verified as lead free by a lead inspection must institute ongoing maintenance of painted surfaces and safe work practices as part of regular building

operations. This includes a visual inspection of lead-based paint annually and at unit turnover, repair of all unstable paint, and repair of encapsulated or enclosed areas that are damaged.

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

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

3.06 Correction Period

With the exception of the specific NSPIRE timelines, 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.

3.07 Fees

Late Fees

- Annual Restriction Review: \$250 will be charged if the compliance documents are not submitted by the deadline state in the review notification.
- Repayment based on the terms of the Loan Agreement(s): \$250 will be charged if repayment is late.
- File Audit/Physical Inspection: \$25/day if documentation or responses are not received by the due date state in the letter 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, the development will be assessed a \$250 reinspection fee plus actual costs for travel and per diem will be charged.

Non-Compliance Fee

Non-compliance that continues after the correction period may be charged a fee of \$25/day.

3.09 Non-Compliance

The severity and extent of noncompliance issues with HUD program requirements vary. In general, these violations fall into three categories:

- One-time instances of noncompliance that are relatively small and easy to remedy.
- More severe instances of noncompliance that occur on multiple occasions; and
- Instances of gross negligence, fraud, discrimination or physical conditions that pose an imminent threat to the health or safety of the tenants.

NDHFA’s actions to address issues of noncompliance will reflect the severity and extent of the noncompliance. The table below provides examples of each of these levels of violations.

Sample Compliance Problems

	Examples of Violations
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<p>Level 1 One-time instance of noncompliance</p>	<ul style="list-style-type: none"> • Single instance of property maintenance issues, such as broken windows. • Single instance of an incorrect rent calculation. • Single instance of failure to raise the rent of an over-income tenant; or • Untimely reports.
<p>Level 2 Serious and recurring instances of noncompliance</p>	<ul style="list-style-type: none"> • Incorrect, or absence of, income-eligibility determinations for tenant applications. • Incorrect, or absence of, annual tenant income-eligibility recertifications. • Failure to adopt or follow tenant selection procedures. • Failure to charge correct rents.
<p>Level 3 Instances of gross negligence, fraud, discrimination, or conditions that impose imminent threat to tenants' health or safety.</p>	<ul style="list-style-type: none"> • Failure to address major systems repairs (such as heating systems). • Chronic misrepresentation of availability of units to qualified applicants in order to show favoritism to relatives; or • Purposefully overcharging rents and "skimming" the difference.

Examples of Remedial Action

- Require the owner to make property improvements and pay for reinspection of the units.
- Require owner to reimburse tenants who overpaid rent.
- Accelerate the repayment of some portion or all of the loan.
- Require the owner to submit additional reports or to report on a more frequent basis.
- Increase monitoring visits.
- Restrict the owner's decision-making powers.
- Extend or re-start the affordability period.
- Require a new management agent.
- Foreclose the property.
- Restrict the owner from participating in future NDHFA-funded programs.
- Refer the issue to the HUD field office; and
- Add the owner/manager to HUD's debarred list.

3.10 Sample and Mandatory Forms

NDHFA has made available mandatory and sample forms on NDHFA's website at www.ndhfa.org under the Compliance tab. If you are unable to find a form or would like to request a specific form, contact NDHFA's compliance coordinator.

SECTION 4: HOME – AMERICAN RESCUE PLAN (HOME-ARP)

The HOME American Rescue Plan (HOME-ARP) follows most of the same rules as HOME, however there are a few significant differences. These differences are explained in more detail in this section. All other compliance procedures (Income Determination, Annual Restriction Review, Physical Inspections, File Monitoring, Financial Monitoring, etc.) follow HOME rules.

Contact NDHFA’s compliance coordinator if you have any questions regarding the applicability of a HOME rule to the HOME-ARP project.

4.01 Qualifying Households

Qualifying households are eligible based solely on meeting one of the HOME-ARP definitions of Qualifying Populations (QP). Initial income determination of household income is not required to be eligible to occupy a QP unit except as necessary to determine an affordable household contribution to rent.

