# IHCDA Federal Programs (HOME, HTF, CDBG, CDBG-D, NSP) Ongoing Rental Compliance Manual: Revision February 2026

## INTRODUCTION

This manual is a reference guide for compliance for rental projects receiving funding from federal programs administered by the Indiana Housing and Community Development Authority (IHCDA). It is designed to answer questions regarding procedures, rules, and regulations that govern these programs. This manual should be a useful resource for owner agents, developers, management agents, and onsite management personnel. It provides guidance with respect to IHCDA's administration of monitoring for compliance under 24 CFR Part 92, 24 CFR Part 93, and 24 CFR Part 570.

This manual is to be used as a supplement to compliance with all applicable laws and regulations. This manual should not be considered a complete guide to the HOME Investment Partnerships Program (HOME), Housing Trust Fund (HTF), Community Development Block Grants (CDBG), or Neighborhood Stabilization Program (NSP) regulations. The responsibility for compliance with federal program regulations lies with the owner (see disclaimer).

## SCOPE OF THIS MANUAL

This manual discusses the ongoing compliance requirements during the period of affordability for rental projects funded with HOME, Housing Trust Fund, CDBG, CDBG-D, and NSP. For information on the upfront compliance requirements necessary to get an awarded project through the closeout process, please refer to IHCDA's *HOME & HTF Program Manual.*

## **DISCLAIMER**

*The publication of this manual is for convenience only. Your use or reliance upon any of the provisions or forms contained herein does not, expressly or impliedly, directly or indirectly, suggest, represent, or warrant that your project will be in compliance with the requirements of 24 CFR Part 92, 24 CFR Part 93, or 24 CFR Part 570, other applicable regulations, or HUD guidance, as amended. IHCDA hereby disclaims any and all responsibility of liability which may be asserted or claimed arising from reliance upon the procedures and information or utilization of the forms in this manual. You are urged to consult with your own attorneys, accountants, and consultants.*

*Due to the complexity of federal regulations and the necessity to consider their applicability to specific circumstances, owner and management agents are strongly encouraged to seek competent legal and accounting advice regarding compliance issues. IHCDA's obligation to monitor for compliance with the requirements of the regulations does not make IHCDA or its subcontractors liable for an owner's noncompliance.*

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# Summary of Changes

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

**Yellow highlighting indicates a HOTMA related update; Green highlighting indicates an NSPIRE related update; Pink highlighting indicates a 2025 HOME Final Rule related update.**

**Policy Updates:**

- 2.2(I): Due date for Annual Owner Certifications of Compliance changed from January 31st to February 15th
- 3.1B: Per HOME 2025 Final Rule, HOME now requires 60 days written notice for a rent increase
- 3.2D: HOME now requires 60 days written notice for a rent increase
- 3.2(E)(5): Updated language on prohibited fees to include surety bonds, fees not customarily charged in rental housing, fees for processing reasonable accommodation or modification requests, and fees for processing VAWA protection requests
- 3.3(B)(3): Added utility company estimate to allowable utility allowance sources
- 4.2(E): Eviction screening cannot deny an applicant for "no fault" evictions or eviction proceedings where the tenant prevailed or where the matter was dropped.
- 4.3(B): Removed requirement that for HOME-assisted units the owner agent must obtain a certified copy of the tax return by completing IRS Form 4506 "Request for Copy of Tax Form."
- 4.3(B)(4): For HTF-assisted units, safe harbor for means-tested income verification cannot be used at move-in but may be used at recertification
- 5.1(A)(10): For tenants residing in units with USDA Rural Housing Service assistance, the current RD Form 3560-8 Tenant Certification must be included in the file.
- 5.3(B)(1): Removed requirement that for HOME-assisted units the owner agent must obtain a certified copy of the tax return by completing IRS Form 4506 "Request for Copy of Tax Form." Added in HOTMA language about required documentation when using a tax return.
- 5.3B(6): For HTF-assisted units, safe harbor for means-tested income verification cannot be used at move-in but may be used at recertification
- 5.3(C)(6): Updated student financial assistance rules. The special Section 8 rule no longer applies due to changes in the 2026 HUD appropriations bill.
- 5.6A: Per HOME 2025 Final Rule, HOME now requires 60 days written notice for a rent increase
- 5.6B: Per HOME 2025 Final Rule, HOME now requires 60 days written notice for a rent increase
- 6.4(A): Due date for Annual Owner Certifications of Compliance changed from January 31st to February 15th
- 6.5(A)(7): For tenants residing in units with USDA Rural Housing Service assistance, the current RD Form 3560-8 Tenant Certification must be included in the file.

**Clarifications and Minor Updates:**

- 4.2(E): Clarified language on VAWA protection "on the basis of" language per HUD final rule
- 4.2(G)(1): Clarified language on VAWA protection "on the basis of" language per HUD final rule
- 4.3(B)(1): Clarified self-certification of income requirement for HOME and HTF during years that are not every sixth year of the period of affordability. A TIC does not count as a self-certification of income for HOME or HTF. A separate self-certification form must be completed by the household to self-certify their annual income.
- 4.3(F): Added language referencing the requirement to swap Low HOME and High HOME units when a Low HOME household exceeds 50% AMI
- 4.4(A): Clarified that Development Fund rent limits are ignored when a tenant is receiving tenant-based or project-based rental assistance through a federal, state, or local rental assistance program.
- 4.5(D): Clarified that IHCDA implemented NSPIRE 1/1/24 and that NSPIRE replaces UPCS and applies to all projects.
- 4.6(A): Added section regarding smoke-free housing requirements
- 5.1(A): Clarified an asset self-certification form must be in the file if the owner agent allows self-certification of assets under $50,000 (as adjusted by inflation). The TIC or Income Questionnaire alone does not count as an asset self-certification form.
- 5.3(C)(1): Added Social Security Cost of Living Adjustment of 2.8% for 2026
- 5.3(C)(4): Income exclusion for earned income of dependent full-time students increased from $480 to $500 for 2026

- 5.3(C)(6): Clarified language on student financial assistance calculations
- 5.4(A): Income exclusion for earned income of dependent full-time students increased from $480 to $500 for 2026
- 5.4(C): Clarified language on imputing asset income, including instruction to not impute income on cash on hand
- 5.4(C): Added passbook savings rate change for 2026. New rate is 0.40%.
- 5.5(A): Clarified self-certification of income requirement for HOME and HTF during years that are not every sixth year of the period of affordability. A TIC does not count as a self-certification of income for HOME or HTF. A separate self-certification form must be completed by the household to self-certify their annual income.
- 6.6: Added section to clarify modification process

# Section 1: Key Terms and Concepts

## Part 1.1 Affordability Requirements

HOME regulations allow for two types of HOME-assisted units:

- **High HOME** units are HOME-assisted units reserved for households at or below 80% AMI ("low-income").
- **Low HOME** units are HOME-assisted units reserved for households at or below 50% AMI ("very-low income").

In their funding application, an owner usually agrees to restrict units at additional area median income (AMI) levels. Such additional restrictions are codified in the lien/restrictive covenant agreement recorded against the property, and the owner must continue to meet these requirements throughout the project's period of affordability.

- All units committed to serving households with incomes less than 30% AMI (Low HOME) must be rented to households with incomes less than or equal to 30% AMI at time of move-in. *NOTE: All HTF-assisted units must be 30% AMI.
- All units committed to serving households with incomes less than 40% AMI (Low HOME) must be rented to households with incomes less than or equal to 40% AMI at time of move-in.
- All units committed to serving households with incomes less than 50% AMI (Low HOME) must be rented to households with incomes less than or equal to 50% AMI at time of move-in.
- All units committed to serving households with incomes less than 60% AMI (High HOME) must be rented to households with incomes less than or equal to 60% AMI at time of move-in.
- All units committed to serving households with incomes less than 80% AMI (High HOME) must be rented to households with income less than or equal to 80% AMI at time of move-in.
- Certain NSP or CDBG-D projects may have units designated at 120% AMI. For these projects, all units committed to serving households with incomes less than 120% AMI must be rented to households with income less than or equal to 120% AMI at time of move-in. 120% limits will never apply to HOME, HTF, or CDBG units.

Housing Trust Fund ("HTF") regulations require all HTF-assisted units to serve households with incomes at or below the 30% AMI limit for the HTF program. The HTF program uses different income and rent limits than the HOME program.

All awards must be secured throughout the period of affordability by a recorded lien/restrictive covenant agreement.

## Part 1.2 The HOME "Program Rule" and the "Project Rule"

**The HOME "Program Rule"** states that at initial occupancy, 90% of HOME-assisted units must be occupied by households with incomes at or below 60% of AMI.

**The HOME "Project Rule"** states that all HOME developments with five or more HOME-assisted units must have at least 20% of the HOME-assisted units occupied by households at or below 50% of AMI for the duration of the affordability period.

The Program Rule and Project Rule apply only to HOME-assisted projects.

## Part 1.3 Period of Affordability

The length of time for which a project must continue to remain in program compliance and meet its specified requirements (as outlined in the application and restrictive covenants) is called the period of affordability or affordability period.

**The period of affordability begins after project completion.** Project completion is defined as the date that all necessary title transfer requirements and construction work have been performed; the construction/rehabilitation completed complies with the requirements of 24 CFR 92.2 and the property standards of 24 CFR 92.251 or 24 CFR 570 and the stricter of the local rehabilitation standards or the Indiana State Building Code; the final drawdown has been disbursed for the project; and the project completion information has been entered into the disbursement and information system established by HUD. Final inspection and closeout monitoring must occur, and all issues be resolved, before the project will be considered complete and the period of affordability begins. This date will be codified in the IHCDA closeout letter.

The following chart defines the period of affordability that applies to HOME, NSP, CDBG, and CDBG-D funded projects, including permanent rental, permanent supportive housing, and transitional housing. The affordability period for HTF-assisted units is always 30 years, regardless of the amount of assistance per unit:

| **HOME (committed before 4/20/2025), CDBG, CDBG-D, or NSP** | **Affordability Period** |
|---|---|
| Rehabilitation or acquisition of existing housing less than $15,000 per unit | 5 years |
| Rehabilitation or acquisition of existing housing $15,000 - $40,000 per unit | 10 years |
| Rehabilitation or acquisition of existing housing greater than $40,000 per unit or any rehabilitation involving refinancing | 15 years |
| New construction or acquisition of newly constructed housing (regardless of amount) | 20 years |

| **HOME (committed on or after 4/20/2025)** | **Affordability Period** |
|---|---|
| Rehabilitation or acquisition of existing housing less than $25,000 per unit | 5 years |
| Rehabilitation or acquisition of existing housing $25,000 - $50,000 per unit | 10 years |
| Rehabilitation or acquisition of existing housing greater than $50,000 per unit or any rehabilitation involving refinancing | 15 years |
| New construction or acquisition of newly constructed housing (regardless of amount) | 20 years |

Note: An IHCDA award may be made in the form of a loan. Prepayment or maturity of a loan prior to the end of the period of affordability does not affect the period of affordability end date.

## Part 1.4 Fixed and Floating Units

A project's Award Agreement will outline whether the program-assisted units are considered fixed or floating units.

**Fixed units:** The program-assisted units remain the same throughout the period of affordability. Specific units are designated as assisted units and those units will remain designated as assisted units throughout the period of affordability. Any non-assisted units at a property with fixed program units will remain designated as non-assisted units and can be rented without regard to rent and income restrictions.

**Floating units:** The program-assisted units may change during the period of affordability. The unit mix can be changed during the period of affordability so that the total number of assisted units meets the requirements set out in the application and recorded lien/restrictive covenant agreement. Each substituted unit must be comparable in terms of size, features, and number of bedrooms to the originally designated assisted unit.

If all units in a property are program-assisted units, then the units are considered fixed units. In a property with a mix of program assisted and non-assisted units, the assisted units may be fixed or floating.

## Part 1.5 Types of Rental Housing Projects

**Permanent Rental Housing**

The purpose of this activity is to provide funding for affordable long-term housing that will be rented to income-eligible households. Eligible activities include acquisition, rehabilitation, or new construction.

Permanent rental housing units may not be used for temporary housing, transitional housing, or emergency shelter at any time. Each household moving into a permanent rental housing unit must be certified as income eligible and must enter into a lease agreement. For more information on lease requirements, see Part 5.6.

Eligible permanent rental housing includes assisted living facilities that meet IHCDA's definition. IHCDA defines an assisted living facility as a living arrangement in which services are available to residents (e.g., meals, laundry, medication reminders, etc.) but the residents still live independently. Services provided cannot be mandatory as a condition of occupancy. Residents of such facilities pay a regular monthly rent and pay additional fees for the services that they desire. The fees for any services that are mandatory (i.e., services that are a condition of occupancy) must be included in the gross rent calculation.

**Permanent Supportive Housing**

The purpose of this activity is to provide funding for affordable long-term housing with supportive services for persons experiencing homelessness or at risk of homelessness or persons with disabilities. Eligible activities include acquisition, rehabilitation, or new construction. Services provided must be voluntary, i.e., acceptance of services cannot be mandatory as a condition of occupancy.

Permanent supportive housing units may not be used for temporary housing, transitional housing, or emergency shelter at any time. Each household moving into a permanent supportive housing unit must be certified as income eligible and must enter into a lease agreement. For information on lease requirements, see Part 5.6. For additional information on permanent supportive housing requirements, see Part 4.6.

**Transitional Housing**

Transitional housing is designed to provide short-term, time-limited housing with supportive services for populations such as persons experiencing homelessness or at risk of homelessness, persons exiting institutional settings, and survivors of domestic violence. The intent of transitional housing is to facilitate the movement of individuals and families to independent living (e.g., permanent rental housing), generally within 24 months.

Transitional housing units may not be used for emergency shelter at any time. Each household moving into a transitional housing unit must be certified as income eligible and must enter into a program agreement. For more information on program agreements, see Part 5.6.

## Part 1.6 Applicability of HOME Rules to CDBG, CDBG-D, and NSP Properties

Because the CDBG, CDBG-D, and NSP programs do not provide much regulation or guidance on rental project compliance, IHCDA generally adopts the HOME rental compliance requirements for its CDBG, CDBG-D, and NSP funded rental properties. The HOME rental requirements apply to CDBG/CDBG-D/NSP rental properties with the following exceptions:

- Part 1.1- the concept of Low HOME and High HOME units only applies to HOME projects.
- Part 1.2- the “Program Rule” and “Project Rule” only apply to HOME projects.
- Parts 2.1G, 2.2N, & 3.2- the requirement to annually request approval of rents only applies to HOME and HTF projects.
- Parts 3.1C & 4.3F- the temporary noncompliance over-income rule for households exceeding 80% AMI at recertification only applies to HOME units
- Part 3.2B(8)- the rule to ignore Low HOME rent limits on a tax credit unit only applies to the HOME program
- Part 3.2D- the rent adjustment rule for households exceeding 80% AMI at recertification only applies to HOME units
- Part 4.1G- the student status rule only applies to HOME projects.
- Part 4.2G- VAWA is not applicable to CDBG, CDBG-D, or NSP projects.
- Part 6.5C- Financial oversight requirements are not applicable to CDBG, CDBG-D, or NSP projects.

## Part 1.7 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 1/1/24. This manual has been updated to include HOTMA provisions, including requirements from the HOTMA final rule and the February 2, 2024 revised HUD Notice H 2023-10 / PIH 2023-27 “Implementation Guidance: Sections 102 and 104 of the Housing Opportunity Through Modernization Act of 2016.”

HUD CPD has not published HOTMA guidance specific to the programs covered by this compliance manual. Any future HUD CPD HOTMA guidance shall supersede any guidance in this manual and IHCDA shall announce any such changes via RED Notice.

# Section 2: Responsibilities

The entities involved in program compliance include IHCDA, the owner agent, and the management agent including onsite management and maintenance personnel. The various responsibilities for these entities are set forth below.

## Part 2.1 Responsibilities of IHCDA

IHCDA allocates and administers the HOME, HTF, CDBG, CDBG-D, and NSP housing programs for the State of Indiana. IHCDA's responsibilities are as follows:

### A. Review Annual Owner Certifications and Annual Financial Information

IHCDA will review an Annual Owner Certification for each project. For information on Annual Owner Certifications, see Part 6.4.

In addition, for each HOME or HTF project with 10 or more units (total units, not assisted units), IHCDA must annually review the financial condition of the project to determine "the continued financial viability of the housing" in accordance with the Financial Oversight requirements of the HOME and HTF regulations. IHCDA must take actions, as feasible, to correct any problems identified through financial review. IHCDA staff will contact each affected property annually to request the necessary information. For additional information on financial review, see part 6.5(C).

### B. Conduct File Monitoring and Physical Inspections

All projects will be subject to tenant file monitoring and physical inspections at least once every three years. IHCDA will perform a file review and physical inspection for each project prior to award closeout and then every third year thereafter. However, IHCDA 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 IHCDA's assessment that a project is high risk.

Previously, the frequency of monitoring and inspection varied based on the number of units (1-4 units once every 3 years, 5-25 units once every 2 years, or 26+ units annually). This method was discontinued starting with the 2018 monitoring/inspection cycle.

Tenant File Audits - Information to be reviewed will include, but is not limited to, annual Tenant Income Certifications, Income Questionnaires, documentation received to support those certifications (i.e., income and asset verifications), rent and utility allowance records, leases and lease addenda, tenant selection plans, etc. Owners must provide organized tenant files to IHCDA with documentation in chronological order. For more information on file audits, see Part 6.5.

Physical Unit Inspections – IHCDA staff or an IHCDA contractor will conduct a physical inspection to ensure that the development is suitable for occupancy per the NSPIRE inspection protocol.

IHCDA retains the right to perform a file review and/or physical inspection of any building and/or unit at any time during the period of affordability, with or without notice to the owner.

### C. Remedying Noncompliance

When noncompliance is discovered, IHCDA will work with the owner and/or management agent to remedy the issue during a correction period. If necessary, IHCDA will recapture funds. For information on recapture, see part 7.6.

### D. Suspension and Debarment

IHCDA may suspend or debar entities from participation in IHCDA programs if noncompliance issues are recurring or egregious, the owner agent is nonresponsive to IHCDA requests, funds are misused, an entity engages in fraudulent activity, etc. For information on suspension and debarment, see Part 7.9.

### E. Conduct Training

IHCDA will conduct or arrange compliance trainings and will disseminate information regarding the dates and locations of such trainings to its partners. Trainings will be announced via IHCDA Real Estate Department Notices ("RED Notices").

### F. Possible Future Subcontracting of Functions

IHCDA may, in its sole discretion, decide to retain an agent or private contractor to perform some of the responsibilities listed above.

### G. Approve HOME and HTF Rents

IHCDA must approve, at least annually, the rents to be charged by all HOME or HTF-assisted projects. See Part 3.2 for additional information on approval of rents for HOME or HTF-assisted units. This rule only applies to the HOME and HTF programs.

## Part 2.2 Responsibilities of the Owner

The owner must comply with all applicable program requirements and certify that such requirements have been met. Any violation of program requirements could result in the owner being required to repay federal or state funds and may jeopardize future applications for IHCDA funding.

The responsibilities of owners include, but are not limited to:

### A. Leasing units to eligible households in a non-discriminatory manner

For more information on leasing requirements, see Part 5.6. For more information on fair housing and tenant selection plans, see Part 4.2.

### B. Charging no more than the maximum allowable rents (including utility allowances and non-optional fees)

For more information on rent limits and maximum allowable rent, see Part 3.2.

### C. Maintaining the property in habitable condition

The owner is responsible for ensuring that the development is maintained in a decent, safe, and sanitary condition in accordance with appropriate standards. Failure to do so is an act of noncompliance. See Part 4.5.

### D. Record retention requirements

Written award agreements must be retained for five years after the agreement terminates.

Tenant files must be retained for the most recent five years throughout the period of affordability, until five years after the end of the period affordability (to determine the length of the period of affordability, see Part 1.3). However, if any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required retention period, the records must be maintained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

IHCDA permits the electronic storage of records in lieu of hardcopies, as long as the electronic storage system includes reasonable controls for accuracy and reliability and maintains documents that are accessible, legible, and readable.

The records must include the following:

- The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit)

- The number of residential rental units that are program assisted units and if those units are considered fixed or floating
- The rent charged on each residential rental unit, including any non-optional fees and the applicable utility allowance. Utility allowance records must include copies of the annual supporting documentation.
- The number of occupants in each program assisted unit
- Vacancy data, documentation of marketing efforts, and information that shows when and to whom the next available units were rented (this information must include the unit number, tenant name, move-in dates, and move-out dates for all tenants, including market rate tenants)
- The Tenant Income Certification (TIC) and Income Questionnaires for each household and applicable documentation to support each household's income certification and, if applicable, student status eligibility
- Any local health, safety, or building code violation reports or notices issued by the State or local government unit responsible for making local health, safety, or building code inspections

### E. Attending IHCDA Compliance Training

Owner agents are encouraged to voluntarily attend IHCDA compliance training opportunities. IHCDA may require attendance from owner or management agents who are found to be out of compliance or to have a history of noncompliance. If IHCDA requires attendance due to an audit finding, the owner agent must provide proof of registration and participation in the required training. IHCDA will not issue an "issues resolved letter" or close the audit until verification of mandatory training has been provided.

For information on available IHCDA compliance training opportunities, stay tuned to IHCDA RED Notices.

### F. Being knowledgeable about:

The owner is expected to know and maintain records regarding:

- Award expiration dates, closeout dates, and the duration of the period of affordability
- The award number and address of each building in the project
- The applicable income and rent restriction for each unit (30%, 40%, 50%, 60%, 80%, or 120%)
- Whether program-assisted units are considered fixed or floating units
- The terms under which the award was made, including the requirements applicable to the funding policy under which the award was made and scoring elections applicable to the project
- Any restrictions required in the award agreement and recorded lien/restrictive covenant, including required amenities, services, design features, and special population targeting

The items listed above can be found in the application, award agreement, recorded lien/restrictive covenant, and/or the closeout letter for the project. To ensure compliance, it is important that the owner and management agents have copies of these documents and are familiar with the terms defined within.

### G. Complying with the terms of the Application, Award Agreement, and Lien/Restrictive Covenant

In addition to meeting rent and income restrictions, this obligation includes providing the agreed upon services, amenities, design features, and any special population targeting throughout the period of affordability. IHCDA will monitor for compliance with these elections.

### H. Reporting to IHCDA any changes in ownership or management of the property

If a change in ownership is proposed during the period of affordability, a detailed description of the change must be provided in writing to IHCDA's Chief Real Estate Development Officer for approval. IHCDA must approve any change in ownership or transfer request that occurs before the expiration of the affordability period. If the request for an ownership change is on a HOME project that received HOME funds under the CHDO set-aside in 2013 or later as CHDO owner or CHDO developer, IHCDA must ensure that the project will continue to meet the CHDO set-aside requirements. If the new ownership will not maintain compliance for the duration of the affordability period, the original award recipient will be subject to recapture.

If the project has HOME or HTF funds, the request for approval must include the following documentation:

- Current year-to-date financial statements and previous two calendar year financial statements for the new owner entity
- An updated operating pro forma (IHCDA Compliance Form #29C) prepared by the new owner covering the remainder of the period of affordability

After IHCDA approval, final changes in ownership must be reported via IHCDA Compliance Form #29B "Property Ownership Change Form (Non-LIHTC Projects)." In addition, the following documentation must be submitted:

1. A copy of all sale documents;
2. The newly amended and stated partnership agreement (if a LIHTC project);
3. A copy of the "Property Management Change Form" (IHCDA Compliance Form #30) if management agent has changed; and
4. Any other additional information that IHCDA may request.

