

Chapter 26

RENTAL

HOME funds are to be used by Awardees for acquisition, acquisition and rehabilitation, rehabilitation and new construction of affordable rental housing. The following is a list of Forms of Assistance. These are defined as a sub-activity under Rental:

- A. Acquisition: Acquire housing for purposes of renting to individuals.
- B. Acquisition and Rehabilitation: Acquire and rehabilitate housing for purposes of renting to individuals.
- C. Rehabilitation: Rehabilitate currently owned housing for purposes of renting to individuals.
- D. New Construction: Construction of housing for purposes of renting to individuals.

The HOME Program distinguishes between units in a rental property that have been assisted with HOME funds (HOME-assisted units) and those that have not (non-assisted units). This information is usually found in a written agreement between OHFA and the Awardee of HOME funds. HOME prohibits discrimination against rental assistance subsidy holders.

HUD requires that a minimum number of rental units be designated as HOME-assisted. This number is based on the share of HOME funds to the total eligible costs invested in the project. In general, HOME requirements apply only to the HOME-assisted rental units and related common space.

DEED RESTRICTION

A deed restriction or covenant must be recorded for all rental projects and is enforceable by OHFA. This deed restriction or covenant is a legally binding document that is attached to a HOME-assisted rental property. The deed restriction or covenant “runs with the land” for the entire affordability period. It ensures that the HOME affordability requirements stay in place regardless of whether the mortgage or HOME assistance has been repaid, or property ownership transfers. Current and future owners are legally bound by the terms outlined in the HOME deed restriction or covenant.

HIGH/LOW UNITS

HUD publishes two annual HOME rent limits: the High HOME rent limits and the Low HOME rent limits. These are the maximum rents that owners can charge tenants that reside in HOME-assisted units. HOME properties with five or more HOME-assisted units must have at least 20 percent of their HOME-assisted units designated as Low HOME Rent units. The remaining units are High HOME Rent units.

When OHFA commits HOME funds to a project, it determines the total number and type,

by bedroom size, of High and Low HOME Rent units in the rental property. The owner must maintain this mix of High and Low HOME Rent units for the entire affordability period. Prior to the Awardee implementing a rental increase during the affordability period, the Awardee must receive prior approval from OHFA.

High HOME Rent Units - High HOME Rent units must be occupied by tenants whose incomes do not exceed the HUD-published HOME low-income limits(80%). The rents for these units cannot exceed the HUD-published High HOME rent limits.

Low HOME Rent Units - Low HOME Rent units must be occupied by tenants whose incomes do not exceed the HUD-published HOME very low-income limits(50%). The rents for these units cannot exceed the HUD-published Low HOME rent limits.

FIXED/FLOATING UNITS

The designation of a specific rental unit as a HOME-assisted unit may remain the same, staying “fixed” throughout the affordability period, or the designation may change, “floating” among comparable rental units.

Fixed HOME-Assisted Units - Fixed HOME units remain designated as HOME-assisted units for the entire affordability period—regardless of if the unit becomes vacant or when an existing tenant becomes over-income.

Floating HOME-Assisted Units - Floating HOME units are initially designated as HOME-assisted, but the designation changes, or “floats,” among all comparable units within the same HOME-assisted rental property as properties are vacated and/or tenants’ incomes go over-income.

The owner must maintain the total number of HOME units, High HOME Rent units, and Low HOME Rent units throughout the affordability period, rather than the specific units. During the affordability period, owners/managers must ensure that the rents they charge for their HOME-assisted rental units do not exceed the applicable HOME rent limits. HUD updates and publishes HOME rent limits each year. OHFA provides the updated rent limits to owners/managers. Different rent limits apply to High HOME Rent units and Low HOME Rent units.

HOME rent limits include utilities. This means that the rent that can be charged for a unit cannot be more than the HOME Rent limit *subtracting* the tenant-paid utilities.

RENT INCREASES

A rent increase must be approved by OHFA prior to implementing. This is required for **ALL** HOME units, including designated HOME vacant units.

INCOME

Initial Occupancy –

When the property first leases up, OHFA requires all the HOME-assisted units to be occupied by households whose incomes are at or below 60 percent of area median income unless otherwise stated in the written agreement. This is because, for each annual HOME allocation that OHFA receives, at least 90 percent of the households assisted initially through all of its rental housing programs must have incomes at this level. The balance of assisted households must have incomes that do not exceed 80 percent of the area median income.

