HOME Rental Project Compliance

Day 2 AM:

HOME Assisted Units in LIHTC Projects

Monte Franke, for Rhode Island Housing

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Agenda

HOME Units in LIHTC Projects

HOME Requirements Review

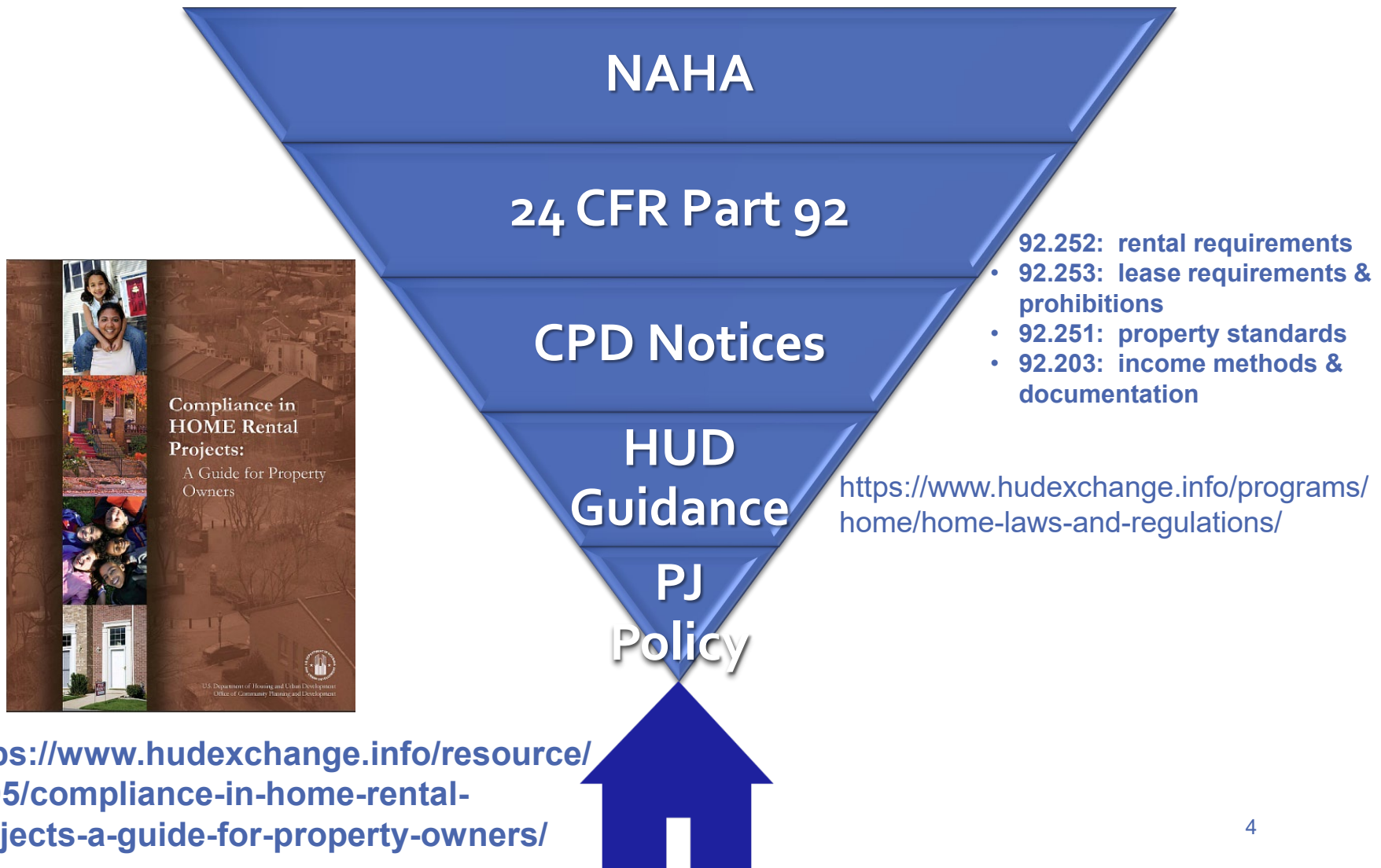Combining HOME & LIHTC

Initial Occupancy Differences

Ongoing Compliance Differences

Overview of HOME Requirements

HOME Policy Resources

NAHA

24 CFR Part 92

CPD Notices

HUD Guidance

PJ Policy

- **92.252: rental requirements**
- **92.253: lease requirements & prohibitions**
- **92.251: property standards**
- **92.203: income methods & documentation**

https://www.hudexchange.info/programs/home/home-laws-and-regulations/

Compliance in HOME Rental Projects: A Guide for Property Owners

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

https://www.hudexchange.info/resource/2395/compliance-in-home-rental-projects-a-guide-for-property-owners/