Changes in management company must be reported via IHCDA Compliance Form #30 "Property Management Change Form."

If the owner or management organization is not changing, but individual contacts have changed, the owner must notify IHCDA in writing of such changes in ownership or management contact information including the new contact person's name, address, e-mail address, and telephone number.

## I. Reporting tenant events and submitting Annual Owner Certifications

### 1. Annual Owner Certification of Compliance / IHCDA Online Management System

The owner must annually certify compliance to IHCDA, under penalty of perjury, for each year of the period of affordability. The Annual Owner Certification of Compliance is due on or before February 15th of each year and certifies information for the preceding calendar year. The report covers the period from January 1-December 31 of each year and is due to IHCDA by the close of business February 15th of the next calendar year. Complete submission includes the Owner Certification and finalization of all tenant events in the online reporting system. Projects with Low Income Housing Tax Credits must also submit payment of the annual LIHTC monitoring fee. A submission is not complete until the owner representative completes the finalization process by submitting the Annual Owner Certification, inputting all tenant events, and then selecting "Finalize Year" in the online reporting system.

The first annual owner certification is due by February 15th of the year following the year of the award's closeout date (i.e., the first year of the period of affordability). For example, if the affordability period for a project begins in 2025, the project owes a 2025 Annual Certification which is due by February 15, 2026. However, the owner must begin reporting tenant events in the online system with the first tenant move-in.

Effective January 1, 2009, all IHCDA assisted rental developments are required to enter tenant events using the Indiana Housing Online Management System. Tenant events include move-ins, move-outs, annual recertifications, unit transfers, rent and utility allowance changes, household composition updates, and student status updates. Tenant events that must be reported online do not include interim recertifications performed for other programs, such as Section 8 or Rural Development. **IHCDA requires the owner to enter all tenant events into the system within 30 days of the event date.**

It is mandatory that all tenant events be submitted electronically using the Indiana Housing Online Management System for all developments that contain IHCDA assisted units (e.g., HOME, HOME-ARP, HTF, CDBG, CDBG-D, NSP, Tax Credits, Section 1602, TCAP, Bonds, and/or Development Fund/Trust Fund). This online tenant event reporting process eliminated the former process of submitting a "Tenant Beneficiary Spreadsheet."

To use the rental reporting system or register to become a user, please visit the Indiana Housing Online Management System and contact IHCDA's Data and System Specialist with any questions. Training and resource materials for Owner Certification and tenant event submission are available on IHCDA's compliance webpage.

IHCDA will set up the buildings for a project in the online reporting system and approve one project owner web user. It is then the responsibility of that project owner web user to approve designated management web users and to set up the individual units within the buildings. IHCDA's compliance webpage includes an online reporting system training and FAQ that further describes user roles and permissions.

### 2. HMIS Reporting

All IHCDA funded permanent supportive housing units and units set aside for persons experiencing homeless are required to report through IHCDA's Homeless Management Information System (HMIS), or through Indianapolis HMIS if located in Indianapolis. For more information see [IHCDA's HMIS webpage]. This requirement is in addition to Annual Owner Certification reporting. Units targeting survivors of domestic violence must report through the HMIS Comparable Database.

## J. Training onsite personnel

The owner must ensure that onsite property management agents know, understand, and comply with all applicable federal and state code, regulations, and policies governing the project, including all elections made in the application, award agreement, and lien/restrictive covenant agreement.

As a best practice, IHCDA encourages the owner to make certain that property management and compliance personnel are familiar with the most current edition of the IHCDA Compliance Manual, the compliance forms and information on IHCDA's compliance manual webpage, and the online reporting requirements through the Indiana Housing Online Management System.

## K. Notifying IHCDA of any noncompliance issues and replacing noncompliant units

If the owner determines that a unit, building, or entire project is out of compliance with program requirements, IHCDA should be notified immediately. The owner must formulate a plan to bring the development back into compliance and advise IHCDA in writing of such a plan.

The owner must keep documentation outlining: the nature of the noncompliance issue, the date the noncompliance issue was discovered, the date that noncompliance issue was corrected, and a description and proof of the actions taken to correct the noncompliance.

Additionally, for HOME compliance the owner is responsible for replacing temporarily noncompliant units (units where the household exceeds 80% AMI) as per the guidelines in Part 3.1 C. This rule only applies to HOME-assisted units.

## L. Providing all pertinent property information to the management agent

To ensure compliance, the owner should provide the management agent with copies of the following documents: the application, award agreement, recorded lien/restrictive covenant agreement, closeout letter, the IHCDA application policy under which the project was awarded funds, and, if applicable, copies of any IHCDA approved modification letters and modified award documents.

If there is a change in management companies, 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.

## M. Affirmative Fair Housing Marketing Plan and Required Fair Housing Documents

### 1. Affirmative Fair Housing Marketing Plans (AFHMP)

An Affirmative Fair Housing Marketing Plan (AFHMP) is required for all awards containing five or more program-assisted units. The AFHMP must be created using HUD Form 935.2A to identify the populations least likely to apply for housing and the outreach/marketing efforts that will be utilized to reach that population.

For the programs covered by this compliance manual, HUD will not approve the AFHMP and as such the AFHMP should **not** be submitted to HUD to review and sign. An AFHMP should only be submitted to HUD for review and approval if one of the following HUD funding sources is included in the development:

- ☐ Section 221 (d)(2) Homeownership Assistance
- ☐ Section 221(d)(3) Below-Market Interest Rate
- ☐ Sections 235 and 236
- ☐ Sections 232, 234(c) and 213 - Condominium and Cooperative Housing
- ☐ Section 232 - Nursing Homes and Intermediate Care Facilities
- ☐ Section 207 - Mobile Home Courts
- ☐ Sections 207, 220, 221(d)(3) and (4) – Multifamily Rental Housing
- ☐ Rental Assistance Payment (RAP) and Rent Supplement
- ☐ Section 8 Project Based Assistance
- ☐ Section 202 Projects with Section 8 Assistance
- ☐ Rural Housing Section 515 Projects with Section 8 Assistance
- ☐ Loan Management Set Aside (LMSA)
- ☐ Property Disposition Set-Aside (PDSA)
- ☐ Section 202 with 162 Assistance – Project Assistance Grants (Section 202 PACs)
- ☐ Section 202 with Project Rental Assistance Contracts (Section 202 PRACs)
- ☐ Section 202 without Assistance (Income Limits Only)
- ☐ Section 203(b) and (1) - One-to-Four-Family Mortgage Insurance for Homeowners
- ☐ Section 811 with Project Rental Assistance Contracts (Section 811 PRACs)

The AFHMP must include the following information.

i. What segment has been determined the least likely to apply based on market demographics?
   - Families with children
   - Persons with disabilities
   - Specific race, ethnic group, religion, etc.

ii. What residency preferences are in place for the property?

iii. What marketing efforts are being made to reach those least likely to apply and how are marketing activities evaluated to determine if they are successful?

iv. Are the Fair Housing and Equal Opportunity Employment posters prominently displayed and where are they displayed? Is the AFHMP made available for public inspection and where is it displayed? Does the project site sign contain the HUD approved Equal Housing Opportunity logo, slogan, or statement and where is the sign displayed?

AFHMPs must be updated at least once every five years or more frequently when there are significant changes in the demographics of the local housing market area as described in the instructions for Part 9 on Form 935.2A.

2. Required Brochures and Poster

All households must be given the Fair Housing brochure entitled "Are You a Victim of Housing Discrimination" at the time of move-in. The household must sign documentation acknowledging the receipt of this brochure at time of move-in, and this receipt must be maintained in the household's file. IHCDA provides compliance Form 9C "Lease Addendum Receipt of Required Pamphlets" as a template acknowledgement form.

Additionally, all owners are required to post the Fair Housing and Equal Opportunity poster onsite in the leasing office and/or other common areas.

The above referenced brochure and poster are available in Appendix F.

## N. Requesting Approvals for HOME or HTF Rents

Per HOME and HTF regulations, IHCDA must annually approve the rents to be charged for IHCDA funded HOME or HTF-assisted rental units. Therefore, owner agents of projects with IHCDA HOME or HTF-assisted rental units must complete IHCDA Compliance Form #46 "HOME and HTF Rent Update Form" and submit it to IHCDA via homerentupdate@ihcda.in.gov.

The form must be submitted annually at the time that new rent limits are released by HUD, even if the owner is not proposing a change in rents charged, as well as at any other time in the year that the owner is proposing to change rents. See Part 3.2 for additional information on HOME/HTF Rent Updates and reporting requirements.

### O. Submitting Annual Financial Information

Owners of HOME or HTF-assisted projects with 10 or more units (total units, not assisted units) must annually submit property financials for IHCDA review as part of the Annual Owner Certification of Compliance submission. See Part 6.5(C) for additional information.

## Part 2.3 CHDO Set-aside Requirement

Per 24 CFR 92.300, IHCDA must reserve no less than 15% of its annual HOME allocation for projects to be owned, developed, or sponsored by IHCDA certified Community Housing Development Organizations (CHDOs). The terms owned, developed, and sponsored are specifically defined in 24 CFR 92.300.

HOME projects awarded under the CHDO set-aside in 2013 or later for a CHDO owner or CHDO developer must continue to be owned by a CHDO for the duration of the affordability period. In the event of a transfer of ownership or restructuring, IHCDA must ensure that the CHDO or a replacement CHDO continues to own the project.

## Part 2.4 Responsibilities of the Management Agent & Onsite Personnel

The management agent and all onsite personnel are responsible to the owner for implementing all program requirements.

- Anyone who is authorized to lease apartment units to tenants should be trained on all federal and state laws, rules, and regulations governing certification and leasing procedures, including program regulations, Fair Housing and nondiscrimination, and Indiana State Code regarding leasing requirements.
- The management company must provide information, as needed, to IHCDA and submit all required reports and documentation in a timely manner.
- Management agents must be onsite during IHCDA onsite file monitorings and physical inspections to provide access to necessary documentation and to units.
- Management must enter each property into the Indiana Housing Now online housing search database at indianahousingnow.org. Exception: 100% supportive housing developments that use Coordinated Entry for referrals are not required to list in Indiana Housing Now

## Part 2.5 Owner Agent

For the remainder of this Compliance Manual, the phrase "owner agent" collectively refers to the owner and their hired agents, including but not limited to the property management company, onsite property management, maintenance staff, and compliance personnel.

## Part 2.6 Demonstrating "Due Diligence"

The owner is ultimately responsible for compliance and proper administration of the program and all award requirements. IHCDA expects all owner agents 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.

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

Due diligence also includes keeping up to date with IHCDA policies by reading amended IHCDA Compliance Manuals, following IHCDA updates via RED notices, and attending IHCDA sponsored compliance trainings. These are all examples of voluntary efforts that owner agents can take to remain in compliance.

Another way in which the owner 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 audits.

If noncompliance issues are discovered, IHCDA may ask the owner 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 agent to have policies in place to minimize and remedy these errors.

# Section 3: Income Limits, Rent Limits, and Utility Allowances

To remain in compliance, program units must be income- and rent-restricted. This section provides guidance on how to properly apply income limits, rent limits, and utility allowances. Income and rent limit charts are provided in Appendix C.

## Part 3.1 Income Limits

### A. Income Limits

All program units must be occupied by income-qualified households, based on the income limits published annually by HUD. When new limits are published annually by HUD, IHCDA will post the new income limits and corresponding rent limits on its website via a RED Notice. This information is provided by IHCDA only for the owner's convenience as a courtesy. However, it is the responsibility of the owner agent, not IHCDA, to verify its accuracy.

The owner agent must ensure that the correct set of income limits is being utilized based on the applicable funding sources. IHCDA releases separate sets of income limits for different programs as required by HUD. For example, each year IHCDA releases separate income limits charts for the tax credit program, the HOME program, and the HTF program. The limits may differ across programs even in the same county for the same year.

Owners may not anticipate increases in income limits and corresponding rents. Limits remain in effect until new annual limits are officially published by HUD. New limits must be implemented by the HUD defined implementation date.

Household income must be determined in a manner consistent with the 24 CFR Part 5.609 methodology (commonly known as the "Part 5 Methodology" or "Section 8 methodology") of calculating annual income as described in Chapter 5 of the HUD Handbook 4350.3 and amended by HOTMA. When determining if a household's income is at or below the applicable income limit, the earned income from each adult household member 18 years of age or older and the unearned and asset income of all members of household (regardless of age) must be included in the total household income calculation. See Chapter 5 of HUD Handbook 4350.3 and HOTMA Implementation Notice (HUD Notice H 2023-10 /PIH 2023-27)- REVISED February 2024 for rules on calculating income.

### B. Over-income Households and Temporarily Noncompliant Units (**HOME ONLY**)

***NOTE: The following guidelines apply only to HOME-assisted units.**

A household residing in a HOME-assisted unit is considered to be "over-income" when total household income exceeds 80% AMI in a High-HOME unit (a unit designated at 60% or 80% AMI), or exceeds 50% AMI in a Low-HOME unit (a unit designated at 30%, 40%, or 50% AMI). When a household becomes over-income, the HOME-assisted unit it occupies is considered to be "temporarily noncompliant." Temporary noncompliance is permissible and does not penalize the owner as long as appropriate steps are followed to restore the proper unit mix. Certain rules go into effect to correct the unit mix depending on whether the over-income household occupies a fixed or floating HOME-assisted unit (see below). Over-income households may never be evicted or otherwise have their tenancy terminated solely because their income increased.

- **Over-income households in Fixed Units (Over 80% AMI)**

  When an owner agent conducts an income recertification and determines that a household occupying a fixed HOME-assisted unit exceeds 80% AMI, the unit is considered to be temporarily out of compliance. When the household is determined to exceed 80% AMI, the rent must be raised as soon as the lease permits (at a minimum, the owner must provide at least 60 days written notice before implementing any increase in rent). Instead of following the applicable HOME rent limit, the household must be charged 30% of adjusted income in rent. However, if the unit is also part of the Low Income Housing Tax Credit program, the tax credit rent rules must be followed and this rule does not apply- use the applicable tax credit rent limit.

  The unit is considered back in compliance when one of the following scenarios is met:

1. The over-income household vacates and a new qualified household moves into the unit. The over-income household cannot be evicted or otherwise terminated because of the increase in income; or
2. The over-income household recertifies and no longer exceeds 80% of AMI due to an increase in the income limit and/or a decrease in household income.

*Example:*
*A household moved into a 60% AMI fixed HOME unit with a qualified income. At recertification, household income has increased and is now above 80% AMI. The household is considered over-income and the unit is temporarily noncompliant. When the lease permits, but with at least 60 days written notice, the owner agent must increase the household's rent to 30% of adjusted income. When the household vacates, the unit must be once again rented to a household that qualifies at or below 80% AMI and the applicable 60% HOME rent limit would once again apply to the unit. The temporary noncompliance is remedied when:*

*i. the household vacates and the unit is rented to a household that qualifies at or below 60% AMI; or*
*ii. the over-income household recertifies and no longer exceeds 80% AMI.*

- **Over-income households in Floating Units (Over 80% AMI)**

When an owner agent conducts an income recertification and determines that a household occupying a floating HOME-assisted unit exceeds 80% AMI, the unit is considered to be temporarily out of compliance. When the household is determined to exceed 80% AMI, the rent must be raised as soon as the lease permits (at a minimum, the owner must provide at least 60 days written notice before implementing any increase in rent). Instead of following the applicable HOME rent limit, the household must be charged 30% of adjusted income in rent, not to exceed the rent on a comparable market unit in the area. However, if the unit is also part of the Low Income Housing Tax Credit program, the tax credit rent rules must be followed and this rule does not apply- use the applicable tax credit rent limit.

The unit is considered back in compliance when one of the following scenarios is met:

1. The over-income household vacates and a new qualified household moves into the unit. The over-income household cannot be evicted or otherwise terminated because of the increase in income; or
2. The over-income household recertifies and no longer exceeds 80% AMI due to an increase in the income limit and/or a decrease in household income; or
3. A non-assisted unit (i.e., a market unit or other unit not currently a HOME-assisted unit) becomes vacant and is re-designated as a HOME-assisted unit. In this scenario, the over-income unit is re-designated as a non-assisted unit and the units swap status. The substituted unit that becomes an assisted unit must be a "comparable unit," defined as a unit that is <u>equal or greater</u> than the original unit in terms of size, number of bedrooms, and amenities.

*Example: A household moved into a 60% AMI floating HOME unit with a qualified income. At recertification, household income has increased and is now above 80% AMI. The household is considered over-income and the unit is temporarily noncompliant. When the lease permits, but with at least 60 days written notice, the owner agent must increase the household's rent to 30% of adjusted income, not to exceed the rent on a comparable market unit in the area. The temporary noncompliance is remedied when:*

*iii. the household vacates and the unit is rented to a household that qualifies at or below 60% AMI; or*
*iv. the over-income household recertifies and no longer exceeds 80% AMI; or*
*v. A vacant, comparable, non-HOME-assisted unit is converted to a 60% HOME unit and the temporarily noncompliant unit is converted to a non-assisted unit.*

- **Re-designating Low HOME units that exceed 50% AMI**

If a property with HOME units has both High HOME (60% or 80% AMI) and Low HOME (30%, 40%, or 50% AMI) units, the units may have to swap status to maintain the proper unit mix. <u>This rule applies regardless of whether the units are fixed or floating.</u>

If a household that is designated as Low HOME (30%, 40%, or 50% AMI) exceeds the Low HOME income limit (i.e., the 50% AMI limit), the unit is temporarily noncompliant even though household income does not exceed 80% AMI. In this scenario, the unit remains temporarily noncompliant until a High HOME unit (unit at 60% or 80% AMI) is vacated at which point the units must swap status. The vacant High HOME unit becomes a vacant Low HOME unit and must be rented to a household at 30%, 40%, or 50% AMI depending on the set-aside assigned to temporarily noncompliant unit. The temporarily noncompliant unit is re-designated as a High HOME unit at the appropriate set-aside and rent may be increased when the lease permits (with at least 60 days written notice). NOTE: Until the units swap status, the temporarily noncompliant unit remains rent-restricted at the applicable Low HOME rent restriction.

*Example: The Smith household moves into a 40% HOME unit. At recertification, the household is determined to exceed the 50% AMI income limit but does not exceed the 80% AMI income limit. Because the Smith household occupies a Low HOME unit and now exceeds 50% AMI, the unit is considered temporarily noncompliant. The Smith household is allowed to stay in the unit and remains rent-restricted at the 40% HOME rent limit. Later, the Johnson household vacates their 60% HOME unit. This unit must be converted to a Low HOME unit at the 40% AMI restriction in order to replace the temporarily noncompliant Low HOME unit occupied by the Smith household. The Smith household is converted to a High HOME unit at the 60% AMI restriction. The units swap status and the temporary noncompliance is resolved.*

## Part 3.2 Rent Limits

All program units must be rent-restricted based on the rent limits published annually by HUD. HUD publishes income and rent limits for each county in Indiana on an annual basis. When new limits are published annually by HUD, IHCDA will post the limits on its website. This information is provided by IHCDA as a courtesy for the owner's convenience. However, it is the responsibility of the owner agent, not IHCDA, to verify its accuracy.

The owner agent must ensure that the correct set of rent limits is utilized based on the applicable funding sources. IHCDA releases separate sets of rent limits for different programs as required by HUD. For example, each year IHCDA releases separate rent limits charts for the tax credit program, the HOME program, and the HTF program. The limits may differ across programs even in the same county for the same year.

When new rent limits are released, IHCDA requires each HOME or HTF-assisted property to submit a HOME/HTF Rent Update Form (IHCDA Compliance Form #46) for annual approval of rents. Each property must annually submit this information, even if no rent increase is proposed. Per HOME and HTF regulations, the participating jurisdiction/HTF grantee (i.e., IHCDA) must annually approve rents to be charged for all HOME or HTF-assisted properties. The Rent Update Form must also be submitted and approved if the owner proposes changes in rent at other times of the year. This rule only applies to HOME or HTF-assisted units.

Owner agents may not anticipate increases in income and rent limits. Limits remain in effect until new annual limits are officially published by HUD. New limits must be implemented by the HUD defined implementation date. Income and rent limits are provided online in Appendix B.

### A. Rent Limit Terminology

The **rent limit** is published annually by HUD per bedroom size. The published rent limit must account for tenant-paid rent plus a utility allowance for tenant-paid utilities (excluding telephone, cable television, and internet) plus any non-optional charges. Therefore, tenants cannot be charged rent in an amount equal to the rent limit unless all utilities are owner-paid and there are no additional non-optional charges. See Part 3.3 for more information on utility allowances.

The **gross rent** for a unit is the sum of tenant-paid rent + utility allowance + non-optional charges. The gross rent may never exceed the applicable published rent limit.

The **maximum allowable rent** is the most the owner agent is permitted to charge for rent after a utility allowance for tenant-paid utilities (except telephone, cable television, and internet) and other non-optional charges have been deducted. The maximum allowable rent can never exceed the applicable published rent limit. Maximum allowable rent may also be referred to as the "maximum chargeable rent" or the "net rent."

The **tenant-paid rent** or **lease rent** is the actual rent charged to the household by the owner, as defined in the lease. The lease rent may never exceed the maximum allowable rent or the applicable published rent limit.

Each project has a **gross rent floor**, defined as the lowest rent limit that the owner will ever be required to implement for that project. The gross rent floor is the rent limit in effect at the time the funds are committed. If the current applicable limits drop below the gross rent floor, the owner is not required to accept lower rents. For more recent projects, the gross rent floor is now clearly defined in the IHCDA Award Agreement document. If the Award Agreement for a project does not define the gross rent floor, IHCDA can assist in determining this information.

See Part 3.2B below for special exceptions to the rent limit rules.

### B. Rent Limits for Special Unit Types

The program rent limits may not apply in the following situations:

1. **HOME 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.
        - For example, the FMR for a 0-bedroom unit is $300. The rent limit for an SRO unit (with neither food preparation or sanitary facilities or only one) would be $225 ($300 x 75% = $225).

    - 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).

    - Note: For HOME projects involving new construction, conversion of nonresidential space, or reconstruction, SRO units must contain either food preparation or sanitary facilities (and may contain both). For HOME projects involving acquisition or rehabilitation of an existing residential structure or hotel, neither food preparation nor sanitary facilities are required to be in the unit. If units do not contain individual sanitary facilities, the building must contain sanitary facilities that are shared by tenants.

2. **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 now more than the Low HOME rent limit.

    - Note: For HOME projects involving new construction, conversion of nonresidential space, or reconstruction, SRO units must contain either food preparation or sanitary facilities (and may contain both). For HOME projects involving acquisition or rehabilitation of an existing residential structure or hotel, neither food preparation nor sanitary facilities are required to be in the unit. If units do not contain individual sanitary facilities, the building must contain sanitary facilities that are shared by tenants.

3. **HOME Group Homes**

    - Defined as housing occupied by two or more persons or families with common space/facilities for group use.

- The unit is considered a single unit with multiple bedrooms and the rent is calculated as a single unit. Rent cannot exceed the Fair Market Rent for that bedroom size. Each bedroom will have a separate lease and will be charged a proportionate share of the total Fair Market Rent. The combined totals for all bedrooms in the unit cannot exceed the Fair Market Rent for a unit of that bedroom size.

- For example, a group home with four bedrooms would use the Fair Market Rent for a four-bedroom unit and each person's rent would be the proportionate share of the total unit rent. The sum of each occupant's rent cannot exceed the four-bedroom FMR.