Tenants that occupy HOME-assisted housing must meet specified income limits. The HOME Program uses two income limits:

Low-income households must have incomes that do not exceed 80 percent of area median income;

Very low-income households must have incomes that do not exceed 50 percent of area median income.

Owners/Managers must determine that a prospective tenant is income-eligible before renting a HOME-assisted unit to that household. This means verifying the household's anticipated annual gross income and determining income does not exceed the HOME low-income limit (for a High HOME Rent unit) or very low-income limit (for a Low HOME Rent unit). There needs to be at least one income document for each adult; either document actual income or zero income. Also include verification of all assets. If household consists of single parents or children with differing last names, need proof of child support. Effective 10-1-14 OHFA will allow unborn children to be counted when determining household size with a self-affidavit. See Chapter 8 on income.

RECERTIFICATION REQUIRED

Annually, during the affordability period, the owner/manager must recertify the tenant's income eligibility. At the time of recertification, follow the same process as though this is an initial move-in. The application used at the time of initial move-in may be modified for a recertification. A sample application is included in the links for your convenience. At recertification void the rental history portion of the application. Remember the initial certification the household must not be over the income limit. At recertification, if the household is over the applicable limit, you must follow the steps listed further in this chapter. You will either re-designate the unit to a High HOME or adjust the household's income. Please see the Over Income section of this chapter.

Before signing a lease to rent a HOME-assisted unit to a new tenant household, the owner/manager must determine that the household is income-eligible. If the applicant's income exceeds the HUD income limit, that household cannot occupy a HOME-assisted unit.

STUDENT ELIGIBILITY

Effective 8/23/13, the HOME Student question must be asked at initial certification and recertification.

Is anyone attending an institution of higher education?

If yes, can this person meet an exception below?

- 1. Is this person over the age of 23?*
- 2. Is this person a veteran of the US military?*
- 3. Is this person married? (HUD should recognize same sex marriage)*
- 4. Does this person have dependent child(ren)?*
- 5. Does this person have disabilities?*
- 6. Will you reside with and are a dependent of a household member in this unit?*

If the student cannot meet one of the six exceptions above, they are not eligible to occupy a HOME unit.

Source documents are written documentation, generated by a third party (such as an employer), that verifies the income sources the applicant reports. Third party verification is the preferred method. If this is unobtainable, you will need to obtain and examine at least two months of source documentation evidencing annual income.

Acceptable source documents include:

- Wage statements;
- Interest statements;
- Unemployment compensation statements; and
- Third party verifications from employers, banks, or others with first-hand information about the applicant's finances. These verifications should be in writing, and can include documented telephone interviews.

Owners/Managers can use a prospective tenant household's income-eligibility determination for up to six months after the determination is made. (See Chapter 8 for income forms)

OVER INCOME

When the tenant of a HOME unit becomes over-income, the unit and property are in temporary noncompliance with the HOME requirements. Temporary noncompliance is permissible as long

as the owner/manager takes steps, at the next available opportunity, to restore the property's compliance. These steps will vary, depending on if the property has fixed or floating HOME-assisted units.

The adjusted income method is used *only* for the purposes of determining rent. It is *never* used for verifying a tenant's annual income for purposes of establishing income-eligibility.

Adjusted household income is determined by subtracting any of the following five deductions, or allowances, from a household's annual gross income.

- **Dependent Deduction.** \$480 for each dependent. This includes any of the following family members who are not the head of household, co-head or spouse: persons under 18, disabled family members, or full-time students;
- **Child Care Expenses Deduction.** Reasonable child care expenses for children 12 and under during the period for which annual income is computed that enable a family member to work or go to school, if no adult is available in the household to provide child care;
- **Medical Expenses Deduction.** For elderly and disabled households only, medical expenses, including medical insurance premiums, in excess of three percent of annual income that are anticipated during the period for which annual income is computed and that are not covered by insurance. This is also allowed for a disabled household with no disability assistance expenses;
- **Disability Assistance Expenses Deduction.** Reasonable expenses in excess of three percent of annual income for the apparatus and care of a disabled family member that enable that person or another person to work that are anticipated during the period for which annual income is computed; and
- **Elderly or Disabled Household Deduction.** \$400 for any elderly family. An elderly family is one where the head of household or spouse is 62 or older or disabled.

