

# HOME Rental Project Compliance

Day 1: HOME Rental  
Compliance Basics

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Rhode Island Housing

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# Agenda

## Day 1: HOME Rental Occupancy Basics

HOME Overview

Marketing & Tenant Selection

Household Eligibility

Rents, Utility Allowances & Leases

Ongoing Occupancy Requirements & Monitoring

## Day 2 AM: HOME Assisted Units in LIHTC Projects

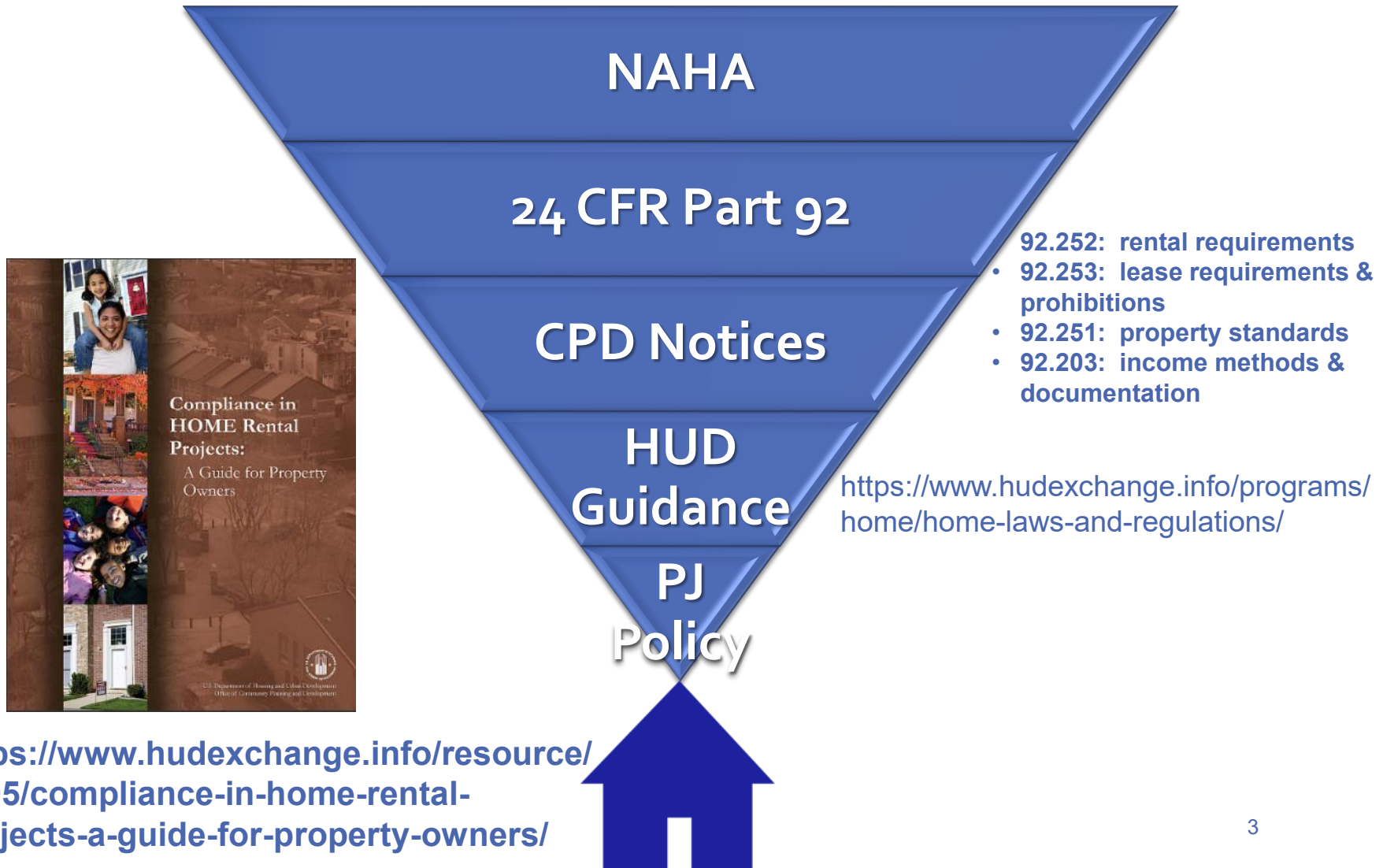
HOME Requirements Review

Combining HOME & LIHTC

Initial Occupancy Differences

Ongoing Compliance Differences

# HOME Policy Resources



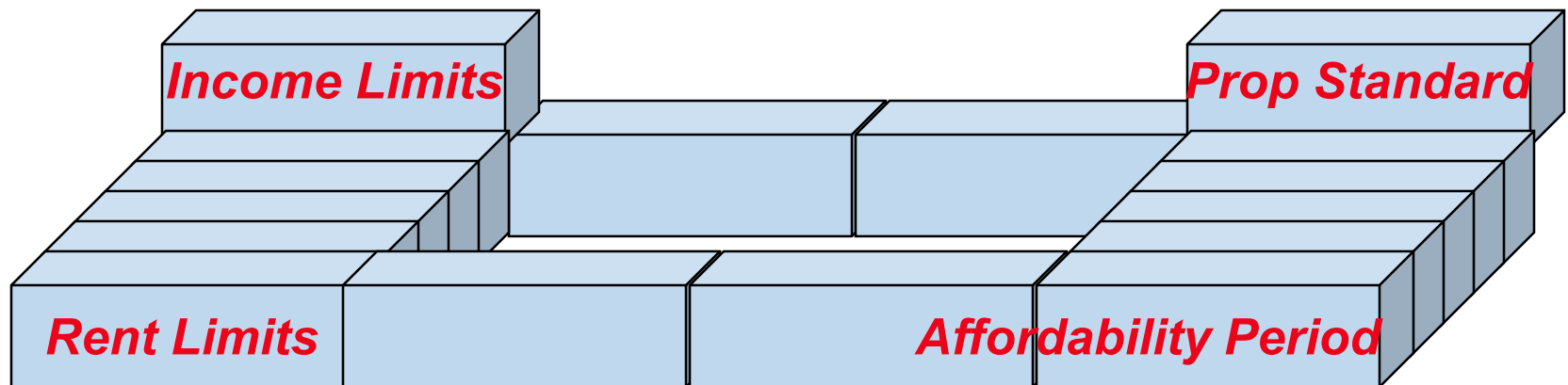


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## The Cornerstones of HOME Compliance

# 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; in written agreement
- 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
- Limit applies to total contract rent + tenant-paid utilities:
  - Includes TBRA payments
    - Project-based assistance exception
  - Allowance for tenant-paid utilities

# Compliance Cornerstone 3

- Property Standards:
  - State/local codes & UPCS deficiencies (2013 rule)
    - HUD to issue UPCS deficiencies 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

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# **Marketing & Tenant Selection**

# Initial Occupancy Prerequisites

## Written Agreement/LURA

- Income levels, unit mix (sizes), fixed/floating, initial rents, deadlines, affordability start

## Affirmative Marketing Plan (5+ assisted units)

- Special outreach to those least likely to apply

## Tenant Selection Plan

- Preferences, selection policies, and procedures for intake, processing, grievances, waitlist

## Lease

- Approved lease; prohibited terms; 30 day notice