**4. Units with Project-based Rental Assistance (HOME, CDBG, CDBG-D, NSP)**

Rent limits do not apply to any rental assistance or subsidy payment provided under a Federal, State, or local rental assistance or subsidy program. If a household lives in a project-based rental assistance unit (e.g., PBV, PBRA, or Section 811 PRA) under a subsidy program in which the tenant-paid rent portion is no more than 30% of the household's monthly adjusted income or 10% of the household's monthly gross income, then the owner may ignore the rent limit and accept the rent allowable under the rental assistance program.

**5. Units with Project-based Rental Assistance (HTF)**

Rent limits do not apply to any rental assistance or subsidy payment provided under a Federal or State project-based rental assistance or subsidy program. If a household lives in a project-based rental assistance unit (e.g., PBV, PBRA, or Section 811 PRA) under a subsidy program in which the tenant-paid rent portion is no more than 30% of the household's monthly adjusted income, then the owner may ignore the HTF rent limit and accept the rent allowable under the rental assistance program.

**6. Households with Tenant-based Rental Assistance (HOME, CDBG, CDBG-D, NSP)**

Rent limits do not apply to any rental assistance or subsidy payment provided under a Federal, State, or local rental assistance or subsidy program. If a household receives tenant-based rental assistance (e.g., a Housing Choice Voucher) under a subsidy program in which the tenant-paid rent portion is no more than 30% of the household's monthly adjusted income or 10% of the household's monthly gross income, then the owner may ignore the rent limit and accept the rent allowable under the rental assistance program.

**7. Households with Tenant-Based Rental Assistance (HTF)**

If a household in an HTF-assisted unit receives tenant-based rental assistance (e.g., a Housing Choice Voucher), the rental assistance portion must be included in the gross rent calculation. Therefore, the gross rent is calculated as tenant rent + utility allowance + non-optional charges + tenant-based rental assistance amount. Gross rent cannot exceed the HTF rent limit.

**8. Low HOME Units with Low Income Housing Tax Credits**

If a Low HOME unit is also a Low Income Housing Tax Credit program unit, the owner agent may ignore the HOME rent limit and instead charge the rent allowable under the tax credit program.

## C. Calculating Rent for Units/Households without Rental Assistance

- Determine the AMI% level (set-aside) the household fits into based on the development's application.
- Determine the utility allowance for the unit based on bedroom size.
- Determine the total maximum allowable rent. Maximum allowable rent equals the applicable HOME rent limit (based on the AMI level) minus the utility allowance and any non-optional fees

*Example 1:*
Household Size: 3 people
Annual Income: $26,000
AMI level: 60%
Maximum 3-bedroom HOME Rent (60% AMI): $700
Utility Allowance: $100
Maximum Tenant Rent: $600 ($700 limit - $100 UA)

*Example 2:*
Household Size: 3 people
Annual Income: $26,000
AMI Level: 60%
Maximum 3-bedroom HOME Rent (60% AMI): $700
Utility Allowance: $0 (owner pays all utilities)
Maximum Tenant Rent: $700 ($700 limit - $0 UA)

## D. Adjusting Rents due to Tenant Income Increases (**HOME ONLY**)

***NOTE: The following requirements apply only to HOME-assisted units.**

If household income exceeds 80% AMI at recertification, the household must be charged 30% of its adjusted income as rent. For floating units, households that exceed 80% of AMI are not required to pay rent that exceeds the market rate for comparable non-assisted units in the neighborhood. Rent can only be increased when allowed by the lease, and at a minimum, the owner must provide at least 60 days written notice before implementing any increase in rent.

The following chart outlines the maximum rents that tenants can be charged for developments that are either funded only with the HOME program or that are funded in conjunction with Low Income Housing Tax Credits. When combining programs, the strictest limits should be applied in order to maintain compliance with both programs. However, when combined, the LIHTC over-income rules override the rules discussed in this chapter.

**Table 1: Rent Limits for HOME**

| HOME Designated AMI level | "Fixed" unit | "Floating" unit |
|---|---|---|
| Units designated at 30% | Rent may not exceed 30% Rent Limit | Rent may not exceed 30% Rent Limit |
| Units designated at 40% | Rent may not exceed 40% Rent Limit | Rent may not exceed 40% Rent Limit |
| Units designated at 50% | Rent may not exceed 50% Rent Limit | Rent may not exceed 50% Rent Limit |
| Units designated at 60% | Rent may not exceed 60% Rent Limit | Rent may not exceed 60% Rent Limit |
| Units designated at 80% | Rent may not exceed 80% Rent Limit | Rent may not exceed 80% Rent Limit |
| Household exceeds 80% AMI at recertification | When lease allows, but with at least 60 days written notice, rent must be adjusted to 30% of adjusted household income. *Does NOT apply if LIHTC. | When lease allows, but with at least 60 days written notice, rent must be adjusted to 30% of adjusted household income, not to exceed market rent for a comparable unit in the area. *Does NOT apply if LIHTC. |

Note: Households must be given at least 60 days written notice prior to any increase in rent.

**Table 2: Rent Limits for HOME when Combined with Low Income Housing Tax Credits**

| HOME designated AMI level | Allowable Rent when Combined with LIHTC |
|---|---|
| Units designated at 30% | Lesser of the 30% HOME Rent Limit or the applicable LIHTC Rent Limit |
| Units designated at 40% | Lesser of the 40% HOME Rent Limit or the applicable LIHTC Rent Limit |
| Units designated at 50% | Lesser of the 50% HOME Rent Limit or the applicable LIHTC Rent Limit |
| Units designated at 60% | Lesser of the 60% HOME Rent Limit or the applicable LIHTC Rent Limit |
| Units designated at 80% | Lesser of the 80% HOME Rent Limit or the applicable LIHTC Rent Limit |
| Household exceeds 80% AMI at recertification | If a household's income increases above the 80% income limit and the unit has both HOME and LIHTC, the applicable LIHTC limit will apply. The household is not considered an over-income unit until the income exceeds 140% of the tax credit Federal Minimum Set-Aside for the development. Follow the tax credit "Next Available Unit Rule," not the HOME over-income rule. However, the unit may still need to be re-designated from low-HOME to high-HOME. |

## E. Allowable Fees and Charges

### 1. General Rule

Customary fees that are normally charged to all tenants, such as security deposits, pet deposits/fees, application fees, late payment fees, and parking fees (if such fees are customary in the neighborhood and the parking area was not included in tax credit eligible basis if a LIHTC project) are permissible. However, an applicant or tenant cannot be charged a fee for the work involved in completing the additional forms of documentation required by the program, such as the Tenant Income Certification and income/asset verification documents.

Refundable fees associated with renting units (such as security deposits) and one-time penalty fees (such as late payment fees and fees for prematurely breaking a lease, as long as such fees are clearly defined within the lease) are allowable fees that are excluded from the gross rent calculation.

### 2. Condition of Occupancy Rule (Optional Vs. Non-optional Fees)

Any fee that is charged for a service that is a condition of occupancy (i.e., a fee for a service that is non-optional / mandatory) must be included in the gross rent calculation when checking rent against the applicable rent limit. This is true even if federal or state law requires that the services be offered to the tenants by the owner.

Assuming they are truly optional, fees may be charged for elected services or additional amenities (such as pet fees, fees for extra storage units, transportation, meals, etc.) and these fees are not included in the gross rent calculation. A service or amenity is considered optional only if (1) a tenant may opt out of the service or amenity without penalty and still move in or continue to live at the development and (2) "reasonable/practical alternatives" exist. A fee may only be charged if that service or amenity is provided to the tenant.

Any services the tenant pays for that are provided by the development (whether optional or non-optional) must be listed in the tenant's lease with the cost of each individual service clearly listed.

*<u>Example: Fees for paying with credit/debit card</u>*

*Some owner agents may accept payment via credit or debit card using an onsite credit/debit card reader. A fee for making payment via credit or debit card can be passed onto the tenants if it is an optional fee. The fee would be considered optional if the tenants have alternative methods of paying rent that do not include a fee (e.g., cash, money order, check, etc.). In this scenario, credit/debit card payment would be an optional service offered for the tenants' convenience. The amount of the fee for paying with credit/debit card, as well as a list of all accepted alternative methods of payment, must be disclosed to all tenants. Furthermore, the fee may not exceed the actual costs incurred by the owner agent to cover technology costs and fees they incur for processing such payments. Owner agents must keep documentation showing the actual costs incurred and the amount of the fee being charged to tenants.*

*If credit/debit card is the only means of paying monthly rent, then the fee is not optional, but rather a condition of occupancy (as paying rent is a condition of occupancy). In this case, the credit/debit card fees would have to be included as part of the gross monthly rent calculation.*

*<u>Example: Fees for making online payments</u>*

*Some owner agents may accept online payment of rent. A convenience fee may be charged to the tenant and this fee would be considered optional if the tenants have alternative methods of paying rent that do not include a fee (e.g., cash, money order, check, etc.). In this scenario, the online payment would be an optional service offered for the tenants' convenience. The amount of the fee for paying online, as well as a list of all accepted alternative methods of payment, must be disclosed to all tenants. Furthermore, the fee may not exceed the actual costs incurred by the*

*owner agent for offering online payment. Owner agents must keep documentation showing the actual costs of processing online payments and the amount of the fee being charged to tenants.*

*If online payments are the only means of paying monthly rent, then the fee is not optional, but rather a condition of occupancy (as paying rent is a condition of occupancy). In this case, the fees for online payments would have to be included as part of the gross monthly rent calculation.*

3. **Application Processing Fees**
Reasonable application fees may be charged to prospective tenants to cover the actual cost of processing the application and checking criminal history, credit history, landlord references, etc. However, the fee cannot exceed the amount of the average expected out-of-pocket costs incurred by the owner agent for processing an application.

4. **Mandatory Renter's Insurance**
If renter's insurance is required as a condition of occupancy, then the amount of renter's insurance must be included in the gross rent calculation. In this scenario, the owner agent must obtain proof of renter's insurance for the tenant, locate the annual premium, and divide by 12 to obtain a monthly cost of renter's insurance. This monthly cost must be added to the tenant-paid rent portion, tenant-based rental assistance, the utility allowance, and any other non-optional fees when calculating gross rent.

5. **Prohibited Fees**
The following fees may not be charged, regardless of whether or not they are included in the gross rent calculation:

    1. Fees for work involved in completing the Tenant Income Certification and other program specific documentation. The owner agent cannot charge an applicant or tenant for costs incurred to receive or complete income verification forms. If there is a fee associated with obtaining verification, the owner agent may choose to pay the fee or may instead use a different source of verification.

    2. Fees for inspecting a unit, preparing a unit for occupancy, or correcting deficiencies in a unit. The owner agent is responsible for maintaining all units in a manner suitable for occupancy at all times. If a tenant is to be charged decorating, cleaning, or repair fees, the owner agent must document the file with photos of the damage to prove that the unit was damaged by the tenant and is in condition beyond normal expected wear and tear. Charges cannot exceed the actual amount spent on repair. IHCDA will expect to see documentation in the tenant file as to the nature of the damage, including photos and receipts or invoices for the repair work.

        This requirement is not only a program requirement, but also a requirement under Indiana Code 32-31-7-6 which states that "at the termination of a tenant's occupancy, the tenant shall deliver the rental premises to the landlord in a clean and proper condition, **excepting ordinary wear and tear expected in the normal course of habitation of a dwelling unit."**

    3. An owner agent may not charge pet deposits or fees for assistance animals (including both service and support animals). See Part 4.2B for additional information.

    4. A "move-in fee" that is not a refundable security deposit or a reasonable application fee per Part 4.3C.

    5. Surety bonds, security deposit insurance, or instruments similar to surety bonds or security bond insurance in lieu of or in addition to a security deposit.

    6. Fees that are not customarily charged in rental housing, e.g. laundry room access fees.

    7. Fees for processing a reasonable accommodation or modification request under Fair Housing.

8. Fees for processing an emergency transfer or other protection requested under VAWA.

### F. Section 8 or Section 811 Rental Assistance

For tenants with **tenant-based Section 8 Housing Choice Vouchers**, a copy of either (1) the original Housing Assistance Payment (HAP) Contract and the current HAP Amendment from the public housing authority, or (2) a copy of the current HUD Form 50058 must be kept in the household's file in order to verify the Section 8 rental assistance received.

For tenants residing in units with **Section 8 Project Based Vouchers (PBV)**, a copy of either (1) the current HUD Form 50058 showing the amount of rental assistance, or (2) HUD Form 525530 Tenancy Addendum for Section 8 Project-Based Voucher Program must be included in the file.

For tenants residing in units with **Section 8 Project Based Rental Assistance (PBRA) or Section 811 Project Rental Assistance (811 PRA)**, the current HUD Form 50059 showing the amount of rental assistance must be included in the file.

See Part 3.2B for information on calculating rent limits with tenant-based rental assistance or project-based rental assistance.

## Part 3.3 Utility Allowances

### A. General Information

Gross rent includes an allowance for tenant-paid utilities. Utilities include heating, air-conditioning, water heating, cooking, other electricity, water, sewer, oil, gas, and trash, where applicable. Utilities do not include telephone, cable television, or internet. *NOTE: HUD Form HUD-52667 "Allowances for Tenant-Furnished Utilities and Other Services" includes line items for range/microwave and refrigerator. These items are only included in the utility allowance calculation if they are not provided in the unit (i.e., if the tenant must furnish their own appliances).

If all utilities are paid by the owner, a utility allowance is not required. When utilities are paid directly to the utility provider by the tenant, a utility allowance must be used to determine maximum allowable rent. To be in included in the utility allowance, a utility must be paid directly by the tenants, not by or through the owner of the building. If the owner or a third-party (not the utility provider) bills the tenant for a utility, the payment designated for the utility must be considered rent and may not be included in the utility allowance. The utility allowance for utility costs paid directly by the tenant must be subtracted from the applicable rent limit to determine the maximum allowable tenant-paid rent.

*For example: If the rent limit on a unit is $650 and the tenant pays utilities with a utility allowance of $66 per month, the maximum allowable rent chargeable to the tenant is $584 ($650 minus $66).*

### B. Approved Utility Allowance Sources

The following list contains the different sources of utility allowances allowable for program units:

1. **Rural Development (RD) Assisted Buildings**: Buildings assisted by RD or with RD-assisted tenants must use the applicable USDA Rural Development approved utility allowances. If a building is both RD-assisted and HUD-regulated, use the RD approved utility allowance.

2. **HUD-Regulated Buildings (e.g., Section 8 Project-Based Rental Assistance):** Must use the applicable HUD approved utility allowance that is specific to the building. However, if the building is also RD-assisted, use the RD approved utility allowance instead. A building is considered HUD-regulated if HUD reviews the rents and utility allowances for the building on an annual basis.

3. **Buildings that are not RD-Assisted or HUD-Regulated**: Buildings that are not RD-assisted or HUD-regulated may use any of the following utility allowance options:

- Use the applicable local PHA's utility allowance. Owner agents are advised to check every 60 days to see if the PHA has updated its UA charts. *NOTE: The PHA chart was not an allowable option for HOME compliance for projects that received a commitment of HOME funds after 8/23/13 from time of commitment through April 20, 2025. Those projects were required to use a project-specific utility allowance during that time period. This rule is no longer effective as of April 20, 2025. PHA UA charts are now allowable for all HOME projects;
- Use the county-specific PHA utility allowance schedule from [IHCDA's utility allowance webpage](). *NOTE: The IHCDA county charts were not an allowable option for HOME compliance for projects that received a commitment of HOME funds after 8/23/13 from time of commitment through April 20, 2025. Those projects were required to use a project-specific utility allowance during that time period. This rule is no longer effective as of April 20, 2025. PHA UA charts are now allowable for all HOME projects;
- Utility Company Estimate: An interested party may request the utility company's written estimation of actual utility consumption for a unit of similar size and construction in the geographic area in which the building is located. Such an estimate must be in writing, signed by an appropriate local utility company official, prepared on the utility company's letterhead, and maintained in the development file.
- Options 4, 5, or 6 as described below. *NOTE: These options are all project-specific utility allowances and are eligible for use by HOME projects that received a commitment of HOME funds after 8/23/13.

4. **Energy Consumption Model:** Upon request, IHCDA will approve a utility allowance estimate for a development based on actual tenant consumption (utility usage) data. Requests for an Energy Consumption Model Estimate must be made by submitting the letter entitled "Approval Request Letter- Energy Consumption Model" (available in Appendix C) to ua@ihcdain.gov. Along with the request letter, the owner must complete and submit the "IHCDA Tenant Usage Data Form" (available in Appendix C). This usage data form must include information for 30% (rounded up) of the units of each unit type (flat or townhome) for each bedroom size. (Note: There are two separate usage data forms for flats and townhomes). The usage data must contain a full 12 months of consumption. The usage data forms may be completed by the owner, management agent, or an approved qualified engineering/professional firm on behalf of the owner (see Option #7 below for more information on using approved engineers).

   To be included in the estimate, a unit must have at least 44 weeks of continuous consumption data (i.e., the unit cannot have been vacant for more than 8 weeks of the year). The consumption data can be no more than 60 days old. Additionally, the owner must submit verification of the tax rate for the county in which the development is located.

   *Example: A development has 48 units with 20 one-bedroom units and 28 two-bedroom units. The sample must include 30% of the one-bedroom units (6 units) and 30% of the two-bedroom units (9 units rounded up from 8.4).*

   For new construction developments or renovated buildings with less than 12 months of consumption data available, IHCDA will allow consumption data for the 12-month period of units of similar size and construction in the geographic area in which the new development is located. The existing development that will be used for the comparison must be in the State of Indiana and must be in the same climate zone as the development for which the estimate is being completed. Please reference the Climate Zone Map in Appendix C. Once the project achieves 90% occupancy for 90 consecutive days, the owner is required to resubmit usage data to IHCDA using the actual units in the development.

   When IHCDA approves the estimate, the owner will receive an IHCDA Utility Allowance Approval letter.

5. **HUD Utility Schedule Model**: The owner may calculate utility allowances using the HUD Utility Schedule Model found at http://www.huduser.org/resources/utilmodel.html. Requests for approval of a HUD Utility Schedule Model must be made by submitting the letter entitled "Approval Request Letter- HUD Utility Schedule Model" (available in Appendix C) to ua@ihcda.in.gov. Along with the request letter, the owner must also submit the model and the supporting documentation used in the model.

   When IHCDA approves the estimate, the owner will receive an IHCDA Utility Allowance Approval letter.

6. **<u>IHCDA /Qualified Engineer Estimate</u>:** The owner may use an independent licensed engineer or qualified professional approved by IHCDA to calculate a utility estimate model. A list of approved engineers/professionals is maintained in Appendix C. The qualified professional must (1) be approved by IHCDA and (2) not be related to the development owner as defined in Internal Revenue Code Section 267(b) or 707(b). To become IHCDA approved, the engineer/ qualified professional must submit the "Application for Approved Utility Allowance Provider" (available in Appendix C).

   The estimate must consider local utility rates, property type, climate and degree-day variables by region in the state, taxes and fees on utility charges, building materials, and mechanical systems. Considerations under "property type" should include the types of appliances, building location, building orientation, and unit size. Alternatively, the qualified engineer may create an allowance using actual consumption data as described in Option #4 above.

   When IHCDA approves the estimate, the owner will receive an IHCDA Utility Allowance Approval letter.

## C. Updating Utility Allowances

The owner agent must use the most current applicable utility allowance and update utility allowances at least annually. Owner agents may combine utility allowances from different sources. When using multiple utility allowance sources for different utility types, the owner agent must clearly document which source is being used for each utility type. The owner agent may elect to change the utility allowance source from year to year.

To remain in compliance, owner agents must utilize the correct and most current utility allowance to properly determine rents. An increase in the utility allowance will increase the gross rent and may cause the rent to be greater than the maximum allowable rent, in which case the tenant-paid rent portion must be lowered. <u>When a utility allowance change causes gross rent to exceed the allowable rent limit, rents must be refigured within 90 days of the effective date of the change to avoid violating the rent limit. The owner cannot wait until the next recertification to adjust rent.</u>

Utility allowances must be reviewed and updated as follows:

- If there is a change in who pays the utilities;
- Within 90 days of an allowance update by IHCDA, HUD, Rural Development, or the local PHA;
- At least once per calendar year for developments or buildings with documentation from a local utility supplier
- At least once per calendar year for developments or buildings using an IHCDA/Qualified Engineer Estimate, HUD Utility Schedule Model, or Energy Consumption Model. These utility allowance types must be submitted to IHCDA for approval prior to implementation.

Utility allowance noncompliance may occur when:

- Rents are not updated within the 90-day time after a new utility allowance is effective;
- The owner agent did not update the utility allowance annually;
- The wrong utility allowance type was used (for example the HUD allowance was not used for a HUD-regulated building or the RD allowance was not used for an RD regulated building);
- The utility allowance was incorrectly calculated;
- Utilities are tenant-paid but a utility allowance was not used; or
- The owner agent did not maintain proper documentation to show how the utility allowance was computed.

# Section 4: Compliance Regulations

The following section highlights some of the statutory and regulatory provisions directly affecting compliance. However, this is not meant as an exhaustive listing of compliance regulations (see the Preface and Disclaimer on Page 1).

## Part 4.1 Rules Governing the Eligibility of Particular Tenants and Uses

### A. Vacant Units

Vacant units formerly occupied by qualified low-income households may continue to be treated as occupied by a qualified low-income household for purposes of the set-aside requirements, provided that reasonable attempts are being made to rent the unit. The owner agent must document that reasonable attempts are being made to rent vacant units to qualified households.

Units cannot be left permanently vacant and still satisfy the requirements of the program. Vacant units must remain suitable for occupancy and cannot be left in an uninhabitable condition or cannibalized for parts. IHCDA reserves the right to question vacancies that are noted during physical inspection, file monitoring, or Annual Owner Certification review, especially when there is a high quantity of vacancies or when units have been vacant for longer than 90 days.

### B. Household Composition

When determining household size for purposes of implementing the correct income limits, do not include live-in aides, guests, or foster children and foster adults as household members. See Part 4.1 D for information on live-in aides.

A household has the right to decide whether or not to include individuals permanently confined to a hospital or nursing home as a household member. If the individual is included as a household member, their income must be certified and included in household income.

Military members away on active duty are only counted as household members if they are the head, spouse, or co-head or if they leave behind a spouse or dependent child in the unit.

All other individuals, including temporarily absent family members (e.g., dependents away at school, etc.), unborn children, and children in joint custody agreements that are in the unit at least 50% of the time, must be included as household members for purposes of determining the applicable income limit.

Household composition may change after the initial tenant(s) moves into a unit. However, at the time of application an applicant should be asked if there are any expected changes in household composition during the next 12 months. If so, the composition change and any subsequent changes in estimated income should be reflected on the initial Tenant Income Certification.

### C. Unborn Children and Child Custody

An owner agent must count an unborn child (or children) when determining household size and applicable income limits. The owner agent must obtain a self-certification from the household certifying the pregnancy and such statements must be placed in the tenant file. If the unborn child has been self-certified by the household, then it must be included in household size. Per the HUD Handbook 4350.3 Appendix 3, the owner "may not verify further than self-certification."

When determining household size, owner agents must include children subject to a joint custody agreement if such children live in the unit at least 50% of the time.