For additional guidance on adjusting income, see Chapter 4 of the "Technical Guide for Determining Income and Allowances for the HOME Program". The link can be found in Chapter 8 of this manual.

Note: the owner/manager cannot terminate or fail to renew the tenant household's lease because the household is over-income, however the household's rent **must** be adjusted. Over-income tenants are protected by the terms of their leases; rent changes go into effect only when the lease permits.

OVER INCOME IN FIXED HOME UNITS

When an owner/manager conducts the annual income recertification and finds that a household's income has increased above the HOME income limits, the steps that it takes to restore compliance depend on whether the over-income tenant occupies a High HOME Rent unit or a Low HOME Rent unit

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 tenant household.

The owner/manager *must* raise the over-income household's rent as soon as the lease permits, in accordance with the terms of the lease. The rent for the over-income tenant must be adjusted such that the tenant 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 a LIHTC unit, the tenant must pay the rent dictated by the tax credit program.

This new rent is set irrespective of market rents in the neighborhood.

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

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 Rent unit can be redesignated as a Low HOME Rent unit, or (2) the unit is vacated and can be rented to another very low-income tenant household. The unit that is occupied by the over-income tenant retains its designation as a Low HOME Rent unit until another unit can be redesignated as the Low HOME Rent unit. For as long as the unit retains the Low HOME Rent designation and is occupied by a low-income household, the owner/manager may not increase the tenant's rent above the Low HOME rent limit. When a High HOME Rent unit in the property vacates, regardless of bedroom size, the unit must be redesignated as a Low HOME Rent unit and rented to a very low-income tenant, at no more than the Low HOME Rent. Once a new Low HOME Rent unit has been designated, the Low HOME Rent unit that is occupied by the over-income tenant must be redesignated as a High HOME Rent unit. At this time, the owner/manager can increase the tenant's rent up to the High HOME Rent, subject to terms of the lease.

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/manager *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 also a LIHTC unit, the tenant must pay the rent dictated by the tax credit program.

This new rent is set irrespective of market rents in the neighborhood.

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

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

OVER INCOME IN FLOATING HOME UNITS

When the owner/manager conducts the annual income recertification and finds that a household's income has increased above the HOME income limits, the steps that it takes to restore compliance depend on whether the over-income tenant occupies a High HOME Rent unit or a Low HOME Rent unit. If the tenant occupies a Low HOME Rent unit, the steps also depend on whether or not the tenant is low-income.

An over-income household occupies a floating High HOME Rent unit.

The owner/manager must adjust the rent of the over-income tenant household so the household 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: unlike the rule for properties with fixed HOME-assisted units, in a property with floating HOME units a tenant 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 Rent 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 lesser, unless doing so preserves the original unit mix. The newly designated High HOME Rent unit must be rented to a tenant whose income does not exceed the low-income limit, at a rent that does not exceed the High HOME Rent.

Once a comparable non-assisted unit is designated the new High HOME Rent unit, the unit with the over-income tenant is redesignated as a non-assisted unit. At this point, the owner/manager may adjust the tenant'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 tenant's lease.

A household is low-income, but is not very low-income, and occupies a floating Low HOME Rent.

The unit that is occupied by the over-income tenant keeps its designation as a Low HOME Rent unit until a comparable unit can be substituted. The rent of the over-income tenant must not exceed the Low HOME rent limit while the unit is a Low HOME Rent unit.

When the next High HOME Rent unit in the property is vacated, it must be redesignated as a Low HOME Rent unit rented to a tenant 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 Rent unit is designated, the unit with the over-income tenant is redesignated as a High HOME Rent unit. The tenant's rent may be adjusted to no more than the High HOME rent limit.

A household's income is above the low-income limit and it occupies a Low HOME Rent unit.

The next vacant, comparable, non-assisted unit must be designated as a Low HOME Rent unit, and rented to a tenant 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 Rent unit is designated, the unit that is occupied by the over-income tenant is considered a Low HOME Rent unit that is temporarily out of compliance.