- VAWA addendum

## Tenant Participation Plan (CHDOs only)

- Fair lease & grievance procedure
- Tenant participation in management decisions

# Affirmative Marketing

- Required for all properties with 5 or more assisted HOME units:
  - Procedures to provide info to eligible persons without regard to race, color, national origin, sex, religion, familial status or disability
- Elements:
  - Identify least likely to apply
  - Conduct special outreach activities
  - Maintain records of effort & results



# Marketing Accessible Units

- Application materials & locations accessible
- Accessible units must be marketed affirmatively
- Offer available units:
  - 1st to current occupant who requires accessibility features
  - Next: applicant on waiting list who requires accessibility
  - Additional outreach
  - Last to non-disabled person on waiting list
- Reasonable accommodations & modifications for all units



# Tenant Selection Plan

- Written tenant selection plan required
  - Criteria for selecting tenants – income & other factors
  - Prompt notification to rejected applicants in writing
  - Written waiting list and chronological order
- Policies
  - Non-discrimination & accessibility
  - Preferences
  - Selection criteria
  - Conflict of interest
- Procedures: intake, processing, waiting list

# Tenant Selection Criteria

- Tenant selection policies and criteria:
  - Comply with PJ's affirmative marketing requirements
  - Limit the assisted housing to very low and low-income
  - Limits or preferences to particular segment of population, ONLY if in written agreement & disclosed in all materials
  - Not exclude applicants with voucher or TBRA
  - Objective criteria materially related to lease performance
  - Can include household income, housing history, credit history, criminal record