### D. Live-in Care Attendants (Live-in Aides)

A live-in care attendant (a.k.a. a live-in aide) is a person who resides with one or more elderly or near-elderly persons or persons with disabilities. To qualify as a live-in care attendant, the individual (a) must be determined to be essential to the care and well-being of the tenant, (b) must not be financially obligated to support the tenant, and (c) must certify that they would not be living in the unit except to provide the necessary supportive services. Family members, including spouses, may qualify as live-in aides if they meet these criteria. A live-in care attendant cannot move a spouse, child, or other member into the unit, as doing so would indicate that they are living in the unit for reasons other than the care of the tenant.

A live-in care attendant is not counted as a household member for purposes of determining the applicable income limits, their income is not counted as part of the total household income, and they do not need to be listed on the TIC. The need for a live-in care attendant must be certified with documentation from a medical professional (e.g., a letter from the tenant's doctor or other healthcare provider) and included in the tenant file. The owner agent may verify whether the live-in care attendant is necessary only to the extent to document that the applicant/tenant has a need for the requested accommodation. The owner agent may not require applicants/tenants to provide access to confidential medical records, to submit to physical examination, or to disclose specific information about the nature of their disability.

If the qualified tenant vacates the unit, the live-in care attendant must vacate as well. If an attendant would like to be certified as a qualified tenant and remain in the unit, normal certification procedures must be performed, and the individual must meet the applicable eligibility requirements of the program.

While the live-in care attendant is not considered a household member, they are still subject to criminal background checks (as per the tenant selection criteria effective at the property) and must comply with tenant house rules. An owner agent may deny a live-in care attendant that does not pass criminal background checks or remove an attendant who exhibits behavior that is disruptive, illegal, or endangering to other tenants, as defined in the tenant selection criteria and lease.

Sample forms to verify and document a live-in care attendant are available as IHCDA Compliance Forms #11 and 12.

### E. Foster Children/Foster Adults

Per HOTMA, foster children and foster adults living in a unit are not considered household members for purposes of determining income limits. Their income and asset sources are not treated as household income. However, they should be considered when determining the appropriate sized unit for a household. In this way, foster children and foster adults are treated "similar to a live-in aide."

### F. Special Needs Populations

The owner may have committed to set aside a percentage of total development units to qualified tenants who meet the State's definition of "special needs population" (as provided in IC 5-20-1-4.5). Special needs populations include:

- Persons with physical or developmental disabilities
- Persons with mental impairments
- Single parent households
- Survivors of domestic violence
- Abused children
- Persons with chemical addictions
- Persons experiencing homelessness
- The elderly

Required Documentation:

1. The owner and a qualified organization that provides and has the capacity to carry out services for the special needs population must enter into an agreement (signed by all parties) whereby the owner agrees to: (a) set aside a number of units for the special needs population and (b) notify the qualified organization when vacancies of the set-aside units occur at the development. The qualified organization must agree to: (a) refer qualified households to the development and (b) notify households of the vacancies of the set-aside units at the development. This is called the "referral agreement."

   The owner may enter into multiple referral agreements throughout the period of affordability. Referral agreements may expire or terminate, as long as at least one active referral agreement with a qualified service provider is in place at all times. IHCDA encourages developments to annually evaluate the affordability and demographic demands of the special needs population in their market area in order to identify potential qualified entities that may provide additional referrals. IHCDA will request to see a copy of current referral agreements when conducting file audits.

2. The resume of the organization providing services for the special needs population (resume must demonstrate ability to provide services).

3. For those tenants referred to the development by the qualified service organization, a copy of the referral should be placed in the file. For special needs tenants who were not referred to the development by the qualified organization, the tenant should self-certify that they meet the definition of special needs population. For persons with disabilities, the owner agent may not inquire into the specific nature of the disability (i.e., cannot ask the tenant details about their disability or ask for medical documentation- see Part 5.3B for more guidance).

4. When reporting tenant events through the Indiana Housing Online Management website, the owner agent must designate which units meet the special needs population set-aside.

5. For information on marketing accessible units or units designated for special needs populations, see Part 4.2F.

### G. HOME Student Rule

The 2013 HOME Final Rule updated the definition of housing to exclude dormitories and all types of student housing, not just student dormitories. The 2015 HUD Applicability Chart clarified that this rule applies retroactively to all HOME-assisted properties not just those funded after implementation of the Final Rule. Therefore, all HOME-assisted units must now adopt the Section 8 program restrictions on student participation found at 24 CFR 5.612.

These restrictions do <u>NOT</u> apply to CDBG, CDBG-D, HTF, or NSP assisted units.

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. **<u>This is true whether the student is full or part-time</u>**.

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 Part 3.2D of this manual.

At initial certification and annual recertification, each adult household member must complete a Student Status Self-Certification for HOME (IHCDA Compliance Form #36) to certify student status. If the household invokes the student rule and claims to meet an exception, management must obtain proof that the household qualifies and document the file.

### H. Conflict of Interest: Occupancy of Assisted Units

Per the conflict of interest provisions of 24 CFR 92.356(f) and 24 CFR 93.353(f), the following persons may not live in assisted units for the duration of the project's period of affordability:

- An owner, developer, or sponsor of a project or recipient of HOME or HTF funds;
- An officer, employee, agent, elected or appointed official, or consultant of the owner, developer, sponsor, or recipient;
- The immediate family members of an owner, developer sponsor, or recipient; or
- The immediate family members of an officer, employee, agent, elected or appointed official or consultant of an owner, developer, sponsor, or recipient

## Part 4.2 Nondiscrimination

### A. Fair Housing and Equal Access: Protected Classes and Affirmative Marketing Requirements

**1. Protected Classes and Prohibited Activities under Fair Housing and HUD's Equal Access Rule**

The owner or agents of the owner shall not discriminate in the provision of housing on the basis of race, color, sex, national origin, religion, familial status, or disability (the seven protected classes under the Fair Housing Act) or ancestry or veteran status (additional protected classes under the Indiana Fair Housing code IC 9-22.5 and Indiana Civil Rights code IC 9-22). Prohibition on sex discrimination includes discrimination based on sexual orientation or gender identity.

Nondiscrimination means that owner agents cannot refuse to rent a unit, provide different selection criteria, fail to allow reasonable accommodations or modifications, evict, or otherwise treat a tenant or applicant in a discriminatory way based solely on that person's inclusion in a protected class. Owner agents may not engage in steering, segregation, false denial of availability, denial of access to services or amenities, discriminatory advertising, or retaliation against individuals that make fair housing complaints.

Effective March 5, 2012, all HUD funded properties (including HOME/CDBG/CDBG-D/NSP funding) are subject to the rule entitled "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity." HUD-assisted properties must make housing available without regard to actual or perceived sexual orientation, gender identity, or marital status. HUD-assisted housing providers are prohibited from inquiring about the sexual orientation or gender identity of applicants and occupants for the purpose of determining eligibility for housing. For purposes of this rule, the term "gender identity" means actual or perceived gender-related characteristics and the term "sexual orientation" means homosexuality, heterosexuality, or bisexuality.

**2. Required Actions- General**

All owner agents should be familiar with state and federal civil rights and fair housing laws. IHCDA strongly encourages owner and management agents to provide Fair Housing and Equal Opportunity training for all staff, including maintenance staff, at least annually.

All tenant selection plans must acknowledge that the property follows the Fair Housing Act's nondiscrimination requirements, as well as the requirements of VAWA (if applicable).

IHCDA has established procedures for processing Fair Housing complaints made to IHCDA. The procedures are as follows: 1) IHCDA will forward all Fair Housing complaints to the Fair Housing and Equal Opportunity Office at HUD and also to the Indiana Civil Rights Commission for investigation and 2) IHCDA will notify the owner and management company of such complaint. Noncompliance may result in penalties, including recapture of funds and/or suspension or debarment.

**3. Required Actions- Affirmative Fair Housing Marketing Plan & Fair Housing Brochure**

All projects with five or more program-assisted units must create and implement an Affirmative Fair Housing Marketing Plan (AFHMP) using HUD Form 935.2A prior to lease up. In addition, AFHMPs must be evaluated at least once every five years and updated according to the policies of the Fair Housing and Equal Opportunity Office of the Department of Housing and Urban Development (HUD). See Part 2.2 L for more information.

Upon project entry, households living in program units must be given the Fair Housing brochure entitled "Are You a Victim of Housing Discrimination." The household must sign documentation acknowledging the receipt of this brochure at time of move-in, and this receipt must be maintained in the household's file.

Owner agents are required to post the Fair Housing and Equal Opportunity poster onsite in the leasing office and/or other common area.

## B. Fair Housing: Reasonable Accommodations and Modifications

The Fair Housing Act requires owners to make reasonable accommodations and modifications when necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. 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
- 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).

The owner agent may verify the disability only to the extent necessary to document that the applicant/tenant has a need for the requested accommodation. The owner agent may not require applicants/tenants to provide access to confidential medical records or to submit to physical examination. The owner agent may not ask about or verify the specific nature and extent of the disability. The verification form used must be signed by the applicant/tenant to authorize release of such information and should request that the source verify (1) whether the applicant meets the Fair Housing definition of disability as provided above and (2) whether the requested accommodation or modification relates to the person's specific needs. Receipt of Social Security disability payments is adequate verification of an individual's disability status, but the correlation between the disability and the requested accommodation or modification may still need verified.

Housing providers are not required to provide individually prescribed or personal items such as hearing aids, wheelchairs, etc.

**1. Reasonable Accommodations and Service Animals**

A reasonable accommodation is 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. Only persons with disabilities are provided reasonable accommodations. Per the Fair Housing Act, a housing provider must allow a reasonable accommodation unless doing so will be an undue financial burden or fundamentally alter the nature of the housing provider's operations. When a reasonable accommodation will result in an undue financial burden, the owner agent must provide all other accommodations up to the point at which further accommodations will result in the undue financial burden. For more information on reasonable accommodation, refer to the HUD and Department of Justice (DOJ) Joint Statement "Reasonable Accommodations Under the Fair Housing Act" released May 17, 2004 (available in Appendix F).

A common type of reasonable accommodation involves assistance animals. IHCDA uses the term assistance animals in this manual to broadly describe a category that includes service animals and support animals. These types of animals are not pets and therefore must be permitted even in "no-pet" housing, assuming that an individual with a disability has requested an accommodation to the "no-pet" rule and that the need for the assistance animal can be verified. The owner agent cannot charge an upfront security deposit or a fee (one-time or recurring) for the assistance animal. However, the owner agent can charge the tenant the cost of repairing any damage caused by the service animal.

Clarifications on assistance animals:

- A resident may request a reasonable accommodation at any time, including before or after acquiring the assistance animal.
- Since pet rules do not apply to assistance animals, owner agents cannot limit the breed or size of an assistance dog. An accommodation could potentially be denied or revoked based on a specific animal's specific behaviors, a direct threat, or a resident's inability to maintain or control an animal.
- "Animals commonly kept in households" can be considered support animals. This includes dogs, cats, small birds, rabbits, hamsters, gerbils, other rodents, fish, turtles, or other small, domesticated animals "traditionally kept in the home for pleasure rather than commercial purposes." Uncommon/unique animals include reptiles (besides turtles), barnyard animals, monkeys, kangaroos, or other non-domesticated animals.
- Uncommon animals could still potentially qualify as an assistance animal, but there is a substantial burden on the person making the accommodation request to prove "a disability-related need for the specific animal or the specific type of animal." Consideration may be given to if the animal can be kept outdoors in a fenced area and appropriately maintained, if applicable.
    - Example 1- if the animal is trained to do something an assistance dog cannot do
    - Example 2- if a healthcare provider confirms a need for that type of animal, perhaps because the resident is allergic to common animals such as dogs and cats

Another common example of reasonable accommodation is a live-in care attendant / live-in aide. For more information on this topic, see Part 4.1D.

**2. Reasonable Modifications**

A reasonable modification is 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. Only persons with disabilities are provided reasonable modifications. Per the Fair Housing Act, a housing provider must allow a reasonable modification at the expense of the tenant. However, if the changes needed by the tenant are items that should have already been included in the unit or common space in order to comply with code or design and construction accessibility standards, then the owner agent will be responsible for paying for the modifications. For more information on reasonable modification, refer to the HUD and Department of Justice (DOJ) Joint Statement "Reasonable Modifications Under the Fair Housing Act" released March 5, 2008 (available in Appendix F).

While the Fair Housing Act allows an owner agent to pass on costs of reasonable modifications to the tenants, Section 504 of the Rehabilitation Act of 1973 (which applies to housing that receives federal financial assistance) requires the housing provider to pay for reasonable modifications unless providing them would be an undue financial and administrative burden or result in a fundamental alteration of the program. **Therefore, the costs of reasonable modifications for HOME, HTF, CDBG, CDBG-D, or NSP assisted units are covered by the owner / housing provider.**

#### 3. Internal Procedures and Documentation

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

- i. Resident or a family member or someone else acting on the resident's behalf makes a request for an accommodation or modification. A request can be made either orally or in writing. If this request is made orally, the owner agent should document the nature of the request and the date and time received. An owner agent cannot deny a request because it was made orally instead of in writing.
- ii. Owner agent verifies the need only if (1) the disability is not obvious, (2) if unsure if the disability is permanent or temporary, and/or (3) if unsure how the request relates to the need (i.e., does not understand correlation between the person's needs and the request made). The form used to request verification cannot ask specific information about the nature of a person's disability. The purpose of verification is to verify that the person meets the Fair Housing Act definition of disability and that the requested accommodation or modification is necessary for that person's equal opportunity to enjoy and use the housing.
- iii. If verification supports the need, then the owner agent must take the necessary steps to provide the reasonable accommodation or modification. An undue delay is noncompliance and is treated in the same manner as a denial.
- iv. If verification does not support the need, then the owner agent should schedule an interactive meeting with the resident to request clarification and attempt to achieve a mutually acceptable resolution of the issue. The owner agent should carefully explain the concerns or questions related to the request and, if applicable, why the request is being denied
- v. Document the tenant file with all related information.

### C. General Public Use and Acceptance of Vouchers

Program units must be available for use by the general public. Owner agents are allowed to establish preferences for certain population groups (e.g., persons experiencing homelessness, persons with disabilities, older persons who meet Housing for Older Person Act age restrictions, etc.). Such preferences must not violate Fair Housing or any other nondiscrimination regulations or policies, must be documented in the project's written tenant selection plan, and must be approved by IHCDA.

A program-assisted unit cannot be provided only for a member of a social organization or by an employer for its employees.

Owner agents cannot refuse to accept a prospective tenant based solely on the fact that they have a Section 8 Housing Choice Voucher or receive assistance through a similar tenant-based rental assistance program.

### D. General Occupancy Guidelines/ Household Size

IHCDA does not impose any requirements governing minimum or maximum household size for a particular unit. Owner agents must comply with all applicable local laws, regulations, and/or financing requirements (e.g., if HUD or Rural Development, follow HUD or RD requirements). IHCDA advises owner agents to be consistent when accepting or rejecting applications. Occupancy guidelines or requirements must be incorporated into the project's written tenant selection plan. Owner agents should be aware of any occupancy standards set by federal, state, or local code or funder requirements that may establish a maximum or minimum number of persons per unit.

For guidance on determining household size, see Part 4.1 B.

## E. Tenant Selection Plans

All developments must have a written tenant selection plan that describes the applicable program eligibility requirements and the screening policies implemented by management. IHCDA will review the tenant selection plan as part of its monitoring efforts.

There are no federal or state requirements regarding criminal or credit background checks, landlord references, or a minimum income. Implementation of these selection criteria is up to owner agent discretion, as long as the screening criteria are applied consistently to all applicants and do not violate Fair Housing or any related nondiscrimination regulations. Screening criteria must comply with requirements of any other funding sources on the development. Minimum income requirements may not be applied to applicants with tenant-based rental assistance or for units with project-based rental assistance.

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

There are no regulations governing citizenship requirements for units assisted by the programs covered in this manual. Since the Fair Housing Act does not prohibit discrimination based solely on citizenship status, owner agents may require applicants to provide documentation of citizenship or immigration status as part of the screening process. If an owner agent chooses to implement such a policy, the screening criteria must be established in writing and applied in a uniform, nondiscriminatory fashion with caution to avoid any discrimination based on Fair Housing protected classes- particularly race, color, national origin, or ancestry. Owner agents should be aware that other housing programs (such as Section 8, other HUD programs, or RD programs) may have stricter citizenship requirements that must be followed if the project has additional funding sources.

Because many of these tenant selection criteria are left up to the discretion of the owner agent, it is required that each development implements a written tenant selection plan. This document must be made available to all applicants and tenants and will be reviewed by IHCDA during compliance monitoring.

At a minimum, a tenant selection plan must include the following:

- Occupancy standards in effect (how many tenants can live in a unit based on size of the unit);
- Program eligibility factors, including income limits and student status eligibility for HOME-assisted units;
- Any minimum income requirements imposed by management, if applicable. Minimum income requirements may not be applied to applicants with tenant-based rental assistance or for units with project-based rental assistance. While a minimum income requirement may be imposed, the tenant selection plan cannot require all applicants to be employed as this could have a disparate impact under Fair Housing;
- Any citizenship requirements imposed by the owner agent or required by another funding source, if applicable;
- Specifics on the information that is analyzed when performing credit checks, criminal background checks, and previous landlord references. The tenant selection plan must clearly spell out what findings constitute a rejection of an application.
    - Criminal screening must be based only on conviction records, not arrest records.
    - Eviction screening cannot deny an applicant for "no fault" evictions or eviction proceedings where the tenant prevailed or where the matter was dropped.

    - Per VAWA protections, if an individual has a poor rental or credit history, a criminal record, or other adverse factors that directly result from being a victim of domestic violence, dating violence, sexual assault, or stalking, the individual cannot be denied assistance under a HUD program if the individual otherwise qualifies for the program.
- Explanation of the application and waiting list process, including a process through which an applicant is notified in writing of rejection and can then choose to appeal the rejection decision;
- Explanation of the transfer policies in effect;
- Breakdown of any special preferences set aside at the project (e.g., units reserved for special needs populations or a Housing for Older Persons age restriction on the project); and
- List of any other relevant items used in considering the household's eligibility for occupancy

When creating a project's tenant selection plan and implementing screening practices, the owner agent must be careful to follow all applicable program eligibility requirements (including General Public Use), nondiscrimination requirements including Fair Housing, the Violence Against Women Reauthorization Act (VAWA), the Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Rule, HUD guidance on criminal background checks, and applicable local occupancy standards. Owner agents should review the guidance issued by HUD's Fair Housing and Equal Opportunity office on April 29, 2024 entitled "Guidance on Application of the Fair Housing Act to the Screening of Applicants for Rental Housing" which provides considerations and potential Fair Housing impacts when considering the use of third-party screening systems. Owner agents should only use screening criteria that are relevant, recent, accurate, and are related to the ability to comply with tenancy obligations. Past actions that are unlikely to recur or that are unrelated to tenancy should not be considered. Owner agents should allow applicants the opportunity to dispute contested information on a screening report.

With the exception of accessible or special needs units (see Part F below), all units must be leased on a first-come first-served basis with tenants selected in chronological order from the waiting list.

Units designated as permanent supportive housing for persons experiencing homelessness are subject to special tenant selection requirements. See Part 4.6 for additional information.

### F. Marketing/Leasing Accessible Units

At initial lease-up, accessible units should be marketed to persons with disabilities requiring an accessible unit. For ongoing leasing, the following order must be followed for marketing/leasing the accessible units:

1. First, offer accessible units to existing residents that require accessibility features but are currently occupying a unit that does not offer such features.
2. Next offer accessible units to qualified applicants on the waiting list that require an accessible unit.
3. Market the unit to attract new qualified applicants that require an accessible unit
4. Finally, offer the unit to a non-disabled household on the waiting list (a household that does not need the accessible features of the unit). The household must be informed, and have an agreement in writing, that it may later be asked to transfer to another comparable, but non-accessible, unit if the accessible unit is needed by a person with a disability. While the household may have to transfer if a comparable, vacant, non-accessible unit is available, it would not be evicted nor otherwise have its tenancy terminated in order make room for a household in need of the accessible features. This agreement must be incorporated into the lease or a lease addendum.

### G. Violence Against Women Reauthorization Act of 2013 and 2022 (VAWA)

The 2013 and 2022 reauthorizations of the Violence Against Women Act (VAWA) expanded the Act's original coverage to include projects funded through many, but not all, HUD programs. Those programs are referred to as "covered programs." The final rule and subsequent program-specific HUD regulations expanded VAWA protections to the HOME and HTF programs as outlined below. CDBG, CDBG-D and NSP are <u>not</u> covered by VAWA.

- HUD implemented specific VAWA regulations for the HOME program in 24 CFR 92.359. Per that regulation, VAWA requirements only apply to HOME projects "for which the date of the HOME funding commitment is on or after December 16, 2016."
- HUD implemented specific VAWA regulations for the HTF program in 24 CFR 93.356. Per that regulation, VAWA requirements apply to all rental housing assisted with HTF.

Note: VAWA is also applicable to the low-income housing tax credit (LIHTC) program. If a project has LIHTC, the owner must follow VAWA requirements.

The 2022 reauthorization of VAWA provides that the Secretary of HUD and the US Attorney General shall implement VAWA enforcement in a manner consistent with Fair Housing enforcement.

**1. 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 or as the direct result of the fact 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.

HUD clarified the meaning of the phrase "on the basis" in the "Violence Against Women Reauthorization Act of 2013; Implementation in HUD Housing Programs" final rule published in the Federal Register on November 16, 2016.

> "HUD interprets the term "on the basis" in VAWA 2013's statutory prohibitions…to include factors directly resulting from the domestic violence, dating violence, sexual assault, or stalking. For example, if an individual has a poor rental or credit history, or a criminal record, or other adverse factors that directly result from being a victim of domestic violence, dating violence, sexual assault, or stalking, the individual cannot be denied assistance under a HUD program if the individual otherwise qualifies for the program."

**2. Lease Terms**

The owner agent 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.

**3. 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 agent 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 agent must provide any remaining tenants with an opportunity to establish eligibility and a reasonable time to find new housing or to establish eligibility.

**4. Confidentially of Tenant Information Related to Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

The owner agent 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.

**5. 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 agent must ensure that these notices are utilized and disseminated at the project as directed by HUD and/or IHCDA. See item #7 below for information on required forms.

**6. 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 agent must ensure that any guidance developed will be utilized as directed by HUD and/or IHCDA. See item #7 below for information on required transfer plan format.

**7. Required Forms**

IHCDA mandates the use of the following VAWA forms for all projects subject to VAWA compliance, as defined above. All forms are available in Appendix H:

- 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 IHCDA.
- 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.
- IHCDA or HUD VAWA Lease Addendum. If the property is HUD-assisted and required to use a HUD-approved lease addendum, use the HUD VAWA Lease Addendum instead of the IHCDA version.
  - If the project includes Low Income Housing Tax Credits with HOME or HTF, use the IHCDA HOME/HTF VAWA lease addendum or the HUD VAWA lease addendum. There is no need to also use the tax credit VAWA lease addendum. Only one VAWA lease addendum is required per household.

**8. 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.

**9. 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.

**10. 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

## H. Housing for Older Persons

The Housing for Older Persons Act of 1995 (HOPA) exempts certain types of "housing for older persons" from the Fair Housing Act's prohibitions against discrimination on the basis of familial status.