HOME Rental Housing

- "Cornerstone" compliance issues: "right P's" – right people, prices, properties, period of time
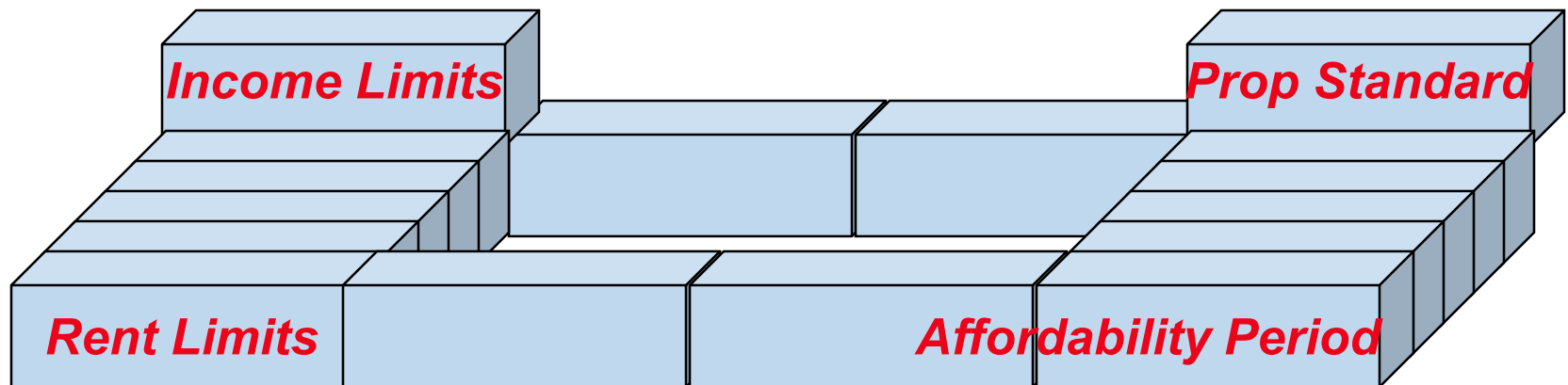
Compliance Cornerstone 1

- Occupancy:
  - If 5+ units, at least 20% @ 50% AMI (VLI): "Project Rule"
  - 90% initial occupants @ 60% AMI: "Program Rule"
  - All assisted units @ 80% AMI (LI)

- If less than 100%, fixed v. floating
  - Cost allocation to determine unit mix

- 18 months from completion to initially occupy assisted units (or repay)
  - HUD requires report after 6 months

Compliance Cornerstone 2

- Rent limits:
  - Published annually by HUD:
    - LI units: lesser of 30% at 65% or FMR
    - VLI: lesser of 30% @ 50% or FMR
  - Total contract rent
    - Includes TBRA payments
    - Project-based assistance exception
  - Adjusted for tenant-paid utilities

Compliance Cornerstone 3

- Property Standards:
  - State/local codes & UPCS (2013 rule)
    - HUD to issue further guidance
  - Accessibility
  - Lead-based paint:
    - annual: visual assessment, paint stabilization
  - HAUs must pass inspection:
    - prior to occupancy
    - during the compliance period

Compliance Cornerstone 4

- Minimum "Affordability Period"
  - less than $15,000 HOME/unit   5 yrs
  - $15,000 - $40,000   10 yrs
  - greater than $40,000 or refinance   15 yrs
  - new construction   20 yrs

- PJ can have longer local restrictions

- Affordability period starts w/ IDIS "completion"
  - Construction completion; prop standards; funds disbursed