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

Until a comparable Low HOME Rent 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 Rent unit is substituted, the unit with the over-income tenant is redesignated a *non-assisted* unit. The owner/manager may adjust the tenant's rent without regard to the HOME restrictions. Rent increases are subject to the tenant's lease.

PROHIBITED AND REQUIRED LEASE TERMS AND TENANT PROTECTIONS

Tenants of HOME-assisted units must be protected by a written lease. Owners must make sure that leases do not exceed the HOME rent limits and do not contain any clauses that are prohibited by the HOME Rule. Lease terms must be for a minimum of one year, unless the owner and tenant mutually agree to a lesser term. In no event can the lease be for less than thirty days. Owners/Managers may not terminate a tenant's lease nor refuse to renew his or her lease without good cause. Even with good cause, the owner must provide the tenant with a thirty-day advance written notice before terminating the lease. Owners must also comply with applicable state and/or local tenant-landlord laws.

Required Lease Provisions

Owners must be sure that the following provisions *are* included in a lease for a HOME-assisted unit:

Required Provision

Description

Income Eligibility/Annual Income Recertification

- Owner retains right to recertify the tenant's HOME income-eligibility on an annual basis. The tenant's failure to cooperate in the income recertification process constitutes a violation of the lease.
- Deliberately providing false information can result in termination of the lease.

HOME Rent Restrictions/Rent Increases

- Rents are subject to the rent restrictions of the HOME Program. Owner retains right to adjust rents, in accordance with the HOME Rent

limits. The rents for tenants whose incomes go over the HOME rent limits for the units they occupy (High or Low HOME Rent units) will be increased.

- Terms for rent increases (i.e., how frequently rent can be increased; when increases can be made; how much written notice must tenant receive).

Required Provision

Description

Lease Term

- The lease term for a HOME-assisted unit must be for at least one year, unless the tenant and the owner mutually agree upon a shorter term.

Annual Unit Inspection

- Owner retains the right to inspect, and to permit the PJ and HUD to inspect, HOME-assisted units during the affordability period. State or local law may establish how much notice the tenant must be given for inspections.

Accessible Units

- Owners may choose to include a provision in the lease of a tenant that occupies, but does not have need for, an accessible unit. This provision would give the owner the right to ask the tenant to move into a comparable non-accessible unit, should the accessible unit be needed by a person with a disability.

Lead Warning Statement, for properties built prior to 1978

- Confirm that the owner has complied with lead-based paint notification requirements.

The above required lease language must either be covered in your own words in the lease, lease addendum, or other legal document. As an option, OHFA has provided a HOME Required Lease Language Addendum that can be found in the Table of Contents/Chapter 26 of this manual.

VAWA

The lease must also address Violence Against Women and Justice Department Reauthorization Act of 2005 (VAWA) or by use of an addendum. A copy of the HUD VAWA Lease Addendum can be found in the Table of Contents/Chapter 26 of this manual.

Prohibited Lease Provisions

Owners must be sure that the following provisions *are not* included in a lease for a HOME-assisted unit. These provisions are prohibited by the HOME regulations at § 92.253:

<u>Prohibited Provisions</u>	<u>Description</u>
Agreement to be sued	<ul style="list-style-type: none">• Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
Agreement regarding seizure of property	<ul style="list-style-type: none">• Agreement by the tenant that the owner may seize or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This provision does not apply to disposition of personal property left by a tenant who has vacated a property.
Excusing owner from responsibility	<ul style="list-style-type: none">• Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent.
Waiver of notice	<ul style="list-style-type: none">• Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant.
Waiver of legal proceedings	<ul style="list-style-type: none">• Agreement of the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
Waiver of a jury trial	<ul style="list-style-type: none">• 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.

Agreement to pay legal costs, 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.

FEES CHARGED BY PROJECT OWNERS

OHFA prohibits project owners from charging fees to tenants that are not reasonable or customary, such as a monthly fee for access to pay laundry facilities. Allowable fees are reasonable application fees to prospective tenants, parking fees to tenants only if such fees are customary for the rental project, fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged for services provided.

UTILITIES

The HUD-published HOME rent limits include utilities. This means when a tenant pays directly for utilities, the owner/manager must subtract an OHFA-approved utility allowance from the applicable HUD-published HOME rent limit.