Therefore, developments may be designated as housing for older persons (as defined in the project's Application and recorded Declaration/Lien) in one of the following ways and not be in violation of Fair Housing:

1. 100% of the units are restricted for households in which all members are age 62 or older (see 24 CFR Part 100.303); or

2. At least 80% of the units in the entire development are occupied by households in which at least one member is age 55 or older. The remaining 20% of the units may also be restricted for households in which at least one member is 55 or older, may have a lower age restriction, or may be left open without any age restrictions; however, the owner agent must ensure that at least 80% of the units remain occupied by households that meet the age definition. The policy elected by the owner agent in regards to the remaining 20% of the units must be implemented consistently for all applicants and must be placed in writing as part of the development's tenant selection plan. Any units not counted for purposes of meeting the 80% requirement may not be segregated within the development

   HUD has noted that phrases such as "adult living," "adult community," or similar statements should not be used to market developments that fall under the 80% at 55 requirements. Rather, the property should be more specifically advertised as housing for households in which at least one household member is 55 years of age or older.

   The owner agent may not evict or terminate the leases of families with children or other individuals under the age of 55 in order to achieve the HOPA occupancy requirements on the 80% of the units.

   For more information on the 80% at 55 restrictions, see 24 CFR Part 100.304 through 100.308. This regulation is also available as "Implementation of the Housing for Older Persons Act of 1995; Final Rule" located in the Federal Register, Vol. 64 No. 63 from April 2, 1999. This document is included in Appendix F.

A project's age restrictions should be clearly defined in the Application and recorded Declaration/Lien, and the owner agent must follow the restrictions defined therein.

If a project receives federal funding from HUD or USDA, the owner should check those regulations for other potential definitions. Units in some HUD and RD age-restricted housing programs can be occupied by households that meet the age requirements or that are disabled. Persons with disabilities do not qualify for age-restricted units in HOME/CDBG/NSP projects unless they also meet the age restrictions. However, when HOME/CDBG/NSP-assisted units are mixed with HUD or RD funding that allows an elderly or disabled definition, the HUD or RD definitions should be followed.

## I. Meaningful Access for Persons with Limited English Proficiency

Persons who as a result of national origin do not speak English as their primary language and who have limited ability to speak, read, write or understand English ("limited English proficiency persons" or "LEP") may be entitled to language assistance under Title VI of the Civil Rights Act of 1964 in order to receive a particular benefit or service. In accordance with Title VI, its implementing regulations and Executive Order 13166, the owner agent must agree to take reasonable steps to ensure meaningful access by LEP persons to activities funded with federal funds.

Any of the following actions could constitute "reasonable steps" depending on the circumstances. This is not, however, an exhaustive list of possible actions:

- Acquiring translators to translate vital documents, advertisements, or notices
- Acquiring interpreters for face-to-face interviews with LEP persons;
- Placing advertisements and notices in newspapers that serve LEP persons;
- Partnering with other organizations that serve LEP populations to provide translation, interpretation, or dissemination of information regarding the project;

- Hiring bilingual employees or volunteers for outreach and intake activities; or
- Contracting with a telephone line interpreter service.

### J. Religious and Faith-Based Organizations

**1. Equal Treatment and Religious Identity**

Organizations that are religious or faith-based are eligible to participate in the programs on the same basis as any other organization. A religious organization that participates in the program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct program funds to support any inherently religious activities( such as worship, religious instruction, or proselytization) and does not discriminate against program participants on the basis of religion or religious belief.

Among other things, faith-based organizations may use space in their facilities, without removing or altering religious art, icons, scriptures, or other religious symbols. In addition, a religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

**2. Beneficiaries and Anti-Discrimination**

The organization may not discriminate against program participants or potential program participants (e.g. tenants, homeowners, or applicants) on the basis of religion, religious belief, the refusal to hold a religious belief, or the refusal to attend or participate in a religious practice.

**3. Separation of Explicitly Religious Activities**

Organizations that are directly funded under the programs covered by this manual may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this part, and participation in any such explicitly religious activities must be voluntary for the program beneficiaries.

**4. Alternative Provider**

If a program participant or potential program participant objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonably prompt time after the objection, undertake reasonable efforts to identify and refer the program participant to an alternative provider to which the participant has no objection. Except for services provided by telephone, internet, or similar means, the referral must be to an alternate provider in the reasonable geographic proximity to the organization making the referral. In making the referral, the organization shall comply with applicable privacy laws and regulations. Owners shall document any such objections from program participants and prospective program participants and any efforts made to refer such objecting participants to alternate providers.

**5. Structures**

Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for explicitly religious activities. Program funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting program eligible activities. When a structure is used for both program eligible and explicitly religious activities, program funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities.

## Part 4.3 HOME/CDBG/NSP/HTF-assisted Units in Tax Credit Developments

A Low Income Housing Tax Credit (LIHTC) development may also receive HOME/CDBG/CDBG-D/NSP/HTF funds, resulting in a certain number of units reserved as both tax credit and HOME/CDBG/CDBG-D/NSP/HTF assisted units. Units that are under multiple funding programs must follow the compliance rules of all applicable programs. In some cases when program compliance regulations differ, the owner agent must follow the stricter of the two rules, while in other cases the rules are completely different and both sets must be applied.

The following is a non-exhaustive list of common issues an owner agent may face when combining tax credits with HUD CPD capital funding programs. This is not meant as an exhaustive listing. For more information on IHCDA's tax credit compliance regulations, please refer to the current edition of the *Indiana Low Income Housing Tax Credit Compliance Manual*.

## A. Combining Programs: Rent and Income Limits and Utility Allowances

1. HOME/CDBG/CDBG-D/NSP/HTF and LIHTC rent and income limits may be different within the same county for the same year. HUD releases a separate set of limits for each program. For a unit under multiple programs, the owner agent must check against all sets of income and rent limits to ensure compliance with all funding programs. EXCEPTION: For HOME compliance, a Low HOME unit that is also a tax credit unit may ignore the HOME rent limit and charge the rent allowable under the tax credit program. *NOTE: The HTF program requires all HTF-assisted units to be income- and rent-restricted at 30% HTF limits. The HTF program has its own HUD-published set of income and rent limits. Owners with HTF-assisted units must refer to this specific income and rent limit chart.

2. The LIHTC program does not include rental assistance in the gross rent calculation. For HTF-assisted units only, tenant-based rental assistance is included in the HTF gross rent calculation. For purposes of determining whether a program assisted unit is in compliance with the HTF rent limits, the sum of the tenant-paid rent portion + tenant-based rental assistance + utility allowance + non-optional fees must be at or below the applicable HTF rent limit. Special rules apply for project-based rental assistance as discussed in Part 3.2(B).

3. OUTDATED HOME UA RULE FOR COMPLIANCE PRIOR TO 4/20/2025: The following rule is no longer in effect but was required for previous years of compliance. HOME funded projects that received a commitment of HOME funds after 8/23/13 must use a project-specific utility allowance for all HOME-assisted units. A PHA chart is not an acceptable utility allowance methodology for HOME-assisted units that received a commitment of HOME funds after 8/23/13. If a unit is both LIHTC and HOME-assisted and the tenant has a Section 8 voucher, this creates a conflict between program rules, because the LIHTC program requires the PHA chart to be used when the tenant has a voucher. In this case, two separate rent checks must be performed.
    a. LIHTC Compliance: tenant rent + PHA utility allowance + non-optional fees = gross rent. Gross rent must not exceed the applicable LIHTC rent limit.
    b. HOME Compliance: tenant rent + rental assistance + project-specific utility allowance (not the PHA chart) + non-optional fees = gross rent. Gross rent must not exceed the applicable HOME rent limit.

4. IHCDA must specifically approve rents for projects with HOME- and/or HTF-assisted units. The owner agent must submit IHCDA Compliance Form # 46: HOME & HTF Rent Update Form via homerentupdate@ihcda.in.gov at least annually to request approval of its proposed rents for HOME and/or HTF assisted units, even if no they are proposing no change.

## B. Combining Programs: Certifications and Verifications

1. 100% tax credit projects do not have to perform annual income recertifications. However, those units that are also HOME or HTF-assisted must have a full income recertification every sixth year of the project's period of affordability and in other years the household must complete a self-certification form to disclose its self-certified income. A TIC must be completed, but the TIC alone does not count as a self-certification form. Income recertifications do not apply to CDBG/CDBG-D/NSP assisted units unless the unit is also HOME or HTF-assisted.

    *Example: A project's HOME award is closed out and the HOME period of affordability begins in 2025. The project has a 20-year period of affordability. Full income certifications are due in the sixth year of the period of affordability (2030), the twelfth year of the period of affordability (2036), and the eighteenth year of the period of affordability (2042).*

2. In HOME/CDBG/CDBG-D/NSP/HTF, verifications are valid for six months. For LIHTC, verifications are only valid for 120 days. Therefore, for units subject to multiple programs, use the stricter tax credit rule and make sure that all verification documents are no older than 120 days as of the effective date of the certification.

3. If paystubs are used to verify employment income, for HOME/CDBG/CDBG-D/NSP/HTF the number of paystubs obtained must amount to a full two consecutive months of pay. For LIHTC, the owner must obtain the two most recent, consecutive paystubs. When combining programs, obtain the number of paystubs needed to satisfy both of these requirements.

4. For HTF-assisted units, the safe harbor for means-tested income verification cannot be used at move-in but may be used at recertification.

## C. Combining Programs: Student Status

1. The 2013 revision to the HOME final rule added a student status requirement for all HOME-assisted units. See Part 4.1G for more information on the HOME student rule. Households applying/residing in units that are both LIHTC and HOME-assisted must meet both program definitions of student status eligibility. The HOME student rule does not apply to CDBG, CDBG-D, NSP, or HTF-assisted units.

2. The CDBG, CDBG-D, and NSP programs do not limit occupancy by full-time students. However, for CDBG/CDBG-D/NSP/HTF assisted LIHTC units, the tax credit full-time student rules apply.

## D. Combining Programs: Fair Housing and Related Nondiscrimination Requirements

1. Upon project entry, households living in all HOME/CDBG/CDBG-D/NSP/HTF assisted units must be given the Fair Housing brochure entitled "Are You a Victim of Housing Discrimination." The household must sign documentation acknowledging the receipt of this brochure at time of move-in. Although this is not a LIHTC requirement, all HOME/CDBG/CDBG-D/NSP/HTF assisted units in a tax credit development must have a signed copy of the acknowledgement located in the tenant file.

2. Effective March 5, 2012, all HUD funded properties (including HOME/CDBG/CDBG-D/NSP/HTF funding) are subject to the rule entitled "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity." According to this rule, HUD-assisted properties must make housing available without regard to actual or perceived sexual orientation, gender identity, or marital status. HUD-assisted housing providers are prohibited from inquiring about the sexual orientation or gender identity of applicants and occupants for the purpose of determining eligibility for housing.

3. HOME/CDBG/CDBG-D/NSP/HTF assisted units are covered by Section 504 accessibility requirements, including the requirement that the owner must pay for reasonable modification requests. A tax credit development with these funding sources is subject to the Section 504 requirements and the owner must pay for reasonable modifications.

4. A project is subject to VAWA compliance if it has tax credits, HTF, or HOME funding (if the HOME funds were committed on or after December 16, 2016).

## E. Combining Programs: IHCDA Monitoring and Inspection

A development with tax credits and IHCDA HOME/CDBG/CDBG-D/NSP/HTF funds will be monitored/inspected by IHCDA for compliance with each program.

1. The tax credit file monitoring will occur once every three years (see Part 7.6 of the *Indiana Low Income Housing Tax Credit Compliance Manual* for an explanation of the tax credit monitoring cycle and sample size).

2. The HOME/CDBG/CDBG-D/NSP/HTF assisted units will be monitored for program compliance at least once every three years of the period of affordability based on the monitoring cycle and sample size defined in this Part 6.5 of this manual. Note: the monitoring cycle and sample size may be different for each program.
3. A HOME- or HTF-assisted project containing 10 or more total units is subject to annual financial review. See Part 6.5C for additional information.

### F. Combining Programs: Adjusting Rent for Over-income Units and Redesignating Low HOME Units (HOME Only)

1. For tax credit purposes, a unit is not considered to be an over-income unit until the household income exceeds 140% of the federal Minimum Set-Aside election. When this occurs, the 140% Rule or Next Available Unit Rule goes into effect. See Part 5.1 C for more information on the Next Available Unit Rule.

   For HOME purposes, a unit is considered to be over-income (and therefore a temporarily noncompliant unit) when household income exceeds 80% of AMI. Under the HOME program, households that exceed 80% AMI are charged 30% of their adjusted income as rent and special rules go into effect to replace the over-income unit.

   For units that are under both programs, the tax credit over-income rule overrides the HOME over-income rule. An over-income HOME household (over 80% HOME AMI) living in a tax credit unit is not subject to increased rent under the HOME over-income rules. Gross rent must remain below the applicable tax credit rent limit.

   Neither program permits eviction or termination of tenancy due to income increases, even if the household exceeds the 140% or 80% AMI levels.

2. If a household that is designated as Low HOME (30%, 40%, or 50% AMI) exceeds the Low HOME income limit (i.e., the 50% AMI limit), the unit is temporarily noncompliant even though household income does not exceed 80% AMI. In this scenario, the unit remains temporarily noncompliant until a High HOME unit (unit at 60% or 80% AMI) is vacated at which point the units must swap status. The vacant High HOME unit becomes a vacant Low HOME unit and must be rented to a household at 30%, 40%, or 50% AMI depending on the set-aside assigned to temporarily noncompliant unit. The temporarily noncompliant unit is re-designated as a High HOME unit at the appropriate set-aside and rent may be increased when the lease permits (with at least 60 days notice). NOTE: Until the units swap status, the temporarily noncompliant unit remains rent-restricted at the applicable Low HOME rent restriction. This rule applies to LIHTC developments with HOME.

### G. Combining Programs: Lead-Based Paint Requirements

1. Households living in assisted units built prior to 1978 must be given the Lead-Based Paint brochure entitled "Protect Your Family from Lead in Your Home." The household must sign documentation acknowledging the receipt of this brochure at time of move-in. Although this is not a LIHTC requirement, households residing in HOME/CDBG/CDBG-D/NSP/TCAP/ HTF assisted units in a tax credit development should have a signed copy of the acknowledgement located in the tenant file.

2. Federally funded projects built prior to 1978 are subject to ongoing compliance with lead-based paint regulations, as described in Part 4.5 C below. Tax credit properties with HOME/CDBG/CDBG-D/NSP/TCAP/HTF funding must comply with these regulations.

## Part 4.4 Projects with Development Fund Loans or Grants

The Indiana Affordable Housing and Community Development Fund ("Development Fund"), formerly known as the Trust Fund, was established in 1989 to provide financing options for the creation of safe, decent, and affordable housing development projects in Indiana communities. Development Fund requirements may be found in Indiana Code 5-20-4.

## A. Income and Rent Restrictions

The Development Fund can be used to finance assisted units for occupancy by households up to 80% of area median income. However, Indiana Code governing the Development Fund requires that at least 50% of the dollars allocated be used to serve very low-income households (those earning less than 50% AMI). **Therefore, at least 50% of the Development Fund assisted units in a project must be designated for households at or below the 50% AMI rent and income limits, even if for other program purposes all units are restricted at 60% or 80% AMI**. Development Fund assisted units may target special needs populations.

When Development Fund is combined with other funding sources, those programs' income and rent limits will apply. For example, in a project with HOME funds and Development Fund, the HOME income and rent limits would be used.

For purposes of rent limits, gross rent must be below the applicable rent limit. Gross rent for Development Fund is defined as the sum of tenant-paid rent portion + utility allowance + non-optional fees. Rental assistance/subsidy is not included in the gross rent calculation for purposes of Development Fund compliance.

Development Fund rent limits are ignored when a tenant is receiving tenant-based or project-based rental assistance through a federal, state, or local rental assistance program. For Development Fund purposes, the owner agent may accept the rent allowed by the rental assistance program.

## B. Income Recertification

For purposes of income eligibility, household income must be calculated and verified at the time of initial move-in using the methodology described in 24 CFR Part 5 and in Chapter 5 of HUD Handbook 4350.3, as amended by HOTMA. Eligibility is based on gross income, not adjusted income. This is the same income certification procedure as used for the rental programs discussed in this manual. Follow the recertification requirements of the other funding programs applicable to the project.

Development Fund assisted units are not required to complete a full annual recertification of household income but must annually certify household size and rent.

## C. Lien and Restrictive Covenants

Development Fund-assisted projects are subject to a Development Fund Lien and Restrictive Covenant Agreement ("LRCA") that must be executed and recorded against the property. When Development Fund is combined with other funding sources, the term of the Development Fund LRCA will be the greater of the applicable program's period of affordability or 15 years.

Upon occurrence of any of the following events during the Development Fund affordability period, the entire sum secured by the lien, including all accrued interest, shall be due and payable by the owner upon demand. Repayment may be demanded upon: (1) transfer or conveyance of the real estate by deed, land contract, lease, or otherwise during the affordability period; (2) commencement of foreclosure proceedings or deed in lieu of foreclosure by any mortgagee during the affordability period; (3) notice of default from any lender or partner; or (4) determination that the assisted units are not being used as a residence by a qualifying tenant or not leased according to the program affordability requirements. The award recipient will be responsible for repaying IHCDA.

IHCDA will release the lien at the end of the affordability period if the borrow/recipient has met all conditions, including paying off the final loan balance.

## Part 4.5 Suitable for Occupancy

### A. General Requirements and Recordkeeping

In addition to being rent-restricted and occupied by qualified households, all program units and buildings must be "functionally adequate, operable, and free of health and safety hazards." Owners must annually certify that all buildings and units in the project meet this standard. If any health, safety, or building code inspections result in a notice of violation, the owner must disclose such findings to IHCDA. Original reports/notices of violations must be maintained as part of the owner's recordkeeping and copies must be submitted to IHCDA along with the Annual Owner Certification of Compliance.

Vacant units must also be suitable for occupancy and cannot be cannibalized for parts. Because the owner is responsible for maintaining all assisted units in a manner that is suitable for occupancy at all times, the cost of preparing vacant units for occupancy cannot be passed on to tenants or applicants. During the inspection process, the IHCDA inspector may ask to inspect a mix of both occupied and vacant units.

Properties must meet the National Standards for the Physical Inspection of Real Estate (NSPIRE) standards established by HUD. NSPIRE requires an inspection of the following inspectable areas: unit, inside, and outside. See Part 4.5D for a list of the Affirmative Habitability Requirements under NSPIRE. NSPIRE standards are included in Appendix D.

For information on IHCDA's inspection process, see Part 6.5.

In addition to program specific compliance, Indiana Code 32-31-8-5 "Landlord Obligations" states:

> "A landlord shall do the following:
> (1) Deliver the rental premises to a tenant in compliance with the rental agreement, and in a safe, clean, and habitable condition.
> (2) Comply with all health and housing codes applicable to the rental premises.
> (3) Make all reasonable efforts to keep common areas of a rental premises in a clean and proper condition.
> (4) Provide and maintain the following items in a rental premises in good and safe working condition, if provided on the premises at the time the rental agreement is entered into:
>
> > (A) Electrical systems.
> > (B) Plumbing systems sufficient to accommodate a reasonable supply of hot and cold running water at all times.
> > (C) Sanitary systems.
> > (D) Heating, ventilating, and air conditioning systems. A heating system must be sufficient to adequately supply heat at all times.
> > (E) Elevators, if provided.
> > (F) Appliances supplied as an inducement to the rental agreement."

### B. Casualty Loss

**1. Definition**

A casualty loss is defined by the IRS as "damage destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual" (IRS Publication 547 and Publication 584). Page 6-5 of the 8823 Guide defines those terms as follows:

- Sudden event: "one that is swift, not gradual or progressive."
- Unexpected event: "one that is ordinarily unanticipated and unintended."
- Unusual event: "one that is not a day-to-day occurrence and that is not typical."
- This explicitly does not include property damage "if the damage occurred during normal use, the owner willfully caused the damage or was willfully negligent, or was progressive deterioration such as damage caused by termites."

While this definition is from the LIHTC program, IHCDA applies this same definition for programs covered by this manual.

**2. Reporting Requirements**
An owner that experiences a casualty loss must:

1. Inform IHCDA of the loss in writing within 10 days of the incident;
2. Submit a plan to IHCDA within 30 days that sets a timeframe for reconstruction or replacement of lost units; and
3. Inform IHCDA when the units have been reconstructed or replaced and provide supporting documentation including an Owner Affidavit and work orders, invoices, or other documents proving completion of reconstruction/repair.

Casualty loss information must be reported via the "Casualty Loss Form" (see Appendix D). Failure to report casualty loss events may result in penalties including suspension.

## C. Ongoing Lead Based Paint Compliance

Projects built before 1978 are subject to ongoing compliance with lead-based paint regulations.

1. Owners must inform current and new occupants of the lead hazard reduction methods that took place and where lead-based paint exists in their units. The brochure entitled "Protect Your Family from Lead in Your Home" must be provided to all new occupants upon move-in. Signed documentation of the receipt of this brochure by the household must be maintained in each tenant file.
2. Owners should request, in writing, that the residents monitor lead-based paint surfaces and inform the owner of potential hazards.
3. Regular maintenance and evaluation of the lead hazard reduction must be performed. The owner is responsible for:
    - A visual inspection of lead-based paint at unit turnover or at least annually on occupied units;
    - Repair of all unstable paint;
    - Repair of encapsulated or enclosed areas that are damaged; and
    - Owners must continue to comply with the notification requirements when additional lead hazard evaluation and hazard reduction activities are performed.

## D. NSPIRE Affirmative Habitability Requirements

NSPIRE requires the following minimum Affirmative Habitability Requirements. IHCDA implemented NSPIRE on January 1, 2024. NSPIRE applies retroactively to all projects and replaces the former Uniform Physical Conditions Standards.

**Inspectable Area = Unit:** the interior components of an individual dwelling where the resident lives

3. Hot and cold running water in both bathroom and kitchen, including adequate source of safe drinking water in the bathroom and kitchen
4. Bathroom or sanitary facility that is in proper operating condition and usable in privacy that contains a sink, a bathtub or shower, and an interior flushable toilet
5. At least 1 battery-operated or hard-wired smoke detector in proper working condition
    a. On each level of the unit
    b. Inside each bedroom
    c. Within 21' of any door to a bedroom measured along a path of travel; and
    d. Where a smoke detector installed outside a bedroom is separated from an adjacent area by a door, must also be installed on the living area side of the door

    If the unit is occupied by a hearing-impaired person, the smoke detectors must have an alarm system designed for hearing-impaired persons.
6. Living room and kitchen area with a sink, cooking appliance, refrigerator, food preparation area, and food storage area
7. For units with Housing Choice Vouchers or Project Based Vouchers, at least one bedroom or living/sleeping room for each two persons in the household
8. Must meet carbon monoxide detection standards established through Federal Register notice and the NSPIRE standard, if applicable

9. Two working outlets or one working outlet and a permanent light within all habitable rooms
10. Outlets within 6’ of a water source must be GFCI protected*. Note: A washing machine’s water connection is considered a water source. Therefore, all outlets within 6 feet of the washing machine connection must be GFCI protected.
11. Must contain a permanently installed heating source. Units may not contain unvented space heaters that burn gas, oil, or kerosene.
12. Must have a guardrail when there is an elevated working surface drop off of 30’ or more measured vertically
13. Permanently mounted light fixture in the kitchen and each bathroom

**Inspectable Area = Inside:** the common areas and building systems within the building interior that are not inside a unit
1. At least one battery-operated or hard-wired smoke detector in proper working condition on each level
2. Must meet carbon monoxide detection standards established through Federal Register notice and the NSPIRE standard, if applicable
3. Outlets within 6’ of a water source must be GFCI protected*. Note: A washing machine’s water connection is considered a water source. Therefore, all outlets within 6 feet of the washing machine connection must be GFCI protected.
4. Must have a guardrail when there is an elevated walking surface drop off of 30” or more measured vertically
5. Permanently mounted light fixtures in any kitchens and each bathroom
6. May not contain unvented space heaters that burn gas, oil, or kerosene

**Inspectable Area = Outside:** the building site, building exterior components, and any building systems located outside of the building
1. All outside outlets must be GFCI protected
2. Must have a guardrail when there is an elevated walking surface drop off of 30” or more measured vertically

*The requirement that all interior outlets within 6’ of a water source must be GFCI protected does not apply in the following circumstances:
- The requirement does not apply to an outlet dedicated to a major appliance (e.g., water heater, HVAC, refrigerator, washing machine, dishwasher, garbage disposal, appliance that is wall-mounted or installed within a cabinet, etc. A “dedicated outlet” is a receptacle outlet that is only capable of serving that specific appliance. A dedicated outlet cannot be a dual/duplex outlet.
- The requirement does not apply to an outlet below a countertop and within an enclosed cabinet, regardless of its distance from the water source.