- Secured by deed restriction/covenant
  - Regulatory Agreement, note & mortgage

Combining HOME with Other Public Subsidies

HOME + Other Funds

- Many HOME projects have other public subsidies
- If combined with other funds, general guidance is to comply with both HOME & the other program(s) requirements
  - But only for the HOME-assisted units
- You will be monitored separately for each program
 - May be coordinated if same agency or interagency agreement

Combining Rules

- Usually following most restrictive rule will cover both programs, e.g.:
  - HH income – use lowest limit
  - Maximum contract rent (rent limit adjusted for utility allowance) – use lowest contract rent calculated

- But not always:
  - Property standards – combine; inspected for both
  - Over-income rent – conflicting requirements

HOME & Project Based Assistance

- HOME can be provided to units with PBA

- HOME rules apply to "HOME assisted units"

- Key differences:
  - Income limits published at different times; check HOME limits
  - Maximum rent:
    - If PBA & HOME VLI (50% AMI) unit, PBA sets the rent
    - If not designated as VLI unit, HOME rent limit applies to total contract rent plus utility allowance
  - Ongoing inspection standards are different - state/local codes & UPCS deficiencies v. HQS
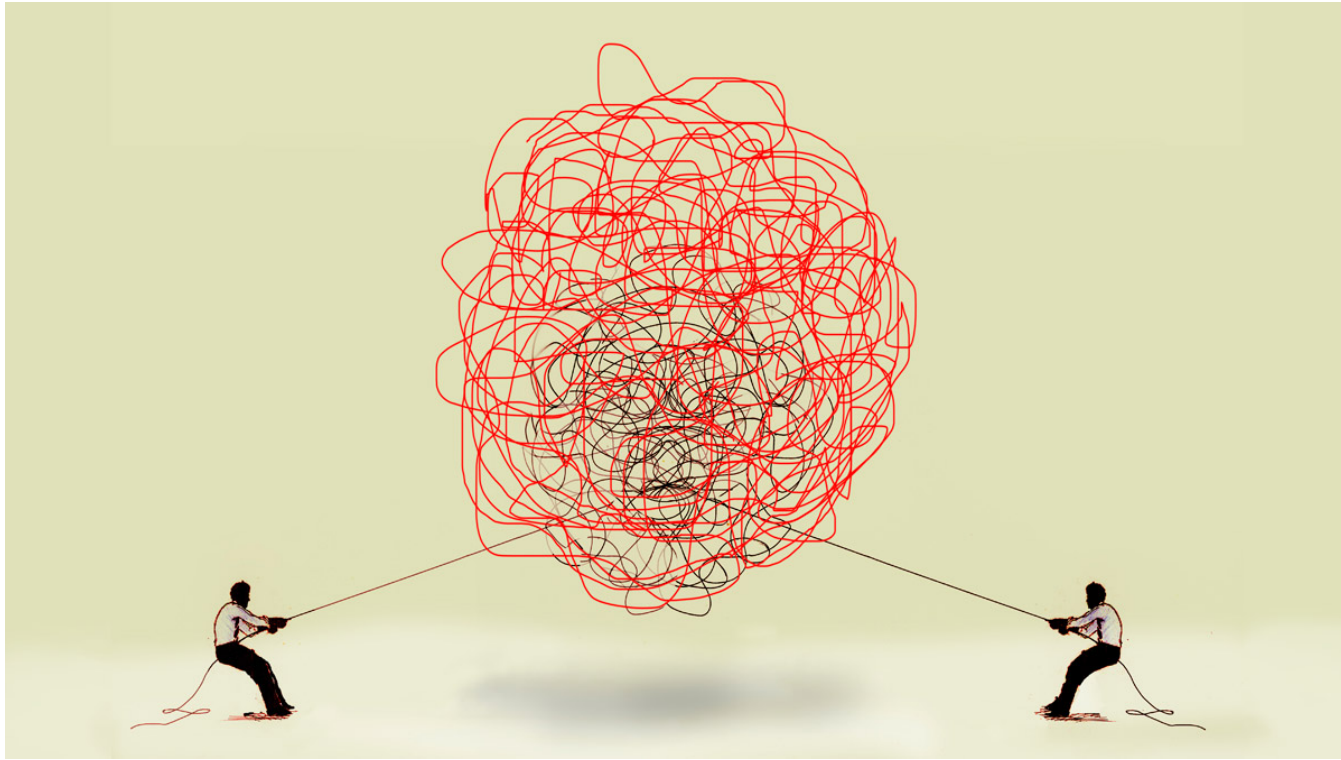
HOME in LIHTC Projects

Disclaimer

- This training addresses the HOME differences – it does not cover LIHTC or compliance items that are the same for the two programs.