4.02 Qualifying Populations (QP)

Qualifying households are eligible based solely on meeting one of the following four HOME-ARP definitions of Qualifying Populations:

1. Homeless (McKinney-Vento Act definition at 24 CFR 91.5)
2. At-risk of homelessness (McKinney-Vento Act definition at 24 CFR 91.5)
3. Fleeing/Attempting to Flee Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking
 - a. Definitions from VAWA regulation at 24 CFR 5.2003, except
 - b. Human trafficking definition from Trafficking Victims Protection Act of 2000
4. Other Populations where assistance would:
 - a. Prevent the family’s homelessness; or
 - b. Serve those with the Greatest Risk of Housing Instability

*Veterans and families including veteran member that meet one of preceding criteria

4.03 Occupancy Requirements

A HOME-ARP unit must be occupied by a household that meets definition of qualifying population at initial occupancy. The Unit remains compliant irrespective of changes in household income as long as unit is occupied by the qualifying household.

4.04 Rent Requirements

QP Households

- HOME-ARP rent cannot exceed Low HOME Rent, unless the project receives project-based subsidy OR the household receives tenant-based subsidy in which case the owner may charge up to the rental assistance program payment standard.

Low-Income Households

- Rent cannot exceed the High HOME rent limit unless the household receives tenant-based rental assistance in which case the owner may charge rent up to the rental assistance payment standard.

4.05 Tenant Contribution to Rent

The owner must develop policies and procedures to determine a household’s reasonable contribution to rent. Tenant contribution to rent must be affordable to qualifying household based on income determination.

Initial Move-in

- If there is an income requirement, use initial income determination to calculate tenant contribution to rent.
- If there is not an income requirement, use information collected at intake to determine a reasonable contribution to rent.

Annual Recertification

Rent contribution must be determined using one of the following options:

- Two months of source documentation
- Self-Certification (income and asset sworn statement)
- Written statement from the administrator of a government program (Safe-Harbor)

At least every sixth year of the compliance period, source documents must be used.

4.06 Recertification – Over-Income Households

Qualifying Households

- If household income is above 50% of area median income but at or below 80%, the household rent increases to the High HOME rent.

Low-Income Households

- A household that was low-income at initial occupancy whose income is above 80% AMI must pay rent that complies with 24 CFR 92.252 (i)(2). Typically, this is the lesser of:
 - Amount payable under state or local law
 - 30% of the family's adjusted income

4.07 Tenant Protections

All HOME-ARP households must have an executed lease that complies with HOME-ARP tenant protections. The lease cannot:

- Contain any of the HOME prohibited lease provisions
- Terminate tenancy or refuse to renew the lease except for serious or repeated violations of the lease terms/conditions, applicable federal, state or local laws, or other good cause

4.08 Tenant Selection

The owner must develop a tenant selection plan meeting the requirements of 24 CFR 92.253(d). The owner may not refuse to lease to a holder of a Section 8 housing choice voucher, recipient of tenant-based rental assistance, or a prospective tenant receiving similar assistance under another federal, state, or local program solely because of the tenant or prospective tenant's participation in such program.

The tenant selection plan will be subject to review and approval by NDHFA both prior to initial occupancy of the HOME-ARP units and throughout the compliance period.

4.09 Non-Compliance

If the project is not completed or fails to comply with initial or ongoing requirements during the compliance period, the Owner must repay the HOME-ARP funds. Within the first 10 years of the compliance period, repayment will be 100% of the HOME-ARP investment. The repayment will be reduced by 20% for each year beyond year 10 if the non-compliance occurs in years 11 through 15.

Selling the project does not constitute non-compliance if the HOME-ARP restrictions remain, the new Owner complies with all applicable HOME-ARP requirements for the duration of the compliance period, **and** HOME-ARP funds remaining the reserves (operating cost assistance and replacement) stay with the project and convey upon sale or transfer.

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 \$5000, the actual income from assets is always the income used. When net family assets exceed \$5000 then the actual income must be compared to the imputed income from assets and the higher amount is used for income determination.

Affirmative Fair Housing Marketing Plan: Also referred to as the AFHMP or Affirmative Marketing Plan. A plan in which the owner/management of a property confirms that they are following Fair Housing regulations and are making efforts to market the property to those groups determined to be least likely to otherwise apply for residency. All projects with five or more HOME- assisted units must have an AFHMP in place.

Affordability Period: The length of time for which a development must continue to meet the program requirements.

AMI: Area Median Income

Annual Household Income: Annual income of all persons who intend to permanently reside in a unit.

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

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

Application: Form completed by a person or household seeking rental of a unit in an award. An application should solicit sufficient information to determine the applicant's eligibility and compliance with federal and NDHFA guidelines.

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

Assets: Items of value, other than necessary and personal items, which are considered in determining the 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.