The passage of the 2013 HOME Final Rule establishes a Utility Allowance (UA) requirement for rental contracts at 24 CFR 92.252(d). This requirement was to be implemented and effective for all rental commitments made on or after 8-23-2013. This was **ORIGINALLY** suspended due to various reasons and errors with the HUD Utility Schedule Model (HUSM).

The suspension has been lifted and the rule implemented. A HOMEfire was published in 2016 identifying other methodologies that meet the HOME regulatory requirements regarding UA calculations. The entire publication can be found as a link to the chapter.

OHFA will continue to allow use of the PHA utility allowance until 9-30-2017. Beginning 10-1-2017, HOME Awardees will be required to select one of the following two methods:

1. Utility Company Estimate (26 CFR 1.42-10(b)(4)(B)) – A PJ may establish or approve a

UA 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.

NOTE: THE UTILITY COMPANY ESTIMATE DOES NOT MEAN THE HOME AWARDEE AVERAGES ACTUAL USAGE. THE ESTIMATE SHOULD BE A DOLLAR AMOUNT(S) SUPPLIED BY THE UTILITY PROVIDER, REGARDLESS OF USAGE HISTORY. IF THE UTILITY PROVIDER WILL NOT COMPLY, ANOTHER UA METHOD IS AVAILABLE.

2. Energy Consumption Model (Engineer Model) (26 CFR 1.42-10(b)(4)(E)) – A PJ may establish or approve a UA based on an energy and water and sewage consumption and analysis model (energy consumption model) prepared by a properly licensed engineer or a qualified professional. IRS regulations require that such professionals be independent from the property owner and they specify the building factors that must be included in the model.

!!!!!!THIS REQUIREMENT IS EFFECTIVE ONLY FOR THOSE CONTRACTS IN WHICH THE WRITTEN AGREEMENT WAS SIGNED ON OR AFTER AUGUST 23, 2013!!!!!!

The UA method and calculation chosen above must be submitted via U.S. mail to OHFA HOME Compliance no later than 8-31 each year to be effective 10-1 that year. This UA will be effective for one year (i.e. 10-1-2017 thru 9-30-2018). The UA must be updated annually and approved by OHFA prior to implementing. You will receive either an email with questions or an email of approval from OHFA prior to the effective date of such UA.

Another viable option that has always been available is to designate HOME rental contracts as All Bills Paid (ABP). If an Awardee would like to choose ABP for a completed contract that this policy will impact, a modification will NOT be required. Awardees will only need to notify compliance of the method used for each contract. Although this option may not behoove all, consider that this may allow more households to apply since they will not be required to put money down for a utility deposit.

Note: As long as the lease complies with the rent limits and utility allowance in effect at the time of lease execution, the owner is not required to increase or reduce the rent until the lease is renewed.

MONITORING

OHFA is required to conduct on-site inspections of HOME-assisted properties throughout the property's affordability period to accomplish two things:

1. Review records and files retained on-site that document the owner's compliance with HOME requirements and to verify the accuracy of information submitted on the owner's rent and occupancy reports.
2. Conduct a physical inspection of a sample of units at the property to assure the property is maintained in standard condition.

NOTE: If housing is not occupied by eligible tenants within six months following the date of completion, OHFA will require the Awardee to submit marketing information and, if appropriate, submit a marketing plan. The HOME funds will be required to be repaid for any unit that has not been rented to eligible tenants eighteen (18) months after the date of project completion.

Additional Resources:

- Guidance for HOME Rental Compliance Checklist
- HOME Rent Limits
- Utility Allowances
- Sample Application
- Compliance in HOME Rental Projects –
A Guide for Property Owners
- HOME Unit Rental Status Sheet
- Instructions for HOME Unit Rental Status Sheet
- Rent Increase Request
- Deed Restriction
- Amended Deed Restriction
- HOME Required Lease Language Addendum
- HUD VAWA Lease Addendum
- HOMEfires Vol. 11 No. 1 - Violence Against Women Reauthorization Act of 2013 on HOME-Funded Projects
- HOMEfires Vol. 13 No. 2, May 2016 – Utility Allowance Requirement per 2013 Final Rule
- Housing Quality Standard Checklist (HQS)
- Uniform Physical Condition Standards (UPCS)
- Debarred or Suspended Contractors