# Targeting Populations

- May not violate nondiscrimination requirements
- But limiting occupancy to disabled does not violate nondiscrimination if:
  - Permitted by federal program OR
  - Not permitted by federal program, but:
    - Disability impedes obtaining/maintaining housing
    - Cannot maintain housing without supportive services
    - Cannot be obtained in integrated setting
  - Open to all disabilities who may benefit
- HH may not be required to accept services



# Fair Housing Policy

- Supreme Court - TDHCA decision
  - “Disparate impact” on protected class
- HUD OGC guidance
  - Criminal record
  - Limited English Proficiency (LEP)
  - Nuisance & crime free ordinances
- Fair housing rule
  - Quid pro quo & hostile environment harassment
  - Direct & vicarious liability of agents



# VAWA



- Protections for victims of:
  - Dating violence, domestic assault, sexual assault or stalking
- Applies to HOME rental units and TBRA committed after Dec. 15, 2016
  - Non-discrimination effective 3/7/13
- PJs & owners/managers are “covered providers”
- HOME: 24 CFR 92.359 (92.253 – lease add.)
  - HUD model documents/forms:  
[https://www.hud.gov/program\\_offices/administration/hudclips/forms/hud5a](https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a)

# Key VAWA Requirements

1

- Nondiscrimination

2

- Disclosure

3

- Confidentiality

4

- Documentation

5

- Lease protections

6

- Emergency transfer plan

7

- Disposition alternatives

# Initial Occupancy Deadline

- Project completion deadline
  - Completion within 4 years of project commitment
  - All funds drawn, all improvements completed, entered into IDIS (occupancy not required)
  - Completion recorded in IDIS
  - Completion date starts the Period of Affordability
- Assisted unit occupancy deadline
  - Initial occupancy of assisted units within 18 months
  - Initial occupants must be recorded by PJ in IDIS
  - Pro rata repayment of units not occupied

# Project Compliance Closeout

- Closeout after full occupancy and documentation
  - Within 60 days of full occupancy
- Documentation of occupancy and other reports (e.g., construction related) received/approved
  - Tenant income certifications
  - Lease Agreement and Lease Addendum;
  - Completed Rental Setup and Completion form
  - Completed HUD 2516 - HOME Contracts Report;
  - Completed HUD 60002 - Section 3 Summary Report;
  - Tenant acknowledgement of receipt of LBP notice

# Household & Income Eligibility

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# Eligible Households

- All HHs in assisted units must be income eligible
  - Income is based on all household members
- Limitations on student eligibility as independent household
- Conflict of interest

# Household Composition

**Includes:** All persons living in the unit 50% or more of the time (including foster children and adults) plus:

- a. Children temporarily absent (in foster home)
- b. Children in joint-custody (present 50% or more)
- c. Children away at school (return during recesses)
- d. Unborn children of pregnant women
- e. Children in process of being adopted
- f. Temporarily absent family members
- g. Family members in hospital or rehab for limited periods
- h. Persons permanently confined to hospital/nursing home\*

(\*HH chooses, but must include income if they count the person in household)

**Excludes:**

- a. Live-in aides
- b. Guests



# HOME Student Rule

- §92.2 definition of low/very low income families adopted HCV/Sec. 8 standard at 24 CFR 5.612
- Students under age 24 do not qualify as a low income household unless:
  - Independently eligible or member of income eligible household; or
  - Specific exceptions: veteran, married (including same-sex), has dependent child
- Applies to certifications & recertifications
  - Existing rental households: in place tenants are not “grandfathered in,” handle at recertification

# Conflict of Interest

- Owner (incl. officers, board, employees, consultant, or immediate family members) may not occupy an assisted unit without the prior written exception by PJ
- Elected, appointed or employed persons of the participating jurisdiction may not occupy an assisted unit (or have financial benefit) without prior written exception by HUD



# Resources

- HOME income limits
  - <https://www.hudexchange.info/manage-a-program/home-income-limits/>
- HOME Income Forms
  - <https://www.hudexchange.info/programs/home/topics/income-determination/>
- CPD Income Calculator (HOME & HTF):
  - <https://www.hudexchange.info/incomecalculator/>
  - [https://www.hudexchange.info/resources/documents/CPDIncomeEligibilityCalculator\\_User\\_Manual.pdf](https://www.hudexchange.info/resources/documents/CPDIncomeEligibilityCalculator_User_Manual.pdf)