**Smoke Alarm Placement Requirements**
Smoke alarms must be installed in all areas listed in the affirmative habitability requirements. The following placement requirements must be met.
- If mounted on the ceiling, smoke alarm must be greater than 4 inches from the wall
- If mounted on the wall, the top edge of the smoke alarm cannot be closer than 4 inches or greater than 12 inches from the ceiling
- It is recommended, but not required, that smoke alarms be installed at least 10 feet from a cooking appliance and not near windows, doors, or ducts where drafts might interfere with their operation

**CO Detector Placement Requirements**
CO detectors are only required if required by NFPA 72 or NSPIRE standards, for example, if a unit (1) contains a fuel-burning appliance or fuel-burning fireplace, (2) has adjacent spaces from which byproducts of combustion gas can flow, or (3) is located one story or less above or below an attached private garage that does not have natural ventilation or is enclosed and does not have a ventilation system for vehicle exhaust. See HUD’s NSPIRE carbon monoxide alarm standard.

## Part 4.6 |Additional Funding Requirements

The owner agent must ensure that all threshold requirements and applicable scoring criteria of the IHCDA application policy under which the project was funded are maintained throughout the period of affordability. This includes the provision of all services and amenities committed to in the application. In addition, the following requirements may apply.

## A. Smoke-free Housing

Projects that agreed to as part of application scoring or that were required to operate as smoke-free housing must utilize a lease addendum that includes the following information:

- Definition of smoking, which includes electronic cigarettes and vaping as a form of prohibited smoking
- Language stating that smoke-free rules apply not only to residents but also their guests on the property, staff, and all others
- Explanation of where smoking is prohibited on the property. Smoking must be prohibited in individual units and all interior common space. The addendum must establish either the entire property as smoke-free or identify a designated smoking area on the property. A designated smoking area must not be within 25 feet of any buildings.
- Explanation of how smoke-free rules will be enforced.

IHCDA recommends the American Lung Association of Indiana's "Smoke Free Housing Toolkit" as a resource for creating a smoke-free housing policy.

## B. Supportive Housing Units for Persons Experiencing Homelessness

Applications funded as supportive housing for persons experiencing homelessness are subject to the following requirements:

- Supportive housing units are permanent, rental housing units. There is no time limit on occupancy- i.e., supportive housing is not a transitional housing or temporary housing model.
- Supportive housing tenants have a lease and all the rights and responsibilities of a lease holder. The lease may not include language mandating participation in services.
- Supportive housing units must serve persons experiencing homelessness who are identified through local Coordinated Entry as being the most vulnerable and in need of supportive housing. Vacant units must be filled by utilizing names from the top of the local Coordinated Entry list.
- Tenant selection plans:
    - Must be written specific to supportive housing principles
    - Must utilize Coordinated Entry as the referral source
    - May not screen out individuals based on a minimum income test, credit history, previous landlord history including previous evictions, a history of or active substance use, history of victimization, or history of homelessness
    - Must include low-barrier criminal background screening
- Supportive services must be voluntary, not a condition of occupancy. However, staff must continually engage and build relationships with tenants to encourage participation in services. Participation in services cannot be required for the tenant to obtain or maintain housing, unless part of a tenant-specific housing retention plan to avoid an eviction due to specific lease violations.
- Must utilize eviction prevention philosophy, strategies, practices, and policies as formulated in a written eviction prevention plan specific to the project. IHCDA provides eviction prevention best practices and templates on its Eviction Prevention and Low Barrier Screening webpage.
- Must report through the Homeless Management Information System ("HMIS")
- Supportive housing units must include owner-paid utilities

# Section 5: Qualifying Households for Program Units

Federal HOME regulations allow various methods of calculating and verifying annual income. However, IHCDA 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"). This methodology is also required for IHCDA funded CDBG/CDBG-D/HTF/NSP projects, as well as by the tax credit program. Note: The Section 8 asset limitation which denies eligibility to households with assets exceeding $100,000 (adjusted annually by inflation) or who own a home that is suitable for occupancy does not apply to the tax credit program.

For additional information on determining income eligibility, refer to the following resources (all included in Appendix A):

- 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), as revised February 2, 2024

## Part 5.1 Tenant Qualification & Certification Process

### A. Necessary Documentation for a Tenant File

Households are qualified for the program only if proper documentation verifying the household's eligibility is obtained and maintained in the tenant file. Forms referenced below can be found on IHCDA's compliance webpage.

**IHCDA accepts electronic signatures from tenants, owner agents, and third-party income verifiers.**

**At a minimum, the following items must be included in the file and must be organized in chronological order for ease of review:**

1. Initial Tenant Application for residency (IHCDA provides a sample as Compliance Form #18)

2. Income Certification Questionnaire (see 5.2. below) completed at time of application, including certification of assets and disposal of assets if applicable. A separate Tenant Income Certification Questionnaire must be completed by each adult household member. For HOME and HTF-assisted units, new Questionnaires must be completed as part of the income recertification process;

3. Tenant Income Certification (see 5.1 B below) signed by each adult member of the household for every year the household resides at the property. The TIC must have proper signature and effective dates clearly stated;

4. Verifications of all sources of earned and unearned income and of all asset sources noted on the Tenant Income Certification Questionnaires. See Part 5.3 for more information on verification requirements;

5. If the value of net family assets is less than or equal to $50,000 (as adjusted by inflation) and the owner agent is utilizing the allowable asset self-certification, an asset self-certification form completed for the household. The TIC or Income Questionnaire alone does not serve as a self-certification of assets.

6. For HOME-assisted units, a separate “HOME Student Status Certification” (Form #36) completed by each adult member of the household each year, along with any additional student status verifications needed. If the unit is also a LIHTC unit, the “Student Status Self-Certification for LIHTC” (Form #35) must also be completed by each adult household member.

7. Any other documentation verifying the household’s eligibility (e.g., unborn child self-certification, joint custody of a child documentation, management clarification documents, etc.);

8. Initial and subsequent leases and all lease addenda executed by the tenant and owner;

9. Documentation of the receipt of the applicable brochures (Fair Housing & Lead Based Paint); and

10. For tenants receiving Housing Choice Vouchers (tenant-based Section 8), a copy of either (1) the Housing Assistance Payment (HAP) Contract and the current HAP Amendment from the Public Housing Authority, or, (2) a copy of the current HUD Form 50058. For tenants in Section 8 Project Based Voucher (PBV) units, a copy of either (1) the current HUD Form 50058 showing the amount of rental assistance or (2) HUD Form 52530 Tenancy Addendum for Section 8 Project-Based Voucher Program. For tenants in Section 8 Project Based Rental Assistance (PBRA) units or Section 811 Project Rental Assistance (811 PRA), a copy of the current HUD Form 50059 showing the amount of rental assistance.

11. For tenants residing in units with USDA Rural Housing Service assistance, the current RD Form 3560-8 Tenant Certification must be included in the file.

NOTE: A recertification file for CDBG, CDBG-D, or NSP units (and for HOME or HTF-assisted units in years that a recertification is not required) will only include the following documentation: a new Tenant Income Certification Form (using Form #39) and the new lease and all addenda. Verification of income and assets is not necessary at recertification for these programs. It is also unnecessary to complete a Questionnaire at recertification. If the unit is also tax credit or HOME or HTF-assisted, those program recertification rules will apply.

All documents included in the tenant file must be fully completed, signed, and dated. IHCDA will not accept documents that are incomplete, that have been marked with correction fluids (i.e., whiteout), or where information has been obliterated with pen or marker. See 5.1 C below for information on how to properly correct documents in a tenant file.

## B. Tenant Income Certification (TIC) Form

Every tenant file must contain a Tenant Income Certification (TIC) form, regardless of whether or not that unit/tenant also has an income certification from another program in the file (e.g., HUD Form 50058/50059 or RD Form 3560-8). IHCDA’s Tenant Income Certification form used for the HOME, HTF, CDBG, and NSP programs includes information that is not found on these other forms, such as the award number, program income and rent limits, the program set-aside for the unit, the certification effective dates, etc. Therefore, properties that have multiple funding sources will need to have multiple signed tenant income certification forms in their files to demonstrate compliance with each separate program.

**IHCDA’s HOME/HTF/CDBG/NSP TIC (Form #38) is a mandatory form that must be used in all tenant files. IHCDA will not accept any other TIC form, unless the TIC is submitted to IHCDA and specifically approved. However, if the property is also funded through the LIHTC program, the IHCDA tax credit TIC must be used instead (Form #22). IHCDA revised the TIC in April 2024 with HOTMA revisions. That revised version of the form must be utilized for all files with an effective date on or after January 1, 2025.**

The TIC must list the IHCDA rent and income set-aside for the unit/household. Therefore, the rent and income restrictions should be listed as 30%, 40%, 50%, 60%, or 80%, not the actual AMI % of the household. For example, at time of move-in, a household may actually have income at 47% of AMI. IHCDA does not need to know this, but rather only needs to know the set-aside the household qualifies under, in this case, the 50%, 60%, or 80% limit. (*Note: Certain, but not all, CDBG-D and NSP projects may be allowed units set-aside at 120% AMI as defined in the award documents).

### C. Correcting Documents

IHCDA will not accept documents that are incomplete, that have been marked with correction fluids (e.g., whiteout), or where information has been obliterated with pen or marker. To correct a document, management should draw one line through the erroneous information and write the corrected information to the side. All corrections should be dated and initialed. Corrections on forms filled out by the management should be initialed by the management agent. Corrections on forms filled out by the tenant should be initialed by the tenant. Corrections to the lease should be initialed by both parties.

If management fails to obtain the necessary paperwork at time of certification, verifications can be retroactively created to document the income and assets that were in place at the time of certification. All retroactive documents must be signed with the current date but noted as being "true and effective" as of the actual certification effective date. The "true and effective" statement must be written on each form that is created or signed after the effective date. Neither tenants nor management are ever permitted to backdate documents. The recertification effective date continues on its regular annual cycle, not the date the documents were completed retroactively.

*Example: Mrs. Smith is due for her annual recertification on December 20th. However, the property manager was distracted putting up holiday decorations and forgot to send out a recertification notice. Therefore, Mrs. Smith does not come to the office to complete her paperwork until January 2nd. Mrs. Smith should sign all paperwork with the current date (January 2nd) but should make a note at the bottom of each form stating "information true and effective as of December 20th."*

### D. One Form per Household or One Form per Member?

| Form | 1 form per household signed by all adults | 1 separate form per each adult member |
|---|---|---|
| Income Certification Questionnaire | - | YES |
| Tenant Income Certification | YES | - |
| Student Status Certification (HOME) | - | YES |
| ≤ $50,000 Asset Certification (as adjusted by inflation) | YES | - |
| Zero Income Certification | YES- if the entire household is claiming zero income | - |
| All other verification documents | - | YES |
| Student Status Certification (for HOME) | - | YES |

## Part 5.2 Tenant Application & Income Certification Questionnaire

A fully completed Application and Income Certification Questionnaire is critical to an accurate determination of tenant eligibility. An Application must be completed by the household at initial move-in. An Income Certification Questionnaire must be completed at move-in and on recertification files for HOME or HTF-assisted units (for years in which a recertification is required).

**IHCDA's Income Certification Questionnaire (Form # 23) is a mandatory form that must be used in all tenant files. IHCDA will not accept any other Questionnaire form, unless the Questionnaire is submitted to IHCDA and specifically approved. IHCDA revised the Income Certification Questionnaire in April 2024. That revised version of the form must be utilized for all files with an effective date on or after January 1, 2025.**

At the time of application, it is the owner agent's responsibility to obtain sufficient information on all prospective tenants to completely process the application, determine household eligibility, and complete the Tenant Income Certification (TIC) form. IHCDA requires that each adult household member complete a separate Income Certification Questionnaire at time of application, and for HOME and HTF-assisted units at each recertification (for years in which a recertification is required). The Application and Income Certification Questionnaire are the first steps in the tenant certification process. The information furnished on the Application and Questionnaire should be used as a tool to determine all sources of income (including total cash value of assets and income from assets), household composition, and student status.

HUD Handbook 4350.3 lists guidelines which the owner may want to adopt for the application process. The application should include:

1. The name of each person that will occupy the unit (legal name should be given just as it will appear on the Lease and Tenant Income Certification);
2. All sources and amounts of current and anticipated annual income expected to be derived during the twelve (12) month certification period. Include assets now owned and indicate whether or not household members disposed of assets for less than Fair Market Value during the previous two years;
3. The current and anticipated student status of each applicant (for HOME-assisted units);
4. A screening process (i.e. previous landlord's rental history, credit information, criminal background, etc.). Owners should ask applicants whether the household's assistance or tenancy in a subsidized housing program has ever been terminated for fraud, nonpayment of rent, or failure to cooperate with recertification procedures;
5. The signature of the applicant and the date the application was completed. It may be necessary to explain to the applicant that all information provided is considered confidential and will be handled accordingly; and
6. Collection of demographic data: IHCDA requires the collection and reporting of the following information for all program tenants:
    - Race
    - Ethnicity
    - Sex
    - Family composition
    - Age (Date of Birth)
    - Income
    - Use of Section 8 (or similar) Rental Assistance Program
    - Disability Status; and
    - Monthly Rental Payment

To meet demographic data collection requirements, owners must annually report demographic data for all household members (each member not just the head of household) living in their developments. IHCDA provides a sample "Race and Ethnicity Data Reporting Form" (Form #37) that owners may utilize to gather this information. This information should only be obtained after a move-in has been approved so that it cannot be construed that the information was used as part of tenant selection / screening.

In order to reduce administrative burden, it is IHCDA's intent to capture all demographic information through the online reporting system as part of the Annual Owner Certification tenant event submission. Therefore, the owner must obtain demographic data for each household member and report this information when submitting tenant events online through https://online.ihcda.in.gov.

## Part 5.3 Income Verification

Owner agents are responsible for obtaining third-party verification of household income, assets, and other factors that affect the determination of eligibility. Third-party verification must be obtained from a third-party or from the household. Owner agents must document the reason why third-party verification was not available, except in cases where regulations specifically permit households to self-certify (i.e., when net assets do not exceed $50,000, adjusted by inflation).

## A. Effective Term of Verification

Verifications of income are valid for six months from the date of receipt by the owner agent and must be obtained prior to move-in or recertification effective date. After this time, if the tenant has not yet moved in or recertified, new verification must be obtained. Verifications that are more than six months old as of the effective date of the move-in or recertification event are invalid and the owner agent must obtain updated verification documents.

## B. Methods of Verification

Owner agents must follow HUD's verification hierarchy (see HUD Notice H 2023-10 / PIH 2023-7) which lists verification documentation from most acceptable to least acceptable. The owner agent must demonstrate efforts to obtain third-party verification prior to accepting self-certification, except in instances where self-certification is explicitly allowed (i.e., when net assets do not exceed $50,000 adjusted by inflation).

**Verification Hierarchy***

| 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, tax returns, etc. | High |
| 3 | Written, third-party verification form | Medium- use if applicant or tenant is unable to provide Level 4 documentation |
| 2 | Oral, third-party verification | Medium |
| 1 | Self-certification (not third-party) | Low- use as last resort if unable to obtain any third-party verification or use when specifically permitted such as when net assets do not exceed $50,000 (adjusted by inflation) |

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

### 1. Third-Party Tenant-Provided Documents (Level 4)

An original or authentic document generated by a third-party source… Such documentation may be in possession of the tenant (or applicant), and commonly referred to as tenant-provided documents. These documents are considered third-party verification because they originated from a third-party source.

Examples of tenant-provided documentation that may be used includes, but is not limited to: pay stubs, payroll summary report, employer notice/letter of hire/termination, SSA benefit letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notes.

When using tenant-provided information, the owner must consider the following:

- Is the document current? Circumstances may have changed since the document was created.
- Is the document complete?
- Is the document an unaltered original copy?

The following requirements apply to tenant-provided documents:

a. **Using Paystubs for Employment Verification**: If utilizing paystubs for employment verification, the owner agent must obtain the two most recent, consecutive months of paystubs from the tenant/applicant.

b. **Using Bank Statements:** If utilizing bank statements, the owner agent must obtain the most recent statement to verify the current balance (if net assets exceed $50,000 adjusted by inflation, and third-party asset verification is required).

c. **Using Tax Returns:** Per the HOTMA Implementation Notice, income tax returns "with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer's transmittal receipt, summary of transmittal from online source, etc.) are an acceptable form of written, third-party verification."

The owner agent must be able to reasonably project anticipated income for the next 12 months from the tenant-provided documents.

**2. Third-Party Written Verification (Level 3)**

IHCDA does not require that the owner agent use particular forms for third-party verifications; however, sample third-party verification forms are provided on IHCDA's compliance webpage. All requests for income verification must:

a) State the reason for the request;

b) Include a release statement signed and dated by the applicant or tenant; and

c) Provide a section for the employer or other third-party source to state the applicant/tenant's anticipated gross annual income or rate of pay, number of hours worked, and frequency of pay. Over-time hours, bonuses, tips, and commissions must be included, as well as the effective date of any verifiable increase during the next 12 months. Spaces should also be available for a signature, job title, phone number, and date. If forms are returned with any information incomplete, management must contact the source and complete a clarification form to document incomplete information.

Owner agents must send and receive verification forms directly to/from the third-party, not through the applicant or tenant.

**3. Third-Party Oral Verification (Level 2)**

When written verification is not possible, direct contact with the source to obtain oral verification will be acceptable to IHCDA only as a last resort. The conversation must be documented in the tenant file to include all information that would have been contained in a written verification. The information must include the name, title, and phone number of the third-party contact, the name of the onsite management representative accepting the information, and the date the information was obtained.

If the owner agent receives third-party verifications that are unclear or incomplete, a documented verbal clarification may be accepted if it includes the name and title of the third-party contact, the name and signature of the onsite management representative accepting the information, and the date the information was obtained.

Furthermore, if after requesting third-party verification, the third-party indicates that the information must be obtained from an automated telephone system, the owner may document the information provided from the telephone system. The documentation must state the date the information is received, all of the information provided, and the name, signature, and title of the person receiving the information.

**4. Self-Certification (Level 1)**

As a last resort, the owner may accept a tenant's signed affidavit if third-party verification cannot be obtained. The owner agent should try to refrain from using self-certifications, except where specifically allowed such as when net assets do not exceed $50,000 (adjusted by inflation).

If self-certification must be used (except when specifically allowed), the owner agent is required to document the tenant file by explaining the reason third-party or tenant-provided verification could not be obtained and showing all efforts that

were made to obtain verification. Per Chapter 5 of the HUD Handbook 4350.3, the following documents should be placed in the tenant file:

a) A written note to the file explaining why third-party or tenant-provided verification is not possible; and/or
b) A copy of the date-stamped original request that was sent to the third-party; and/or
c) Written notes or documentation indicating follow-up efforts to reach the third-party to obtain verification; and/or
d) A written note to the file indicating that the request has been outstanding without a response from the third-party

The owner may accept self-certification if there is a fee associated with receiving the third-party verification. If the owner chooses to pay the fee to obtain the third-party verification, this cost cannot be passed on to the tenant or applicant.

5. **Income Verified for a Rental Assistance Program**

**For HOME, CDBG, CDBG-D, or NSP:** In lieu of conducting their own income calculation, the owner agent **may** accept an income determination that has already been made by a federal or state project-based rental assistance program or a federal tenant-based rental assistance program.

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

The owner agent must obtain from the public housing authority (PHA) or other rental assistance administrator a written statement via IHCDA Compliance Form 16A (for vouchers) or 16B (for other programs) that indicates the household size and annual income. Exception: For Housing Choice Vouchers or Project Based Vouchers, the most recent HUD Form 50058 is an acceptable alternative to Form 16A. 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 Tenant Income Certification Form and Income Questionnaire. The 50058 or PHA Form replaces the third-party income verification but does not replace the TIC. A TIC must be included in the file regardless of whether there is a 50058.

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 owner may not rely on the HUD Form 50058 or PHA form if a reasonable person in the owner's position would conclude that the tenant's actual annual income is higher than the tenant's represented annual income. Additionally, the HUD/PHA form must be signed by both the tenant and the PHA Representative when used as the income verification.

Because the HUD Form 50059 used for Section 8 Project Based Rental Assistance is not signed by a PHA representative, the Form 50059 cannot be used as income verification. However, the 50059 should be maintained in the file to verify the amount of rental assistance on the unit.

Note: The programs covered by 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 so that it is completely inaccessible to the IHCDA auditor.

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

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

- Temporary Assistance for Needy Families (TANF)
- Medicaid
- Supplemental Nutrition Assistance Program (SNAP)- e.g., food stamps
- Earned Income Tax Credit (EITC)
- Low Income Housing Tax Credit (LIHTC)

- Special Supplemental Program for Women, Infants, & Children (WIC)
- Supplemental Security Income ("SSI")
- Other programs determined by HUD to have comparable reliability as announced through the Federal Register

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

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

- Income determination effective date
- Program administrator's signature date
- Family's signature date
- Report effective date
- Other report-specific dates that verify the income determination date

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

**EXCEPTION:** For HTF-assisted units, the safe harbor for means-tested income verification cannot be used at move-in but may be used at recertification.

## C. Guidance for Specific Income Sources

The following section provides guidance on some common and/or complicated sources of income to verify.

For complete information concerning included income and acceptable forms of income verification, see HUD Handbook 4350.3 CHG-4, specifically Chapter 5 and "Appendix 3: Acceptable Forms of Verification, "the *Technical Guide for Determining Income and Allowances,* and the HOTMA Implementation Guidance HUD Notices.

### 1. Social Security and Supplemental Security Income

IHCDA will accept the Annual Benefit Award letter provided from the Social Security Administration to verify Social Security benefits. However, all Supplemental Security Income (SSI or SSDI) is required to be verified and dated within six months prior to the certification date. When interpreting Social Security benefit letters, use the gross amount before deductions unless the deduction is for a prior overpayment of benefits. Since HUD considers Social Security benefits (including SSI & SSDI) to be fixed income sources, management may follow the Streamlining Rule for verification of income and is only required to obtain third-party documentation at move-in and at every third recertification. See Part 5.3(D)(8) below for more information.

The Social Security Administration (SSA) may no longer issue Social Security printouts or provide benefit verification letters. Clients can obtain an instant verification letter online by creating a personal mySocialSecurity account or by calling the national toll free number 1-800-772-1213 and using the automated application to have a letter sent via mail.