- See the LIHTC Compliance Manual:
  - https://www.rihousing.com/wp-content/uploads/RIHousing_LIHTC_Compliance_Manual_March_2019.pdf
    - & the Multiple Programs Guide supplement (at end of manual)

HOME Units in LIHTC Projects

- LIHTC - likely to be all units (applicable fraction)

- But HOME assisted units are determined by cost allocation/designation

- Units that are both LIHTC & HOME-assisted must meet both rules
  - Units without HOME only need to meet LIHTC rules
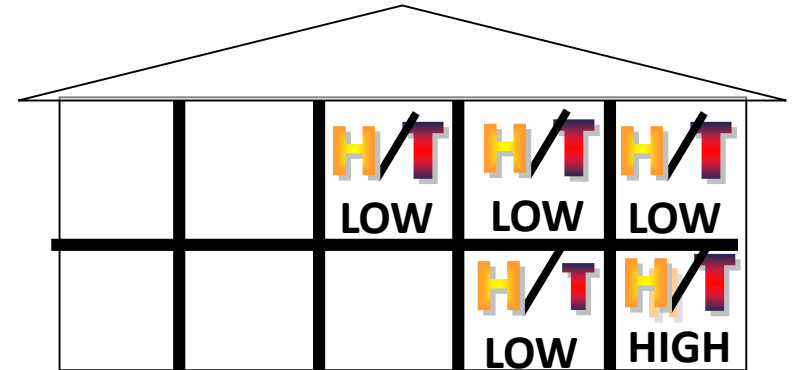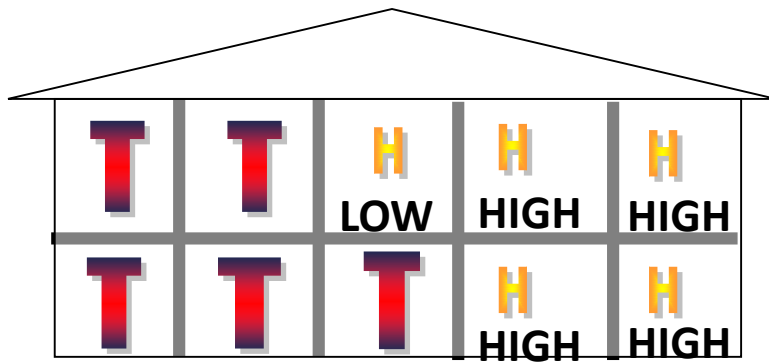
Key Regulatory Differences

Initial Occupancy

- Occupancy mix
- Affirmative marketing
- Income limits, definitions, verification
- Student households
- Rent calculations (& utility allowances)
- Leases
- Property standards & inspections

Ongoing Compliance

- Period of affordability v compliance period
- Maintaining the Mix
- Re-examination
- Over income rules
- Rent changes
- Monitoring

Occupancy/Unit Mix

- LIHTC – typically all unit
  - Traditionally 50% AMI and 60% AMI
  - (Income Averaging option)

- HOME –
  - HAU # & size mix determined in cost allocation
  - All HAUs: ≤ 80% AMI (but <u>60%</u> initial occupancy*)
  - If 5+ HAUs, at least 20% of HAUs ≤ 50% AMI
  - (HOME units must be initially rented within 18 mos or repayment)

- If HAU/LIHTC unit, both program requirements must be met

Fair Housing/Affirmative Marketing

- Both programs subject to Fair Housing Act
  - Discrimination in leasing, terms and conditions of rental units, & advertising prohibited
  - Recent "disparate impact" decisions/policy
  - VAWA applies to both

- Affirmative marketing required by HOME for projects with 5 or more HOME-assisted units
  - PJ specifies outreach activities/procedures and sharing with project owner.
  - Plan must include special outreach to those least likely to apply

- HOME: PJ approval of tenant selection procedures
  - Rejected applicants must receive written explanation