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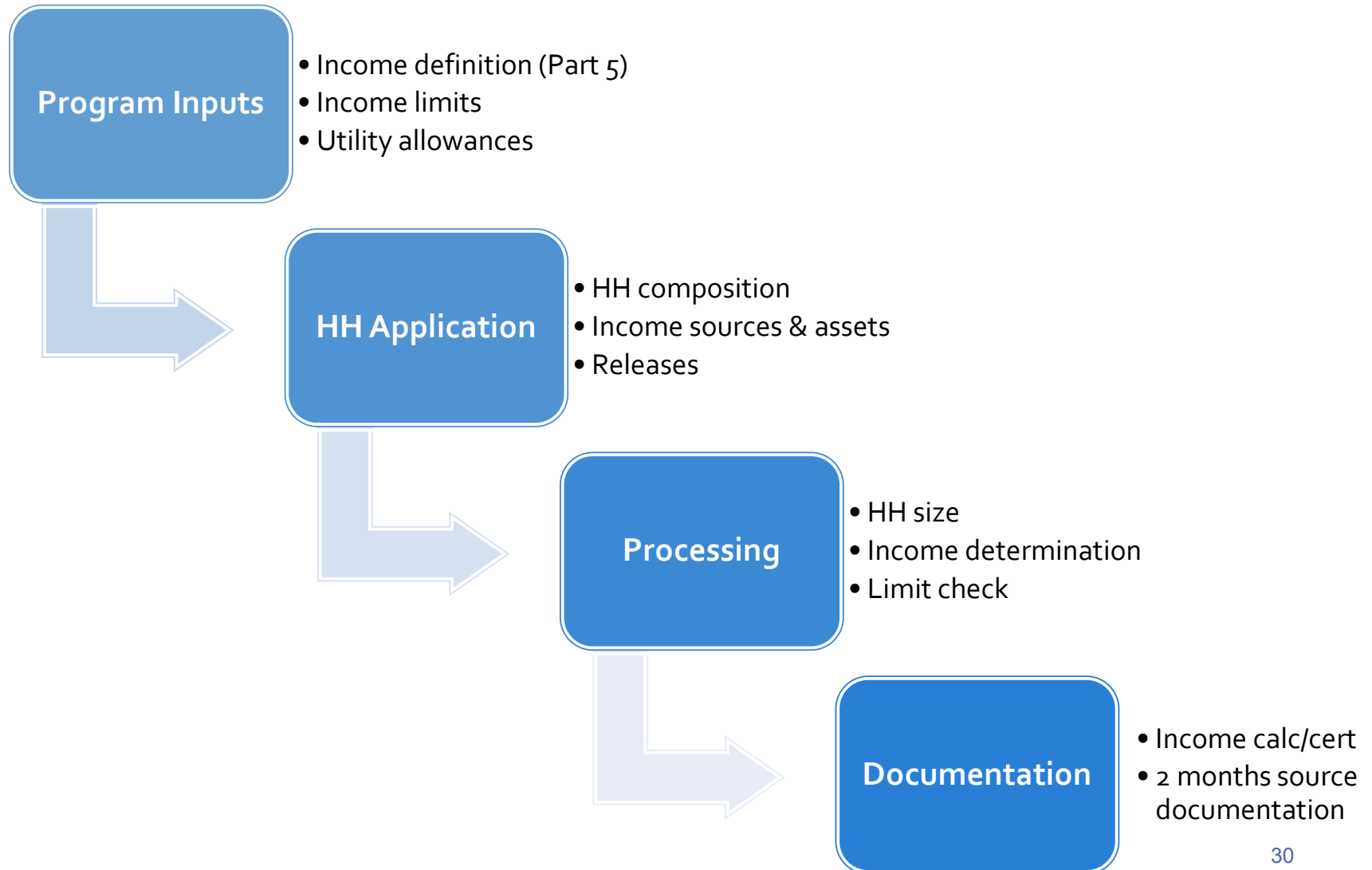
## Income Eligibility



# Income Basics

- Gross annual income determines eligibility
  - Adjusted income: only TBRA & Over Income
- Income based on all household members
- Anticipate (project) income for next 12 months
- Compare income to Program income limits
  - Income limits published by annually on HUD Exchange
- Verify: at least 2 months source documentation
- Recertify rental income annually

# Income Eligibility Process



# Calculating Income

- Gross annual income determines eligibility
  - Part 5 or IRS 1040 income definition
  - Anticipate (project) income for next 12 months
- Compare income to published income limits
  - Limits published annually; only on HUD Exchange
  - Income limits by household size
- At least 2 months of source documentation
  - Income determination is good for 6 months
- Determinations can be made by owners, but PJ responsible for monitoring/ensuring compliance