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.

Bifurcation of Lease: The act of amending a lease to remove some household members while keeping others on the lease. A bifurcation of lease may be required under VAWA to remove a tenant who engages in criminal activity related to domestic violence, dating violence, sexual assault or stalking without removing or otherwise penalizing the victim of such activity.

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

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

Completion Date: The earlier of: (1) of the date that the Certificate of Occupancy for the final livable structure within the Project is issued, (2) the date that the certificate of substantial completion of the Project, issued by an independent third-party architect, is issued, or (3) the date when other evidence of completion exists which is deemed acceptable to the Agency. The completion date is the start date for the project affordability period.

Comparable Unit: A unit that is equal or greater than another unit in terms of size, number of bedrooms, and amenities.

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

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

Current Anticipated Income: Gross anticipated income for the next twelve (12) months as of the date of occupancy that is expected to be received by the tenant(s) including imputed income.

Day Laborer: 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. Such income does **not** meet HUD's definition of "nonrecurring" and must be counted as income.

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

Developer: Any individual and/or entity who develops or prepares a real estate site for residential use to be an award

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; or
- A record of having such an impairment; or
- 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).

Due Diligence: The appropriate, voluntary efforts to remain in compliance with all applicable program rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies. 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 recipients of HUD funds to demonstrate due diligence.

Earned Income: Income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. 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. Earned income includes income of day laborers, independent contractors, and seasonal workers.

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 tenant. For annual recertifications, this date must be no later than one year from the effective date of the previous (re) certification.

Effective Term of Verification: A period of time not to exceed one hundred twenty (120) days. After this time, if the tenant has not yet moved in, a new, written third party verification must be obtained. The verification must be within the effective term at time of Tenant's Income Certification.

Eligible Tenant: The current tenant of the unit, so long as that tenant is eligible to occupy the unit under the requirements of HUD programs. This expressly includes a tenant whose income would not currently qualify under HOME, HTF or NSP, but who was qualified at the time of tenant's original occupancy of the unit.

Emergency Transfer: Under VAWA protections, an eligible tenant may be entitled to an emergency transfer to safe dwelling unit. All properties must create a VAWA compliant Model Emergency Transfer Plan using HUD Form 5381.

Employment Income: Wages, salaries, tips, bonuses, overtime pay, or other compensation for personal services from a job.

Extremely Low Income: HUD uses the term "low-income" for households whose income does not exceed the poverty guidelines or 30% AMI

Fair Market Value: An amount which represents the true value at which 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 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; and
- Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

Fixed Units: The HOME-assisted units remain the same throughout the affordability period.

Floating Units: The HOME-assisted units may change during the affordability period. Unit mix would be changed to maintain conformity during the affordability period so that the total number of HOME-assisted units meets the requirements set out in the application and recorded declaration. Each substituted unit must be comparable in terms of size, features, and number of bedrooms to the originally designated HOME-assisted unit.

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.

Good-cause Eviction: Rental Housing 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.

Gross Income: See Annual Household Income.

Gross Rent: The gross rent for a unit is the sum of tenant portion rent + utility allowance + non-optional charges + tenant-based rental assistance.

Gross Rent Floor: the lowest amount of rent that the owner will ever be required to accept. The gross rent floor is the rent limit in effect at the time the funds are awarded. If the current applicable HOME limits drop below the gross rent floor, the owner is not required to accept lower rents.

Group Home: Housing occupied by two or more persons or families with common space/facilities for group use.

Guest: A visitor temporarily staying in a 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.

High HOME units: HOME-assisted units reserved for households at or below 80% AMI.

HOME Rent Limit: The HUD published maximum rent amount, including a utility allowance and any non-optional fees. Rent limits are published by bedroom size.

Household: The individual, household, or group of individuals living in the unit.

Imputed Income from Assets: The estimated earnings of assets held by a tenant using the potential earning rate established by HUD. This rate will be updated annually by HUD.

Income Limits: Maximum incomes as published by HUD for awards giving the maximum income limits per unit for Low-Income (40%, 50%, 60%, or 80% of median) units.

Independent Contractor: 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." Individuals considered "gig workers," such as babysitters,

landscapers, rideshare or app-based delivery drivers, and house cleaners, typically fall into the category of independent contractors. Such income does not meet HUD’s definition of “nonrecurring” and must be counted as income.