Benefits received through direct deposit or a Direct Express Debit Card are treated as income. In addition, the balance on a Direct Express Debit Card is also considered as an asset and must be verified consistent with the verification procedures for a checking or savings account. A current balance must be provided and included as an asset in addition to the benefit income. This balance can be obtained through an online account service, a paper statement, or an ATM balance.

Delayed SS and SSI payments received as a lump sum are not counted as income, but are included as a lump sum asset (see the second income exclusion example on page 5-21 of HUD Handbook 4350.3). Delayed SS and SSI payments received as periodic payments are excluded from income (see item #13 in Exhibit 5-1 of HUD Handbook 4350.3).

When a Social Security cost of living adjustment (COLA) increase is announced, the increase must be factored into all income determinations with effective dates after the date the increase was announced. Recent COLA increases include:

- On October 19, 2011 the SSA announced a 3.6% COLA increase for 2012.
- On October 16, 2012 the SSA announced a 1.7% COLA increase for 2013.
- On October 30, 2013 the SSA announced a 1.5% COLA increase for 2014.
- On October 22, 2014 the SSA announced a 1.7% COLA increase for 2015.
- On October 15, 2015 the SSA announced there would be no COLA increase for 2016.
- On October 18, 2016 the SSA announced a 0.3% COLA increase for 2017.
- On October 13, 2017 the SSA announced a 2.0% COLA increase for 2018.
- On October 11, 2018 the SSA announced a 2.8% COLA increase for 2019.
- On October 10, 2019, the SSA announced a 1.6% COLA increase for 2020.
- On October 13, 2020, the SSA announced a 1.3% COLA increase for 2021.
- On October 13, 2021, the SSA announced a 5.9% COLA increase for 2022.
- On October 13, 2022, the SSA announced an 8.7% COLA increase for 2023.
- On October 12, 2023, the SSA announced a 3.2% COLA increase for 2024.
- On October 10, 2024, the SSA announced a 2.5% COLA increase for 2025.
- On October 24, 2025, the SSA announced a 2.8% COLA increase for 2026.

**2. <u>Child or Spousal Support</u>**

The amount of child or spousal support included in annual income is "all amounts received," **<u>not</u>** any amount the household may be legally entitled to but is not receiving. HUD's 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 owner agent must verify the amount of support actually received to annualize income. HUD's HOTMA Implementation Guidance notes that "a copy of a court order or other written payment agreement alone may not be sufficient verification of amounts received by a family" since that order would demonstrate the amount the household is entitled to, not the amount they are receiving.

**3. <u>Unemployment and Welfare Benefits</u>**

When anticipating income from unemployment, the owner must annualize the weekly benefit amount regardless of whether the benefit end date suggests that benefits will last for the full year. The owner may not use the total maximum benefit amount, the remaining benefit amount, or an average of the benefits received.

The only exception is if the tenant knows a date on which they will return to work or begin a new job. In this case, the owner would calculate unemployment benefits up until the hire date and then calculate employment income for the rest of the year. IHCDA will expect to see third-party verification of the unemployment benefits and an employment verification showing the start date for the job, including all other information applicable to employment.

Welfare payments in the form of Temporary Assistance to Needy Families (TANF) are included in household income. Food stamps are not included as household income.

Settlement payments from claim disputes over unemployment or welfare are treated as lump sum assets. However, lump sum payments caused by delays in processing periodic payments in unemployment or welfare are included as income (see page 5-18 and Figure 5-3 on page 5-19 of HUD Handbook 4350.3).

**4. <u>Employment Income (Earned Income)</u>**

Earned income is defined as income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Worker's compensation payments, regardless of length or frequency of payments, are always excluded from annual income.

Owner agents must calculate the total anticipated employment income for the next 12 months based on current income and any verifiable changes. Employment income must be third-party verified when possible. Per HUD's HOTMA Implementation Guidance hierarchy of verification, an upfront income verification system such as the Work Number is the preferred source of employment verification, followed by tenant-provided source documents (e.g., paystubs), followed by a written third-party verification form completed by the employer.

If utilizing tenant-provided source documents:

- For tenants with jobs that provide steady employment, the owner must obtain the number of paystubs that covers the two most recent, consecutive months of payments.
- For seasonal workers or day laborers, the owner may need to obtain additional paystubs or an alternate form of verification. Seasonal workers and day laborers are considered to have recurring earned income and these income sources must be annualized and counted in total household income.

If employment verification indicates a range of hours worked, IHCDA will calculate based on the average hours worked, not the highest in the range.

Note: IHCDA no longer requires a year-to-date (YTD) calculation as part of income calculation. If the owner agent chooses to utilize a year-to-date calculation methodology, they must be consistent when calculating income for all households.

When full-time students who are 18 years of age or older are dependents of the household, only a maximum of $480 of their total annual earned income is counted in the total household income calculation. Continue to count the full amount of unearned and asset income. *NOTE: Per HOTMA, the $480 amount will be indexed for inflation and will change annually.

- For 2026, the income exclusion is $500.

When full-time students who are 18 years of age or older are the head-of-household, co-head, or spouse, the full amount of earned, unearned, and asset income is counted in the total household income calculation.

5. **Recurring Gifts / Regular Contributions to Household**

Any regular contributions and gifts to the household from persons not living in the unit must be included in annual income. This includes payments paid on behalf of the family and other cash or noncash contributions provided on a regular basis. Temporary, nonrecurring, or sporadic contributions or gifts are not counted.

The following items are specifically excluded as income:

- Groceries provided directly to the household (not money given to buy groceries)
- Childcare payments paid directly to the childcare provider on behalf of the tenant
- Non-monetary goods such as food, clothing, or toiletries received from a food bank or similar organization
- Gifts for holidays, birthday, or other significant life events or milestones such as weddings, baby showers, or anniversaries

Recurring gifts/contributions should be third-party verified when possible by having the contributor sign a certification stating the amount and frequency of the gift/contribution.

6. **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 ("Non-HEA 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 OR for Households with Section 8 Assistance for Certifications Effective on or after February 3, 2026**

If all student financial assistance is HEA Assistance, exclude the entire amount.

If all student financial assistance is other student financial assistance (Non-HEA Assistance), include the amount that exceeds actual covered costs.

If student financial assistance is a combination of HEA Assistance and other student financial assistance (Non-HEA Assistance), the amount of student financial assistance to include as income is calculated as follows:

- Step 1: Actual covered costs MINUS amount of HEA Assistance = amount of actual covered costs exceeding HEA assistance ("X")
  - If "X" is negative, count the full amount of other student financial assistance (Non-HEA Assistance) as income
  - If "X" is positive, proceed to Step 2
- Step 2: Amount of other student financial assistance (Non-HEA Assistance) MINUS "X" = student financial assistance counted in income ("Y")
  - If "Y" is negative, student financial assistance income = $0

**Determining Student Financial Assistance Income for Households with Section 8 Assistance *ONLY APPLICABLE FOR CERTIFICATIONS EFFECTIVE BEFORE FEBRUARY 3, 2026***

If the household receives Section 8 assistance and the student is the head of household, 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 of household, 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. The formula to calculate the excess amount of financial assistance included in annual income is to subtract the total tuition plus required fees and charges from the total student financial assistance from all sources.

**7. Periodic Payments and Withdrawals**

Periodic payments from such sources as annuities, insurance policies, retirement funds, pensions, and disability or death benefits are included in annual income.

**Retirement Accounts:** The distribution of periodic payments from retirement accounts is included as income and must be verified. Retirement accounts include IRAs, employer plans such as 401(k) or 403(b) plans, and retirement plans for self-employed individuals. Retirement accounts are not considered assets. The owner must verify the amount of distributions. The balance of the account does not matter since retirement accounts are never counted as assets.

**Irrevocable Trusts:** The distribution of periodic payments from the trust's principal is excluded as income. The distribution of periodic payments from interest earned on the trust's principal is included as income, unless the distributions are used to pay for the health and medical expenses of a minor. An irrevocable trust is never counted as an asset and asset income (actual income earned by the trust) is excluded.

**Revocable Trusts (Where the Trust Grantor is Not Part of the Household and Household Does Not Otherwise Have Control of the Trust):** The distribution of periodic payments from the trust's principal is excluded as income. The distribution of periodic payments from interest earned on the trust's principal is included as income, unless the distributions are used to pay for the health and medical expenses of a minor. This type of revocable trust is not counted as an asset and asset income (actual income earned by the trust) is excluded.

**Revocable Trusts (Where the Trust Grantor is Part of the Household or Household Otherwise Has Control of the Trust):** The distribution of periodic payments from the trust's principal is excluded as income. The distribution of periodic payments from interest earned on the trust's principal is excluded as income. This type of revocable trust is counted as an asset and asset income (actual income earned by the trust) is included as income.

**8. Verifying Fixed Income Sources**

**General Rule and Definition of Fixed Income**

The "Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs Final Rule" (a.k.a. the Streamlining Rule) provides a simplified manner of verifying fixed income sources effective April 7, 2016. IHCDA has adopted these streamlining rules to verify fixed income as described below.

Per the Streamlining Rule, as codified through regulation in 24 CFR Part 5.657 and Part 982.516, fixed income sources are defined as "periodic payments at reasonably predictable levels." Fixed income sources include, but are not limited to, 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 income sources must initially be verified through third-party verification. The owner is not required to reverify until the household's third recertification and every three recertifications thereafter (referred to as the "triennial verification"). For years that do not require third-party verification, the owner utilizes the existing verification form and applies an adjustment factor that comes from either (1) a public source (e.g., the Social Security Administration's annual COLA announcement) or (2) tenant-provided third-party generated documentation. The adjustment factor used must be verified and documented in the file. If no public or third-party verification of the COLA/increase is available, then a traditional verification must be obtained.

**Special Rule When 90% or More of Household Income is from Fixed Income Sources**

The "Streamlining Administrative Regulations for Multifamily Housing Programs and Implementing Family Income Reviews Under the Fixing America's Surface Transportation (FAST) Act Interim Final Rule" (a.k.a. the FAST Act) further expands the streamlining rule for verifying fixed income sources effective March 12, 2018. IHCDA has adopted these additional streamlining rules to verify fixed income as described below.

When 90% or more of a household's gross income comes from fixed income sources (as defined above), in addition to the streamlining requirements above, the owner may accept the household's self-certification of income sources that are not fixed during years that do not require the full "triennial verification."

Example 1: Household where fixed income source is 90% or more of gross income. Example assumes the project is subject to recertification of income.

- Move-in: Owner obtains full verification of all income sources.
- 1st Recertification: Owner obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (from the move-in file). Non-fixed income sources are verified by self-certification of the household, as long as the household certifies an amount that is less than 10% of the total gross household income. If non-fixed income sources are greater than 10% of gross household income, they must be verified through the traditional verification methodology.
- 2nd Recertification: Owner obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (from the move-in file). Non-fixed income sources are verified by self-certification of the household, as long as the household certifies an amount that is less than 10% of the total gross household income. If non-fixed income sources are greater than 10% of of gross household income, they must be verified through the traditional verification methodology.
- 3rd Recertification: Owner obtains full verification of all income sources, similar to what was done at the time of move-in.
- 4th Recertification: Owner obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (based on the 3rd recertification file). Non-fixed income sources are verified by self-certification of the household, as long as the household certifies an amount that is less than 10% of the total gross household income. If non-fixed income sources are greater than 10% of gross household income, they must be verified through the traditional verification methodology.
- Process continues to cycle as demonstrated above.

Example 2: Household where fixed income source is less than 90% of gross income. Example assumes the project is subject to recertification of income.

- Move-in: Owner obtains full verification of all income sources.
- 1st Recertification: Owner obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (from the move-in file). Non-fixed income sources are third-party verified.

- 2nd Recertification: Owner obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (from the move-in file). Non-fixed income sources are third-party verified.
- 3rd Recertification: Owner obtains full verification of all income sources, similar to what was done at the time of move-in.
- 4th Recertification: Owner obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (based on the 3rd recertification file). Non-fixed income sources are third-party verified.
- Process continues to cycle as demonstrated above.

### D. Differences in Reported Income

The owner agent should give the applicant/tenant the opportunity to explain any significant differences between the amounts reported on the Application/Income Questionnaire and amounts reported on third-party verifications in order to determine actual income. The explanation of the difference should be documented in the tenant file on a clarification form or self-affidavit.

### E. Zero Income Households

It is possible that a household will have total annual income of $0. This is possible if the household is receiving rental assistance, food stamps, and other forms of assistance that are not counted as income. However, it is often the case that households claiming zero income are in fact receiving some type of recurring gift from friends or family members (see part 5.3(D)(5) above).

If the entire household is claiming zero income, the household must complete IHCDA Form #27 "Zero Income Certification and Basic Needs Questionnaire" or a similar form. This form asks the household to identify how various expenses will be paid and often serves as a way of catching recurring gifts and contributions to the household.

While zero income households do exist, it is the responsibility of the owner agent to prove due diligence when reporting households as zero income. Zero income households can raise a red flag for auditors, especially if the household that is claiming zero income is responsible for a portion of rent.

## Part 5.4 Annual Income

### A. Whose Income and Assets are Counted?

| Member | Employment Income | Unearned/asset income |
|---|---|---|
| Head of household | Yes | Yes |
| Spouse/ Co-head | Yes | Yes |
| Other adult | Yes | Yes |
| Dependent Child Under 18 | No | Yes |
| Full-time student over 18 * | See Note Below | Yes |
| Non-members (live-in aides, guests, foster children, foster adults, etc.) | No | No |

*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.

- For 2026, the income exclusion is $500.

## B. Income

Annual income is defined as the gross amount of earned and unearned income to be received by all adult members of the household (18 years of age and older, including full-time and part-time students) and the gross unearned income of minors 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.

1. **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
    - amounts directly received by the family as a result of state or federal refundable tax credits or tax refunds at the time they are received
    - 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, non-monetary in-kind donations from friends and family
    - 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

2. **Unsecured income**: IHCDA does not require owners to include unsecured income sources when calculating household income. For example, if an applicant or tenant is unemployed IHCDA does not require that individual to anticipate income they may earn if a job is secured, unless it is verifiable that a job has been secured for a future start date.

3. **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."
    - 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 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.

4. **Garnished or withheld wages or benefits:** When a household member's wages or benefits are garnished, levied, or withheld to pay restitution, child support, tax debt, student loan debt, or other applicable debts, the gross amount of income prior to the reduction must be used to determine annual income.

Any income source not specifically excluded by HUD regulation must be included in the calculation of household income. See the list of income exclusions at 24 CFR 5.609.

Note that income limits are based on gross annual income, not adjusted annual income. Allowances commonly used in some federal housing programs, such as childcare allowance, elderly household allowance, dependent allowance, handicapped assistance allowance, medical deductions, etc., are not permitted to be subtracted from the household's gross income to determine income eligibility for program assisted units. Adjusted income is only calculated to determine the rent to charge households exceeding 80% AMI in HOME-assisted units as described in Part 3.1 C.

### C. 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.

Net family assets is calculated as follows: real property + non-necessary personal property (if combined value > $50,000 adjusted by inflation) – federal tax refunds received in previous 12-month period.

There are three types of assets:

- Real property is **included** in net family assets. Real property includes land or a home.
- Necessary personal property is **excluded** from net family assets. Necessary personal property includes (1) items essential to the family for the maintenance, use, and occupancy of the premises as a home, (2) items necessary for employment, education, or health and wellness, (3) items that assist a household member with a disability or that may be required for a reasonable accommodation for a person with a disability, and (4) personal effected including items that are convenient or useful to a reasonable existence and that support and facilitate daily life within the home.
- Non-necessary personal property includes bank accounts, other financial investments, luxury items, and other items not counted as necessary personal property. Non-necessary personal property is treated as follows:
  - 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.

**Table F1: Examples of Necessary and Non-Necessary Personal Property**

| Necessary Personal Property | Non-Necessary Personal Property |
|---|---|
| • Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter)<br>• Furniture, carpets, linens, kitchenware<br>• Common appliances<br>• Common electronics (e.g., radio, television, DVD player, gaming system)<br>• Clothing<br>• Personal effects that are not luxury items (e.g., toys, books)<br>• Wedding and engagement rings<br>• Jewelry used in religious/cultural celebrations and ceremonies<br>• Religious and cultural items<br>• Medical equipment and supplies<br>• Health care–related supplies<br>• Musical instruments used by the family<br>• Personal computers, phones, tablets, and related equipment<br>• Professional tools of trade of the family, for example professional books<br>• Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities<br>• Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment) | • Recreational car/vehicle not needed for day-to-day transportation (campers, motorhomes, travel trailers, all-terrain vehicles (ATVs))<br>• Bank accounts or other financial investments (e.g., checking account, savings account, stocks/bonds)<br>• Recreational boat/watercraft<br>• Expensive jewelry without religious or cultural value, or which does not hold family significance<br>• Collectibles (e.g., coins/stamps)<br>• Equipment/machinery that is not used to generate income for a business<br>• 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) may be paid onto special pay cards / prepaid debit cards instead of through direct deposit into a checking or savings account. These cards are included as assets and are verified in the same way as a checking or savings account. A current balance must be provided and included as an asset in addition to the benefit income being counted as income. This balance can be obtained through an online account service, a paper statement, or an ATM balance.

Disposed of Assets

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

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

Jointly Owned Assets
If assets are owned by the household and one or 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 (see below)
- 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 for a period of 12 months after receipt by the family.

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 net family assets. If the subtraction results in a negative number, then net family assets are $0. When calculating this amount, the owner agent must use the refund amount actually 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.

*Example: Household has a $20,000 savings account with a 2% interest rate. The household has no other assets.*

- *Total value of assets is $20,000*
- *Net family assets = $0 (the total value of assets is less than $50,000 as adjusted by inflation so net family assets is considered $0)*
- *Actual asset income from the savings account is $400 (2% interest x $20,000 balance) even though the net family assets is $0*

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 included in net family assets (i.e., is not a specifically excluded asset); and
- Actual asset income cannot be calculated for that specific asset. When actual income for an asset can be calculated (even if calculated as $0), imputed income is not calculated for that asset.
    - An asset where asset income cannot be computed is different from a financial asset with an actual return of $0. If a financial asset generates zero actual asset income, then imputed income is not calculated. For this reason, imputed income is not calculated, for example, on an account with a 0% interest rate or on cash on hand.

If actual income from assets 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 from assets is calculated using the passbook rate.

- Prior to 2/1/15, the passbook rate was 2.00%
- From 2/1/15 through 12/31/23, the passbook rate was 0.06%
- For 2024, the passbook rate is 0.40%
- For 2025, the passbook rate is 0.45%
- For 2026, the passbook rate is 0.40%
- HUD will calculate a new passbook rate annually

### D. Computing the Total Household Income

After all income and asset information has been verified for a household, all included sources of income are added together to calculate the total household income. In order for the household to qualify for a program assisted unit, the total household income must be at or below the income limit in effect at the time of tenant certification. If the total household income is greater than the income limit, then the household cannot be certified for a program assisted unit. Income and assets must be calculated in accordance with the Section 8 methodology as described in 24 CFR 5.609 and in further detail in Chapter 5 of HUD Handbook 4350.3 as superseded by Notice H 2023-10/PIH 2023-27, as revised February 2, 2024 (HOTMA Implementation Guidance) where applicable. Any income and asset source not specifically excluded from household income must be included.

Income limits are based on gross annual income, not adjusted annual income. Allowances commonly used in some federal housing programs, such as childcare allowance, elderly household allowance, dependent allowance, handicapped assistance allowance, medical deductions, etc., are not permitted to be subtracted from the household's gross annual income to determine income eligibility. Adjusted income is only calculated to determine the rent to charge households exceeding 80% AMI in HOME-assisted units as described in Part 3.1 C.

## Part 5.5 Annual and Interim Income Recertification Requirements

Owner agents may utilize effective dates when performing tenant certifications. Therefore, the tenant may sign the tenant certification on or before the date the certification takes effect. **All income and eligibility verifications must be dated no more than six months prior to the effective date of the tenant certification.** The owner should have language in the tenant certification documents indicating that the tenant must inform the recipient of any changes of income or household composition that may occur between the date the tenant signs the certification and the effective date of the certification.

### A. Recertification for HOME and HTF-assisted Units

Every sixth year of the period of affordability, the owner agent must perform an income recertification for each low-income household and receive third-party documentation to support that certification. 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.

In other years, the owner agent may accept the household's self-certification of income. The household must complete a self-certification form to disclose its self-certified income. A TIC must be completed, but the TIC alone does not count as a self-certification form.

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. *NOTE: This option is required if the project is also LIHTC; 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, owner may choose to annually recertify every existing household on January 1st).

### B. Recertification for Units that are Not HOME or HTF-Assisted

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 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, owner may choose to annually recertify every existing household on January 1st).

A recertification file for CDBG, CDBG-D, or NSP units will only include the following documentation: a new Tenant Income Certification Form (using Form #39) and the renewal lease and applicable lease addenda. Verification of income and assets is not necessary at recertification for these programs. It is also unnecessary to complete a Questionnaire at recertification. If the unit is also tax credit or HOME or HTF-assisted, those program recertification rules will apply.

## Part 5.6 Lease and Rent Requirements

All residents occupying program units must be certified and under a lease no later than the time that the household moves into the unit. A signed lease is required for all permanent supportive housing and permanent rental housing units. All residents of transitional housing must sign a program agreement.

A signed lease must be in effect for each household/unit. Once executed, the lease terms cannot be modified without at least 30 days written notice to the tenant in accordance with Indiana Code 32-31-5-4. For HOME-assisted units, rent increases require at least 60 days written notice per regulation.

### A. Lease or Program Agreement Requirements

A signed lease must be in effect for each year that a household resides in a unit. A new lease and/or a lease renewal addendum must be completed annually. Leases must reflect the correct date that the household moves into or otherwise takes possession of the unit.

A unit must be leased directly to the household, not to an organization that is providing services to the household.

The household may have a cosigner, if necessary, but the cosigner must sign a self-affidavit stating that (1) they will not reside in the unit and (2) disclosing whether or not they will be providing income to the household in the form of rent or utility payments or other recurring gifts. If income is provided, this must be treated as recurring gift income per Part 5.3 (D)(5).

At a minimum, the lease language must include (but is not limited to), the following. Note: Language about programmatic requirements may be included in a lease addendum instead of the main body of the lease.

1. The legal name of all parties to the agreement and all other occupants;
2. Address and description of the unit to be rented;
3. The date the lease becomes effective;
4. The term of the lease (must be for at least one year unless there is a mutual agreement between tenant and owner for a shorter period);
5. The rental amount;
6. Language addressing security deposits;
7. Language or Lease Addendum acknowledging receipt of the Fair Housing and Lead-Based Paint Brochures;
8. The utility allowance requirements, including a clear breakdown of which utilities are owner-paid and which are tenant-paid;
9. The use of the premises including language addressing that only members listed on the lease/TIC may dwell in the unit, that the unit must be the household's primary residence, and that the unit may not be sublet;
10. The rights and obligations of the parties, including the obligation of the tenant to recertify annually (or more frequently as required);
11. Language addressing income decreases and increases (i.e., for HOME-assisted units the 80% rule), utility allowance increases/decreases, basic rent changes (in Rural Development or 236 Developments), household composition changes, student status changes (for HOME-assisted units) or any other change and its impact on the tenant's rent and eligibility. For HOME-assisted units, the owner must give at least 60 days written notice prior to increasing rent.
12. Language addressing the right of the development and/or other funding providers to enter the assisted-unit for physical inspections;
13. Description of the lease renewal process;
14. Description of the termination process (must give at least 30 days written notice for HOME-assisted units);
15. Signature of at least the head of household and co-head;
16. Signature of owner/property manager; and
17. Date of execution.