# Annual Income

- All amounts anticipated to be received during the 12-month period following move-in (or recertification effective date)
- Includes all amounts not specifically excluded by regulation
- Amounts derived from assets (during the 12-month period) for any member of the family
- Part 5:  
[https://www.hudexchange.info/plugins/incomecalculator/assets/docs/HUD\\_P5\\_Inclusions\\_Exclusions.pdf](https://www.hudexchange.info/plugins/incomecalculator/assets/docs/HUD_P5_Inclusions_Exclusions.pdf)



Household Members	Employment income	Other Income (incl. income from assets)
Head	Yes	Yes
Spouse	Yes	Yes
Co-head	Yes	Yes
Other Adult (incl foster adult)	Yes	Yes
<i>Dependents:</i>		
- Children under 18	No	Yes
- Full-time student 18 or older	Earned income of a dependent full-time student 18 years + is capped at \$480.	Yes
- Foster child under 18	No	Yes
Nonmembers		
- Live-in aide	No	No
- Guest	No	No

# Calculating Income from Assets

- IF total cash value of assets is less than \$5,000:
  - THEN Use the actual income the family receives from the assets is the amount that is included in annual income.
- IF total cash value of assets is more than \$5,000:
  - Compute the Actual income from the assets; and
  - Multiply the total cash value of the assets by passbook rate (use .06%) to “impute” income
  - USE WHICHEVER IS HIGHER as income from assets

# Income Verification



- Owners must verify initial tenant income using source documentation
- Acceptable source documents:
  - Wage statements
  - Interest statements
  - Unemployment compensation statements
  - 3rd party verification from employer, bank etc
- At least **2 months** of source documentation
- Sample documentation forms:  
<https://www.hudexchange.info/programs/home/topics/income-determination/#templates-and-forms>

# File Documentation: Income

- HH application / income and HH disclosure
- Release(s)
- Income calculation worksheet/notes
- Verification documentation



# Income Guidance/References

- Determining Income Webinar June 2018
  - <https://www.hudexchange.info/trainings/courses/determining-income-for-the-home-program-session-1/2532/>
- Technical Guide for Determining Income and Allowances for the HOME Program (“Purple Book”):
  - <https://www.hudexchange.info/resources/documents/HOMEGuideForIncomeAndAllowances.pdf>
- HUD Handbook 4350.3 Chapter
  - <https://www.hud.gov/sites/documents/43503C5HSGH.PDF>
  - Guidance or “safe harbor”, but doesn’t overrule HOME rule

# Recertification

- Recertify rental income annually:
- Source docs required every 6th year of project's affordability period
  - Once during each five-year block of aff period (e.g., years 1, 6, 11, 16, but at least years 1,6,12,18)
  - All assisted tenants in project regardless of move-in (i.e., not every 6<sup>th</sup> year of a tenant's occupancy)
- For other years, can use: source documents, written statement from household, or statement from program administrator

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## **Rents, Utility Allowances & Leases**

# HOME Rent Rules

- Rent limits: High HOME and Low HOME
  - Published annually by HUD
- Contract rent must reflect adjustment for tenant paid utilities
  - $\text{Contract rent} < \text{Rent Limit} - \text{Utility Allowance}$
- Only exception: Low HOME units with project based assistance can follow PB rents
- PJ must approve initial rents & annual changes
- Tenants must be given 30 day notice of increases (& terminations)



# Sample HOME Rent Limits

	EFFICIENCY	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
LOW HOME	482	564	690	796	888	980	1072
HIGH HOME	482	564	722	918	947	1089	1231
FAIR MARKET RENT*	482	564	722	918	947	1089	1231
50% RENT LIMIT	536	574	690	796	888	980	1072
65% RENT LIMIT	675	728	874	1002	1099	1193	1289

Information Only

# SRO Rents

- SRO defined as single room that may or may not have food prep and sanitary facilities
- Rent limits for SROs defined in Final Rule
  - Single rent limit: 75% of o BR FMR
  - But must meet VLI (20% @ 50% if 5+ units) occupancy requirement

# Allowance for Tenant-Paid Utilities

- HOME rents are inclusive of utilities
  - Adjust rent limits for tenant-paid utilities
- PJ determine utility allowance annually
  - Pre-8/23/13: PHA Ex Section 8 or actual usage
  - Post-8/23/13: HUD Utility Schedule Model or actual usage/estimate or other method approved by PJ
- See HOMEfires Vol 13 No 2
  - <https://www.hudexchange.info/resources/documents/HOMEfires-Vol13-No2-Guidance-on-How-to-Establish-Utility-Allowances-for-HOME-Assisted-Rental-Units.pdf>

# HOME Rent Example

	1 br	2 br	3 br	4 br	5 br
High	600	670	740	810	860
Low	550	630	710	810	860
FMR	630	710	740	810	860
50%	550	630	710	820	915
65%	600	670	800	910	1010

- Example: What is maximum contract rent for a 3 BR LI unit with a \$120 utility allowance?