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

Lease Rent: The lease rent is the actual rent charged to the household by the owner, as defined in the lease. The lease rent may never to exceed the maximum allowable rent or the applicable HOME rent limit.

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 wellbeing of the tenant, (2) must not be financially obligated to support the tenant, and (3) must certify that they would not be living in the unit except to provide the necessary supportive services.

Low-Income: HUD uses the term “low-income” for households at or below 80% AMI.

Low-Income Unit: Any unit in a building if: such unit is rent-restricted, the individuals occupying such unit meet the income limitation applicable under federal and state requirements, and the unit is suitable for occupancy.

Low HOME units: HOME-assisted units reserved for households at or below 50% AMI.

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

Maximum Allowable Rent: The maximum allowable rent is the most an owner is permitted to charge for rent once tenant-paid utilities (except telephone, cable television, and internet) and other non-optional charges are deducted. The maximum allowable rent can never exceed the applicable HOME rent limit. May also be referred to as the “maximum chargeable rent” or the “net rent”.

Maximum Allowable Rent Calculation: Maximum Allowable Rent = HOME rent limit – utility allowance – any non-optional fees.

Median Income: A determination made through statistical methods establishing a middle point for determining income limits. Median is the amount that divides the distribution into two equal groups, one group having income above the median and one group having income below the median.

Minimum Set-Aside: The minimum number of units that the recipient has elected and set forth in the application to be income and rent restricted.

Net Rent: See Maximum Allowable Rent

Noncompliance: The period of time that an Award, specific building, or unit is ineligible for HOME, HTF or NSP because of failure to satisfy program requirements.

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.

Over-Income Household/Unit: For HOME purposes, a household is considered over-income if it exceeds 80% of AMI or for a Low HOME unit, if the household exceeds 50% of AMI.

Owner Agent: For purposes of this Compliance Manual, the phrase “owner agent” collectively refers to the project owner and their hired agents, including but not limited to the property management company, onsite property management, and compliance personnel.

Passbook Rate: The HUD approved rate for imputing assets. This rate will be updated annually by HUD.

PHA: Public Housing Authority.

Project: A site or sites together with any building(s) located on the site(s) that are under common ownership, management, and financing. The project includes all the activities associated with the site and building.

Protected Class: One of the seven groups specifically protected by the Fair Housing Act. The seven protected classes are race, color, national origin, religion, sex, disability, and familial status.

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 a 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.

Rent Limit: The HUD published maximum rent amount, including a utility allowance and any non-optional fees. Rent limits are published by bedroom size.

Qualified Unit: A unit in a qualified low-income n occupied by qualified persons at a qualified rent.

Seasonal Worker: 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.

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.

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

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.

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

Suspension: An *indefinite but temporary* status assigned to an affected person making it ineligible to apply for additional funding until such 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.

Suspension list: NDHFA’s internal roster of entities that have been officially suspended. NDHFA will also maintain a list of entities recommended for suspension but not yet officially suspended.

Temporarily Noncompliant Unit: A unit is considered to be temporarily out of compliance when a household that originally income qualified becomes an over-income household. Temporary noncompliance is permissible and does not penalize the owner as long as the owner follows the correct steps to restore the HOME unit mix.

Tenant: Any person occupying the unit.

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, Annual Income Recertification, utility schedules, rent records, lease and lease addendum. Any authorized representative of NDHFA or HUD shall be permitted access to these files upon receipt by award recipient or Management Company of prior written notice of not less than two calendar days.

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.

Unearned Income: Any income that is not considered earned income. Includes income from assets, pensions or annuities, and benefit sources such as Social Security or welfare assistance. The unearned income of all household members (regardless of age) is included in the calculation of Annual Household Income.

Utility Allowance: The amount of utilities for a particular unit, as set by a utility allowance schedule published by HUD, Rural Development, or the PHA, or established by a letter from the utility company which states the rates, an NDHFA estimate, the HUD Utility Schedule Model, or an Energy Consumption Model as calculated by an approved engineer or licensed professional. For more information see section 1.17.

Vacant Unit: A unit that is currently unoccupied but was formerly occupied by a qualified household.

VAWA: The Violence Against Women Reauthorization Act of 2013, which provides protections against housing discrimination for victims of domestic violence, dating violence, sexual assault, or stalking.

Verification: Information from a third-party that is collected in order to corroborate the accuracy of information about income provided by applicants to an award.

Very Low-Income: HUD uses the term “very low-income” for households at or below 50% AMI.