Income Limits

- LIHTC: HUD mulit-family income limits
  - HERA exceptions/hold harmless

- HOME: income limits are published separately at www.hudexchange.info

- Lag time between LIHTC & HOME limits
  - Lowest limit applies to LIHTC/HOME unit

Income Definition & Verification

- Both can use Section 8 (Part 5) definition of annual (gross) income

- When programs combined in same unit, use lowest income limit

- Asset income must be included but
  - LIHTC allows for tenant certification of assets when ≤ $5000, imputed income over $5,000; HOME requires all asset income to be verified & imputed income

- HOME rule requires 2 mos. source documentation

- LIHTC verification good for 120 days; HOME 6 mos.
  - Verification forms? RIH specifies

- Records: LIHTC 6 years; HOME 5 years

Student Households

- LIHTC: limits any fulltime (5 mos) student HHs
  - Unless TANF, JTPA/WIA, foster care, married, single parent

- HOME follows Section 8 (Part 5) rule: student **FT/PT < 24** ineligible unless
  - Independently eligible / member of eligible HH
  - Veteran
  - Married (including same-sex)
  - Has dependent child

- Similar but different requirements
  - Separately apply the eligibility criteria
  - Also different treatment of fin assistance > tuition/fees
  - Treatment on recertification different

HOME Conflict of Interest

- Owner, officers, board, employees, consultant, or immediate family members) can't occupy assisted unit without the prior written exception by PJ
  - Does not apply to an employee/agent who occupies a rental housing unit as the project manager or maintenance worker

- PJ employees/officials also subject to conflict of interest (must be cleared by HUD)

HOME Rents ≠ LIHTC Rents

- Each program publishes (different) rent limits
  - LIHTC: 30% at 50% or 60%
  - HOME: Low HOME (30@50% or FMR); High HOME (30% @ 65% or FMR)

- Both subtract utility allowance
  - HOME limit – HOME UA = max HOME contract rent
  - LIHTC limit – LIHTC UA = max LIHTC contract rent

- Combined limit: lower of two

Utility Allowance

- Both programs require utilities be deducted from max rent limit to determine max contract rent
- PJ can use actual utility costs, HUD utility schedule model, or certain estimates
  - See HOMEfires vol 13 no 2 May 2016
- LIHTC may use different schedule than HOME
- PJ may adopt LIHTC utility schedule

Rents, cont.

- Rent limit & TBRA (HCV/Sn 8) different
  - LIHTC: rent limit restricts tenant contribution
  - HOME: total contract rent may not exceed rent limit

- Annual limits: affordability/compliance period
  - HOME: rent limits effective 30 days after publication
  - LIHTC: State allocating agencies issue new rent limits

- Issues:
  - Rent limits issued & effective at different times
  - Programs have different floor & hold harmless provisions (HOME rent limits can drop)
    - HOME: floor is initial rent limits at commitment
    - LIHTC: establish floor rents at allocation or carryover

Lease Requirements

- HOME more stringent requirements than LIHTC

- Leases are required
  - One year term at minimum (unless mutually agreed); LIHTC minimum is 6 months
  - Renewal: at PJ discretion

- PJ must review and approve lease forms
  - RIH Lease Addenda: program & VAWA

- Must include rent AND procedures for adjustments to rents

- PJ/owner cannot require mandatory service program participation

Property Standards

- Standards for HOME & LIHTC differ
  - HOME: state/local codes, min UPCS deficiencies (not yet issued)
  - LIHTC: 2019 rule changes: Min Unit Sample Size Reference Chart, REAC protocols, notice, different file sample

- Inspections:
  - HOME: PJ must inspect for HOME compliance; 1st year & every 3rd year
  - LIHTC: State allocating agency inspects for LIHTC

Ongoing Occupancy

Affordability/Compliance Period

- Minimum affordability/compliance period varies

- Start of affordability period: completion
  - LIHTC: Completion is placed in service date (building by building after construction complete & first unit is occupied by eligible tenant
  - HOME: project completion in IDIS

- Completion dates likely to vary; HOME affordability period & LIHTC compliance period not likely to be exactly same
  - HOME obligations remain on sale (e.g., min 20 year new construction continues in event of 15 year sale)