\$ 740 limit  
- 120 UA  
\$ 620 max contract

# Rent if Project Based Assistance

- PJ may allow owner to charge project based program rent IF:
  1. Low HOME unit; and
  2. Unit receives project-based assistance (not tenant-based); and
  3. Unit is occupied by Very Low Income tenant; and
  4. Tenant does not pay more than 30% of adjusted income for rent & utilities

# Fees Beyond Contract Rent

- Owners may charge fees (e.g., application, parking, services) beyond rent if:
  - Reasonable and customary in the market
  - Optional to tenant
  - Uniformly applied to all tenants (HOME & non-HOME)
- Must be approved by PJ
- Mandatory service fees generally not permitted except in transitional housing



# Annual Approval of Project Rents

- HUD publishes income & rent limits annually
- PJ must review and approve rents & utility allowances annually for each project during the affordability period
  - Ensures compliance with HOME rent limits
  - Prohibits undue rent increases from previous years
- Rent changes when permitted by lease
  - But must provide 30 days notice of rent change

# Lease Requirements



- Leases are required
  - Form must be reviewed and approved by PJ
- Prohibited lease terms (92.253)
- Must specify rent and include procedures for adjustments to rents
  - 30 day notice to increase rent or terminate tenancy
- Term of lease: at least 1 year, unless approved
- VAWA lease addendum



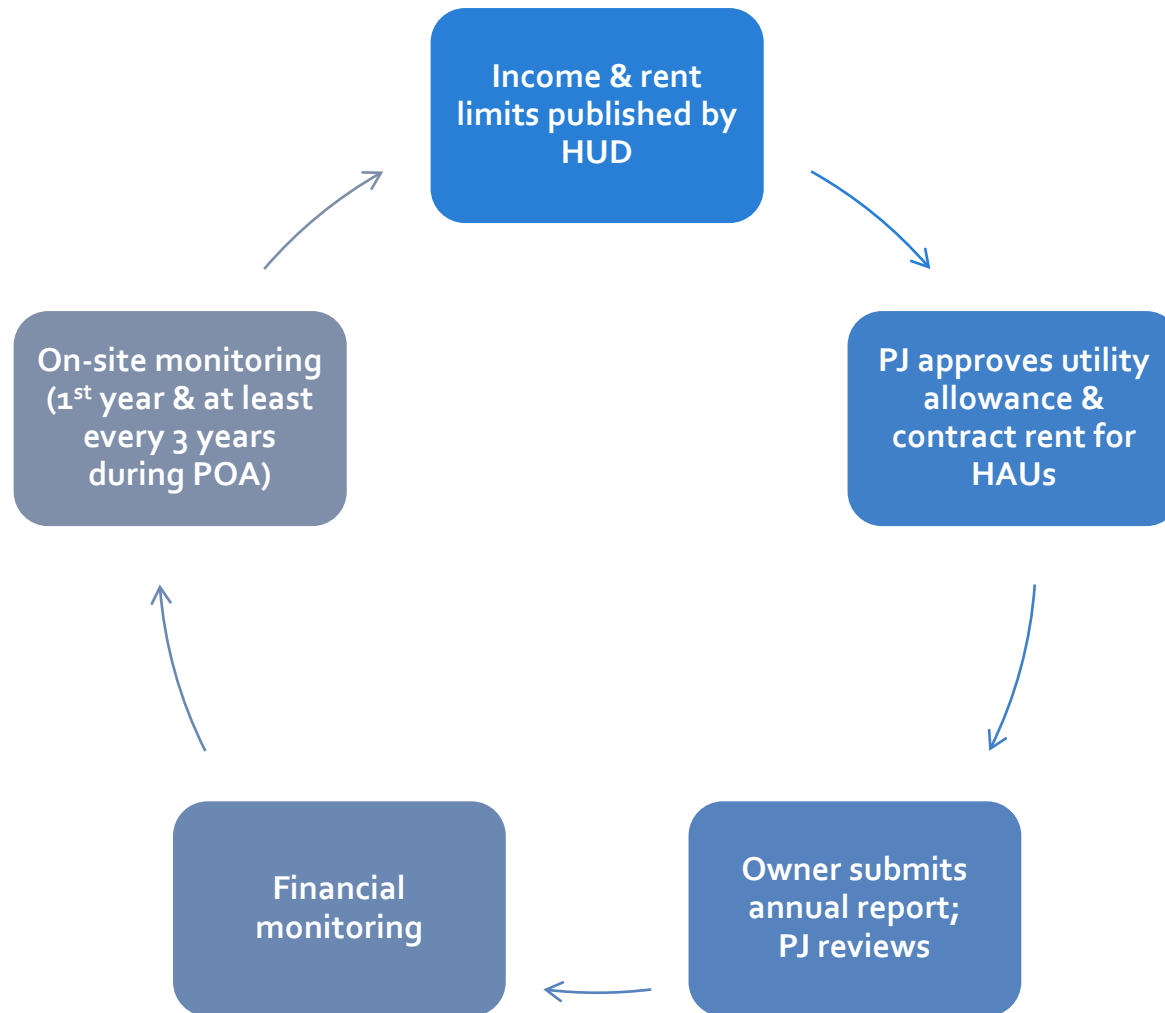
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## Ongoing Occupancy Issues

# Period of Affordability Compliance

- During POA, rental projects subject to:
  - Occupancy mix
  - Income & rent limits
  - Annual income certifications
  - Owner report
  - Onsite file review & unit inspections within 12 months & at least every 3 years thereafter
- Obligations transfer if sale during period
  - If affordability requirements not met, full repayment of HOME funds

# Ongoing Annual Compliance Cycle



# Manage the Unit Mix

- Determine required mix from Agreement
  - Total number of HOME units
  - Unit mix by unit type/size (e.g., 1BR, 2BR, 3BR)
  - Number of VLI/Low HOME units (if 5+)
  - Fixed or floating
- Monitor unit mix status

	Required	0 BR	1 BR	2 BR	3 BR	.....
HOME VLI						
HOME LI						
Unrestricted						

# Over Income

- Possible changes:
  - VLI becomes LI (over 50% below 80%)
  - LI becomes VLI (under 50%)
  - VLI or LI becomes OI (over 80%)
- Questions:
  - What designation?
  - What rent should be charged, and when is the rent adjusted?
  - How to “replace” the unit and restore compliance?

# Income Change Under LI Limit

## VLI → LI

- Designate “OI-VLI” when recertify, unless LI slot available
- Adjust rent only if LI slot available (“swap” occurs)

## LI → VLI

- No rent change & re-designation required
- But owner may designate VLI & Low HOME rent if slot available

# Over Income (>80% AMI)

## Fixed Units

- Adjust rent to 30% of adj. income on renewal (with notice)
- When unit vacated, check VLI/LI mix & select from needed income level