Income Re-examination

- LIHTC
  - Must examine income annually
    - Possible exception for 100% LIHTC projects
  - 3rd party source documents annually

- HOME permits 3rd party documentation every 6th year of affordability period
  - PJs may choose to apply only to small projects

Maintaining the Unit Mix

- Must maintain total number of HOME & LIHTC & non-HOME units
  - Unit #/mix designated in written agreements
  - E.g.: If agreement dictates 10 HOME units, owner is not required to have 11 units with HOME restrictions

- HOME: Must maintain proportion of Low & High HOME rent units
  - Min Low HOME: 20% of HOME-assisted units (5+)
  - Actual percentage established in written agreement
  - HAUs can be fixed or floating per agreement

Over Income

- Different definitions of "over income"
  - LIHTC: above 140% of income limit
  - HOME: above 80% AMI

- OI tenants not required to move

- But rent may change:
  - LIHTC: rent remains capped at LIHTC level until next available unit is swapped (if less than 100%)
  - HOME: tenant pays 30% of Adjusted Income
    - If floating, up to unrestricted rent, change to unrestricted when replaced by next available unit rule
  - In units with both HOME & LIHTC
    - Rent is 30% of Adjusted Income…up to LIHTC rent limit

HOME & LIHTC: Over Income

SUMMARY OF STEPS:
MANAGING RENTAL UNIT MIX UNDER HOME

Income Recertification Conducted

Income between 50 - 80% AMI

MATTERS ONLY FOR LOW HOME RENT UNITS

- Rent: **stays at Low HOME rent** until High HOME rent unit is designated as Low HOME rent.

- Once replacement is identified, rent **adjusts to High HOME rent**

- Unit is now designated as a High HOME rent unit.

Income greater than 80% AMI

SAME ACTIONS FOR HIGH AND LOW HOME UNITS

Fixed unit:

- Rent: raise to 30% of monthly income

- Next Available **HOME** unit must address High/Low HOME unit proportions.

- No action for next available non-HOME unit.

Floating unit:

- Rent: raise to LESSER OF 30% monthly income or Comparable Market Rent

- Next available **non-HOME** unit
  - ✓ Must be designated as HOME unit and
  - ✓ Address High/Low HOME unit proportions

May use High HOME rent limit after unit swap

Adjust rent on renewal – subject to LIHTC

Rent Changes/Approval

- PJ must affirmatively approve/reject project rents each year per §92.252(f)(2)

- PJ schedule need not align w/ calendar year
  - Likely impacts on rent levels & trending assumptions

- Rents may go up or down–HOME units not required to go lower than initial rents in HOME agreement

Terminating Tenancy

- Both programs: May terminate tenancy or refuse to renew lease only for good cause:
    - Serious or repeated violation of the lease terms
    - Violation of applicable Federal, state or local law
    - Other good cause (increase in income is not good cause)
    - Both subject to VAWA in cases of domestic violence
    - Can terminate in transitional housing for failure to comply with service plan or end of transition

- HOME: 30 day notice required

Property Standards

- HOME inspections: PJ must inspect for HOME compliance; 1st year & every 3rd year
    - Statistically valid sample; files do not have to be same as inspections
    - State/local codes & UPCS deficiencies list (to be published)

- LIHTC inspections: State allocating agency inspects for LIHTC
    - 2019 rule change – deferred until 2020
    - RIH continues to follow Revenue Procedure 2016-15 for now

Monitoring

- HOME: Annual Rent & Occupancy report required
  - Tenant info uploaded during year, but annual certification required
  - Owner must certify to property standards

- HOME:
  - Financial Oversight required if 10+ HOME units
  - Risk based oversight policies required
  - Onsite inspections/file reviews: 1st year + not less than every 3rd year
  - Re-inspection varies based on violation severity

- PJ may coordinate with LIHTC review, but must meet specific HOME requirements

It's a Wrap!

- Go to HUD Exchange:
https://www.hudexchange.info/programs/home/
  - Sign up for mailing list:
https://www.hudexchange.info/mailinglist/
  - Download Compliance in HOME Rental Projects:
https://www.hudexchange.info/resource/2395/compliance-in-home-rental-projects-a-guide-for-property-owners/

- Thanks for attending!

- Follow up questions