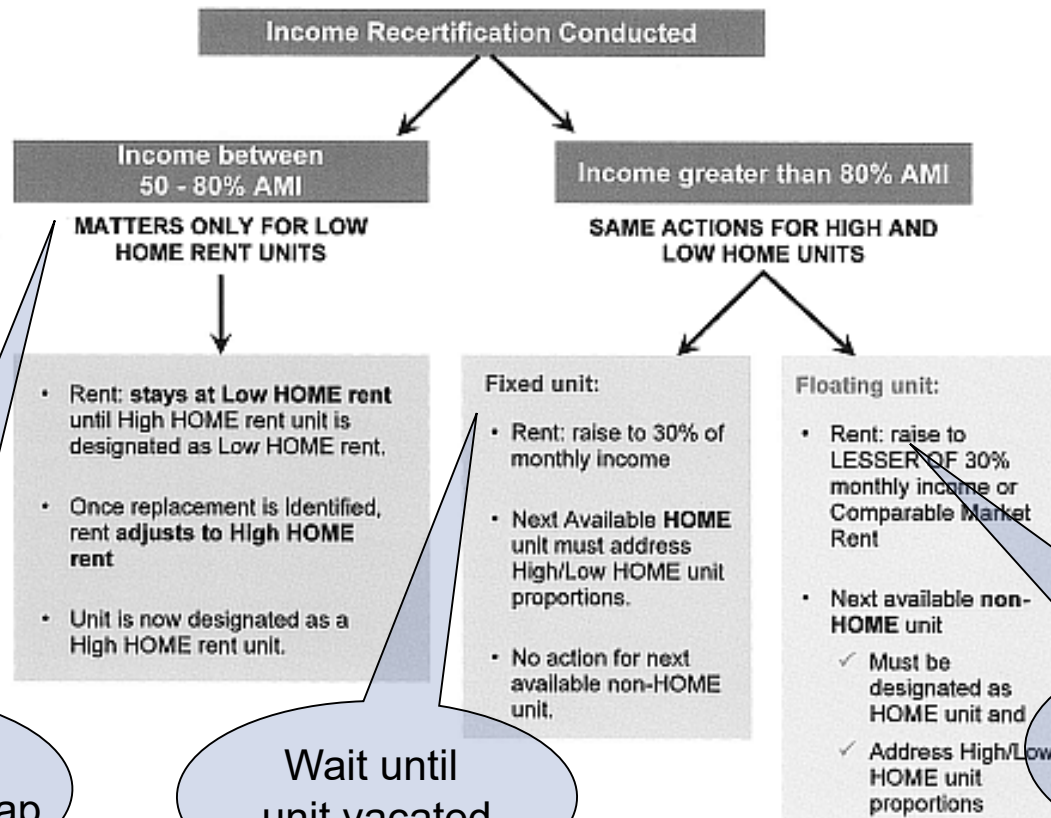
## Floating Units

- Check VLI/LI mix
- Select appropriate income tenant from existing or vacant
- Adjust OI rent only when unit replaced (30% adj.inc. up to unrestricted rent)

# Restoring Unit Mix

<https://www.hudexchange.info/resources/documents/Managing-Rental-Unit-Mix-Under-HOME.pdf>

## SUMMARY OF STEPS: MANAGING RENTAL UNIT MIX UNDER HOME



When VLI/LI  
available to swap

Wait until  
unit vacated

Swap next available  
unrestricted  
unit



# Over Income (>80% AMI)

## Fixed Units

- Specific units are designated
- Can't replace until HH vacates the assisted unit
- Can switch unit between Low HOME and High HOME

## Floating Units

- Next available comparable unit as replacement (unit types designated in agreement)
- Can replace with larger size unit
- Can designate existing tenant or hold vacant unit

# Unit Mix Questions

- Does project meet HOME unit requirements?
  - Total, VLI & LI HOME units?
- Rebalancing: are there tenants in wrong slot?
  - Low HOME units with income 50% - 80% AMI?
  - High HOME units with incomes < 50% AMI
  - Unrestricted units (floating) with incomes < 80% AMI
- Over Income: are there tenants in HOME units with income over 80% AMI?
  - Fixed: Is their rent calculated properly?
  - Floating: unrestricted unit swap & then rent adjusted

# VAWA Protections

- Not “good cause” for terminating victim’s lease
  - May bifurcate lease to evict individual committing act
  - Must allow remaining tenants time to qualify or relocate
- Victim is eligible for emergency transfer
  - Document the request
  - Internal transfer: ongoing HOME requirements, lease transfer without penalty
  - External transfer: if not internal safe units, contact state & other providers, no penalty for lease termination
- Help contact orgs providing assistance
- Protect confidentiality (must report to PJ)

# Terminating Tenancy

- 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 or refusal to purchase unit is not good cause)
  - Completion of tenancy for transitional housing
  - Can terminate in transitional housing for failure to comply with service plan (or end of transition)
- 30 day notice required

# Annual Report by Owner

- Annual Rent and Occupancy report from owner is required (92.252(f)(2))
  - Owner must certify property standards
  - Check with your PJ on their reporting process & format
- Use of periodic owner reports
  - Review project compliance annually
  - Verified with file review when onsite monitoring
- PJs must annually review financial condition of rental projects with 10 or more HOME units (§92.504(d)(2))
  - Check with PJ on submission requirements

# On-Site Monitoring

- Rule now requires:
  - Within 12 months of project completion &
  - At least every 3 years during affordability period
  - More frequent if serious deficiencies
- On-site review will include
  - Unit inspections for prop standards compliance
    - May require follow-up inspections
  - Review of occupancy files for accuracy of reports



# Record Retention & Access

- Retain 5 yrs. after completion or final payment
  - 5 yrs after compliance period for compliance agreements & resale restrictions
  - 5 yrs. rolling base for rental units
- Key compliance documents
  - Aff. Marketing, applicant intake/decisions, waiting list
  - Tenant income certs/re-examinations & documentation
  - Leases
  - LBP disclosures if pre-1978
  - Unit inspection/maintenance records







# 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/>
- This training covered federal requirements, but check on your PJ's policies for additional requirements
- Tomorrow morning: HOME Units in LIHTC Projects