As a convenience to its partners, IHCDA provides the following sample lease addendum documents (available on IHCDA's compliance webpage) and strongly encourages use of these forms. The VAWA Lease Addendum is mandatory:

- Lease Addendum for Units Participating in Section 42 (see Form 9A);
- Lease Addendum for Units Participating in HOME (see Form 9B);
- Lease Addendum for Units Participating in HTF/CDBG/NSP (see Form 9D)
- Lease Renewal Addendum (see Form 10);
- Lease Addendum- Unit Transfer (see Form 44);
- Lease Addendum- Rent Decrease due to Utility Allowance Increase (see Form 45); and
- IHCDA or HUD VAWA Lease Addendum (MANDATORY FORM)- A VAWA lease addendum is mandatory for projects with HTF funds, that received a commitment of HOME funds on or after December 16, 2016, or that have tax credits. If using the IHCDA addendum, the September 2022 revision of the IHCDA VAWA Lease Addendum must be used for all move-ins dated on or after January 1, 2023.
  - If the project includes Low Income Housing Tax Credits with HOME or HTF, use the IHCDA HOME/HTF VAWA lease addendum or the HUD VAWA lease addendum. There is no need to also use the IHCDA tax credit VAWA lease addendum. Only one VAWA lease addendum is required per household.

At a minimum, the Program Agreement for transitional housing should include (but is not limited to):

1. The date the Program Agreement becomes effective;
2. Signature of both resident and staff member;
3. The supportive services available;
4. Program guidelines, such as curfews, laundry, and recreation rules;

5. Program expectations for resident;
6. Maximum length of stay; and
7. List of items, if any, regarded as contraband.

## B. Prohibited Lease Language

Per 24 CFR 92.253(b), the following items within a lease will constitute a finding of noncompliance:

- **Agreement to be sued:** 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;
- **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 State law;
- **Excusing owner from responsibility:** 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:** Agreement of 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 has the opportunity to present a defense, or before a court decision on the rights of the parties;
- **Waiver of a jury trial:** 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 (other than a tenant in transitional housing) to accept supportive services that are offered.
- The lease cannot permit a rent increase without at least 60 days written notice per 24 CFR 92.252(f)(3) for HOME-assisted units
- The lease cannot permit termination without at least 30 days written notice per 24 CFR 92.253(c) for HOME-assisted units.

## C. Rents and Security Deposits

Rents on the program units may not exceed the maximum allowable rent. Any violation of overcharging rents is considered noncompliance and the owner will have to adjust rent and repay the overcharged rents (See Part 3.2 for more information on correctly implementing rent limits).

Security deposits must be treated in accordance with Indiana Code 32-31-3. Landlords cannot ask tenants to waive the security deposit regulations/rights under Indiana Code. Upon termination of a rental agreement, the full amount of security deposit must be returned to the tenant, minus any amount applied for (1) the payment of accrued unpaid rent, (2) the amount of damages (not including normal wear and tear) caused by the tenant, and (3) unpaid utility charges that the tenant is obligated to pay.

Per Indiana Code, within 45 days of the termination of the rental agreement, the landlord must send to the tenant (1) a written notice including an itemized lists of all charges to be deducted from the security deposit including the estimated cost of repair for each damaged item and (2) payment for the difference between the security deposit held and the amount of the damages claimed.

The landlord’s liability (i.e., the 45-day timeframe) does not begin until the tenant has supplied in writing a new address to deliver the notice and refund. If the landlord fails to comply with these requirements, then the tenant is entitled to recover the full amount of the security deposit and reasonable attorney’s fees. Failure to provide notice of damages constitutes agreement that no damages are due and return of the full security deposit.

## D. Initial Minimum Term of Lease

There must be a lease term of at least one year on all program units, unless the owner and the tenant have a mutually agreed upon a different lease term for the unit. All leases must, however, be for no less than 30 days.

Federal regulations do allow shorter leases for certain types of housing for homeless individuals. The following types of housing are exempt from the one-year minimum lease term:

1. Single Room Occupancy (SRO) units in developments receiving McKinney Act and Section 8 Moderate Rehabilitation assistance;
2. Single Room Occupancy (SRO) units intended as permanent housing and not receiving McKinney Act assistance;
3. Single Room Occupancy (SRO) units intended as transitional housing that are operated by a governmental or nonprofit entity and provide certain supportive services; or
4. Units that a) contain sleeping accommodations and kitchen and bathroom facilities; b) are located in a building which is used exclusively to facilitate the transition of homeless individuals to independent living within 24 months; and c) for which a governmental entity or qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

*Note: If a development has units set aside in a building for homeless households, those tenants must have leases with at least one-year terms, unless the building's primary use is described in option 4 above or the owner and tenant have mutually agreed upon a shorter lease term.

**Note: Leases must reflect the correct date of move-in, and/or the date the tenant takes possession of the unit.

## E. Eviction or Termination of Tenancy

If a household cannot pay the rent or otherwise commits material violation of the lease (or transitional housing program agreement), the owner has the same rights in dealing with the income-eligible tenant as with any other tenant, including, if necessary, eviction.

IHCDA encourages owners to utilize eviction only as a last resort and to implement eviction prevention strategies. IHCDA's Eviction Prevention and Low Barrier Screening webpage provides templates and resources for eviction prevention. Note: Permanent supportive housing projects and projects that received eviction prevention points under an IHCDA application scoring system are required to implement project-specific eviction prevention plans.

### 1. Program Requirements and Guidance

Regulations state that there must be just cause for eviction or other form of termination of tenancy (non-renewal of lease). This provision is often referred to as "good cause eviction." Language outlining actions that constitute good cause for eviction or termination of tenancy must be included in writing at the time of initial occupancy, preferably in the lease. Examples of good cause evictions may include nonpayment of rent, violations of the lease agreement, destruction or damage of the property, interference with other tenants, tenant fraud, or use of the property for an unlawful purpose. When dealing with tenant conduct issues, the owner must provide written notice to the tenant prior to beginning eviction. This notice should include a statement that continued poor conduct could constitute a basis for future termination.

For transitional housing, good cause for termination includes completion of the tenancy period for transitional housing or failure to participate in any required supportive services.

For HOME-assisted units, the tenant must be given at least 30 days notice to vacate per regulation.

### 2. Items Not to be Construed as Good Cause for Eviction

- An increase in income that causes the household to exceed the unit set-aside or the 80% (for HOME-assisted units) income limit is not considered good cause for eviction or termination of tenancy.

- Eviction is not permitted if such eviction is discriminatory based on the tenant/household's protected class under the Fair Housing Act (see Part 4.2A).
- Per the Violence Against Women Reauthorization Act of 2013 (see Part 4.2G) 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 either:
    - 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.

**Owners may not terminate tenancy solely because a household experiences a change in income and existing tenants are never required to move because of an increase or decrease in income. This includes temporarily noncompliant HOME units in which the households exceed 80% of AMI.**

**3. Documenting the File**

When the owner determines that eviction or termination of tenancy is necessary, the tenant must be served written notice to vacate. For HOME-assisted units, the tenant must be given no less than 30 days to vacate. The owner must document the justification and keep copies of the notifications sent to the tenant.

When a tenant is evicted or a lease is terminated, IHCDA will expect to see documentation outlining the specific cause for non-renewal and proof that proper written notices were provided to the tenant. It is the owner's responsibility to document and defend the good cause for eviction if challenged in state court. IHCDA reserves the right to request copies of all documentation to support good cause eviction.

## Part 5.7 Purchase of HOME Rental Units by In-place Tenants

During a HOME project's period of affordability, the owner may sell a HOME-assisted rental unit to an existing tenant with IHCDA approval.

When an owner wishes to sell a unit to a tenant, they must notify IHCDA of the intended sale. IHCDA will confirm that the purchaser is a current HOME renter who was income qualified at time of move-in. IHCDA will also review and approve the proposed sale price to confirm it conforms with the HOME homebuyer requirements at 24 CFR 92.254 as well as to ensure other regulatory HOME homebuyer requirements are met. After IHCDA confirms the tenant is an eligible buyer and approves the sale price, but before the sale is complete, IHCDA will conduct an inspection of the unit using NSPIRE standards. The unit must pass inspection, or have all inspection findings remedied, before the sale can be completed.

After sale, the household must occupy the unit as its principal residence and the unit is subject to a period of affordability equal to the remaining period of affordability that would have been in effect if the unit continued as a HOME rental unit. IHCDA will impose appropriate HOME resale restrictions on the unit for the required period of affordability, in accordance with 24 CRF 92.254(a) and 92.255'

If the owner wishes to sell a HOME rental unit but the current household occupying the unit refuses to purchase, such refusal does not constitute good cause for termination of tenancy through eviction or non-renewal of lease. The owner is obligated to continue providing HOME rental housing throughout the period of affordability.

# Section 6: Compliance Monitoring Procedures

This section outlines IHCDA's procedures for monitoring, in accordance with 24 CFR Part 92 and 24 CFR Part 93.

Monitoring is an ongoing activity that extends throughout the affordability period. IHCDA is required by regulation to conduct compliance monitoring and to take the appropriate steps when noncompliance is discovered.

## Part 6.1 Owner and Management Contacts

IHCDA will send correspondence regarding compliance monitoring and physical inspections to the primary owner contact person and primary management contact person provided in the development's funding application and annually updated in the Annual Owner Certification of Compliance. As part of the Annual Owner Certification documentation, the owner is able to elect one designated primary owner contact and one designated primary management contact per development. IHCDA will allow no more than one primary owner contact and one primary management contact name and address per development.

If at any time the primary contact person for the owner or management agent changes, it is the sole responsibility of the owner to inform IHCDA in writing of such change. Changes in ownership entity must be reported to IHCDA via the "Property Ownership Change Form" (Form #29A if the project includes LIHTC or Form #29B if the project does not include LIHTC). Changes in management entity must be reported to IHCDA via the "Property Management Change Form." The forms are available on IHCDA's compliance webpage. Changes in ownership or transfer requests must be approved by IHCDA. See Part 2.2H for additional information on ownership and management company changes.

Changes in contact information only (no change to the ownership or management entity), can be reported via e-mail to IHCDA's Data and System Specialist.

## Part 6.2 The Compliance Manual

IHCDA provides this Compliance Manual as a resource to owner agents. The manual describes the compliance regulations that owner agents must follow and the compliance monitoring procedures used by IHCDA. **An amended Compliance Manual will be released periodically and the newest edition overrides all previous editions. Except where otherwise noted, all amendments to the Compliance Manual apply to all developments, regardless of year of funding**.

All appendices to the Compliance Manual are available online on IHCDA's Compliance Webpage.

## Part 6.3 Compliance Training

IHCDA will periodically conduct or sponsor compliance trainings in both live and virtual formats. Trainings will be held throughout the year and information regarding the times and dates of the trainings will be distributed by IHCDA via RED Notices.

While participation in training is usually voluntary, IHCDA compliance staff may, at their sole discretion, mandate training attendance for those owner agents that exhibit trends in noncompliance or otherwise demonstrate a need for compliance training.

## Part 6.4 Annual Owner Certification of Compliance

### A. Annual Owner Certification of Compliance

The owner must annually certify project compliance to IHCDA under penalty of perjury. The Annual Owner Certification of Compliance is due on or before February 15$^{th}$ of each year and certifies information for the preceding calendar year. Complete submission includes finalizing the Annual Owner Certification questions, submitting all tenant events in the online reporting system, and payment of annual monitoring fees (if the project has LIHTC). A submission is not complete until the owner completes the

finalization process by submitting the Annual Owner Certification, inputting all tenant events, and then selecting "Finalize Year" in the online reporting system.

The first Annual Owner Certification is due by February 15th of the year following the year of the award's closeout date. **However, the owner must begin reporting tenant events in the online system as soon they occur.** The report covers the period January 1 – December 31 of each year and is due to IHCDA by the close of business February 15th of the next calendar year.

The owner must annually certify that:

1. The development meets the required income and rent set-asides per the award agreement.
2. The owner has completed a Tenant Income Certification form and supporting documentation to support the certification for each low-income household, including income eligibility and for HOME-assisted units student status eligibility.
3. Each program unit in the award was rent-restricted as provided under the program and state requirements;
4. The development is in continuing compliance with all promises, covenants, set-asides, and agreed upon restrictions as set forth in the application, Award Agreement, and recorded restrictive covenant.
5. The unit types, gross rents, utility allowance, and actual rents charged for each unit. The owner must upload documentation for all utility allowances used during the calendar year (January 1st – December 31st);
6. All units in the development are for use by the general public and no finding of discrimination under the Fair Housing Act or VAWA occurred for the award. If such findings have occurred, documentation of such findings must be attached to the certification.
7. Fair housing, equal employment opportunity, and lead-based paint brochures have been distributed to tenants and necessary posters are available onsite. Documentation of each beneficiary's receipt of the brochures is being maintained throughout the period of affordability and is available for inspection by IHCDA.
8. All units are used on a non-transient basis (except for transitional housing units allowed under the award agreement).
9. All units in the development are suitable for occupancy, taking into account all federal, state, and local health, safety, and building codes and the state or local government unit responsible for making health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the development. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice to the certification.
10. All tenant facilities included in the award under the program and state regulations, such as swimming pools, recreational facilities, and parking areas, are provided on a comparable basis without charge to all tenants of the development;
11. No program units in the building became vacant during the applicable year; or one or more program units in the building became vacant during the applicable year and reasonable efforts were/are being made to rent such units to eligible tenants. IHCDA reserves the right to question any vacancies, to ask for proof of reasonable marketing efforts, to request a copy of a waiting list for the property, and to verify through owner certification or inspection that vacant units are habitable and rent ready.
12. No tenant of any low-income unit in the award experienced an increase in income above the limit allowed; or income of tenants of a low-income unit in the award increased above the limit allowed and the appropriate over-income rules were followed (if HOME-assisted).
13. The development meets smoke detector requirements;
14. There have been no changes in entity ownership or if there have been, IHCDA has been provided with all details and all necessary documentation;
15. A recorded lien and restrictive covenant is in effect and the development is in continuing compliance with the terms of the covenant and the award agreement applicable to the development, including certification that the owner cannot refuse to lease a unit in the project to an applicant because that applicant holds a Section 8 voucher.
16. The development is otherwise in compliance with the applicable laws, rules, regulations, and ordinances.

### B. Reporting Tenant Events Online

The Indiana Housing Online Management System was designed as a tool for IHCDA to receive Annual Owner Certifications and conduct compliance checks. All IHCDA-assisted rental developments are required to enter tenant events using the Indiana Housing

Online Management system. Tenant events include move-ins, move-outs, annual recertifications, unit transfers, rent and utility allowance changes, household composition updates, and student status updates. Tenant events that must be reported online do not include interim recertifications performed for other programs, such as Section 8 or RD. **All tenant events must be entered into the system within 30 days of the event date.**

It is mandatory that all tenant events be submitted electronically using the Indiana Housing Online Management website for all developments that contain IHCDA-assisted units (e.g. HOME, CDBG, CDBG-D, NSP, HTF, LIHTC, Section 1602, TCAP, Bonds, and/or Development Fund/Trust Fund). This online tenant event reporting process eliminates the former process of submitting a hardcopy "Beneficiary Report Spreadsheet."

To use the rental reporting system or register to become a user, please visit the Indiana Housing Online Management System.

IHCDA will set up the buildings for a project in the online reporting system and approve one project owner web user. It is then the responsibility of that project owner web user to approve designated management web users and to set up the individual units within the buildings. IHCDA's compliance webpage includes an online reporting system training and FAQ that further describes user roles and permissions.

After reviewing the Owner Certification and the online tenant events, IHCDA will notify the owner in writing of any errors or incompleteness and will allow an appropriate correction period. All correspondence to the owner will be sent electronically.

## Part 6.5 IHCDA Tenant File Reviews and Inspections

IHCDA reserves the right to review a development's tenant/unit files and related records either via desktop review (files submitted electronically to IHCDA offices) or onsite at the development and to perform physical inspections as deemed necessary throughout the period of affordability.

All properties will be subject to tenant file audits and physical unit inspections at least once every three years throughout the affordability period, beginning the third year after project closeout/beginning of the affordability period. IHCDA reserves the right to inspect the files and/or physical units at any time at its discretion, with or without advance notification to the owner agent. Decisions to monitor/inspect more frequently may be based on tenant complaints or IHCDA's assessment that a project is high risk. A project may be deemed high risk based on compliance issues identified through the Annual Owner Certification, previous monitorings or inspections, or on financial issues identified through the annual financial review (if applicable).

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, file monitoring or inspection must include a review of at least the number of units identified in the Minimum Unit Sample Size Chart below.
- Inspectable areas under NSPIRE will be inspected for all buildings. Inspectable areas include unit, inside, and outside. See the NSPIRE affirmative habitability requirements in Part 4.5D.

The IHCDA Auditor or Inspector may, at their sole discretion, choose to expand the sample size. Circumstances warranting an expansion of the sample size could include, but are not limited to:

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

**Table: Minimum Inspection Sample Size per 24 CFR 92.251f**

| Number of assisted units in the project | Minimum unit sample size |
| --- | --- |
| 1-4 | 100% of units |
| 5-20 | 4 units |
| 21-130 | 20% of units, rounded up |
| 131-166 | 27 |
| 167-214 | 28 |
| 215-295 | 29 |
| 296-455 | 30 |
| 456-920 | 31 |
| 921+ | 32 |

## A. Tenant File Audits

All developments will have a tenant file audit in the same year the development has a physical inspection. IHCDA staff or a representative of IHCDA will conduct the audit. The audit will either be conducted onsite or through a desktop review. Regardless of whether it is done onsite or offsite, the audit will consist of the following:

1. Fair Housing and Equal Opportunity - Are the fair housing and equal opportunity posters displayed at:

    - The property location if a single site project; and/or
    - At the site where residents apply for housing.

2. Lead Based Paint Educational Information (if applicable) - Is the Lead Based Paint Poster displayed at:

    - The property location if a single site project; and/or
    - At the site where residents apply for housing.

3. Affirmative Marketing- Projects with five or more assisted units must follow Affirmative Fair Housing Marketing procedures.

    - IHCDA will review the Affirmative Marketing Plan process utilized in determining the market least likely to apply for housing, and how the units were marketed to this segment of the population. IHCDA will review documentation including brochures, advertisements, and marketing materials that were utilized;

    - Affirmative Fair Housing Marketing Plans must be evaluated at least once every five years and updated according to the policies of the Fair Housing and Equal Opportunity Office of the Department of Housing and Urban Development (HUD). All updated Affirmative Fair Housing Marketing Plans must be submitted to IHCDA.

    - The Affirmative Fair Housing Marketing Plan must be created using HUD Form 935.2A.

4. Tenant Selection Plans - IHCDA will review the written tenant selection plan. The plan should allow IHCDA staff to determine how tenants are selected and the criteria used for approving or denying applicants. See Part 4.2(E) for more information on Tenant Selection Plans.

5. Lease- IHCDA will review the template lease and all lease addenda to ensure all program requirements are met and that no prohibited language is included. This includes review of required addenda for receipt of brochures, VAWA lease addenda, etc.

6. Utility Allowance - IHCDA will review documentation of utilities paid by the tenant versus those paid by the owner. IHCDA will request copies of utility allowances for the past three years.

7. Tenant Files - For each unit randomly selected, a file must be available containing the following documentation:

    - Lease (original and current);
    - Lease addenda forms- e.g., HOME or HTF/CDBG/NSP Program Lease Addendum, VAWA Addendum, etc.
    - Tenant Income Certification (TIC) form;
    - Tenant Income Questionnaire form(s);
    - Income and asset verifications;
    - Student status certifications (for HOME-assisted units)
    - Documentation acknowledging receipt of the applicable brochures (Fair Housing & Lead Based Paint); and
    - For tenants receiving tenant-based Section 8 vouchers, a copy of either (1) the Housing Assistance Payment (HAP) Contract and the current HAP Amendment from the Public Housing Authority, or, (2) a copy of the current HUD Form 50058. For tenants in Section 8 Project Based Voucher (PBV) units, a copy of either (1) the current HUD Form 50058 showing the amount of rental assistance or (2) HUD Form 52530 Tenancy Addendum Section 8 Project-Based Voucher Program. For tenants in Section 8 Project Based Rental Assistance (PBRA) units or Section 811 Project Rental Assistance (811 PRA), a copy of the current HUD Form 50059 showing the amount of rental assistance.
    - For tenants residing in units with USDA Rural Housing Service assistance, the current RD Form 3560-8 Tenant Certification must be included in the file.

**When performing an onsite (at the development or management office) review, IHCDA will do the following:**

1. As a courtesy, IHCDA will notify the owner agent 10-14 days in advance of the intended site visit. **However, IHCDA reserves the right to monitor or inspect any unit/tenant file at any time at its discretion without prior notification**.
2. The auditor will randomly choose a sample of files for review using the sample size defined above. IHCDA will not provide advance notice of which tenant files will be reviewed during an onsite audit. The owner agent must have all tenant files accessible (including initial and move-out files) when the IHCDA Compliance Auditor arrives onsite. The auditor will randomly choose a selection of files for review, using the sample size methodology described above.
3. Provide an exit interview summary to the onsite representative.
4. Inform the owner agent of any findings of noncompliance with regard to such review.
5. Allow the owner 30 days to notify IHCDA of any correction of noncompliance.

NOTE: If files are not available or are in such a condition that the IHCDA Auditor cannot effectively review the files, the 30-day correction period will begin immediately.

**When performing an in-house (at IHCDA office) file audit, IHCDA will:**

1. Notify the owner agent in writing which unit files have been selected for review;
2. Request that electronic copies of selected files and documentation be submitted through an IHCDA approved file transfer site. Contact your IHCDA Compliance Auditor to set up the file transfer folder.
3. Ask for a current rent roll and utility allowance information;
4. Securely delete all tenant files and confidential information after the review is completed;
5. Give a time frame in which the tenant file documentation must be submitted. IHCDA requires files to be submitted within 14 days of notification of the monitoring;
6. Inform the owner agent of any findings of noncompliance with regard to such review; and
7. Allow the owner 30 days to notify IHCDA of any correction of noncompliance.

NOTE: The desktop notification/file request letter will include a checklist of the items that must be included in each tenant file submitted. When reviewing copies of the files, IHCDA will expect to see all applicable documents listed on the checklist, in the approximate order that they are listed (leasing information, tenant information, income verifications, asset verifications, other clarifications). Auditors will not review files that are submitted in a disorderly or incomplete fashion. If files are not available or are in such an unorganized condition that an IHCDA Auditor cannot effectively review the files, the 30-day correction period will begin immediately.

## B. Physical Inspections

Prior to performing an onsite development inspection, IHCDA or its third-party inspector will:

1. Notify the owner agent of the date and approximate time the inspection will take place.
2. Request that an owner representative be present and accompany the inspector throughout the entire inspection process.

**All** units and buildings must be available for interior and exterior inspections (vacant units, occupied units, and common areas inclusive). Staff will ask to inspect specific units whether the unit is occupied or not and will not give advance notice as to which units will be inspected. Units to be inspected will be selected randomly at the time of inspection.

After performing an inspection, IHCDA will:

1. Immediately provide the owner representative, if applicable, a copy of a Critical Violations Letter identifying all life-threatening or severe issues (per the NSPIRE severity classification) observed at the time of the inspection that require immediate corrections. **All life-threatening or severe issues identified in the Critical Violations Letter must be corrected within 24 hours and IHCDA must be notified of the completed corrections within 72 hours.**
2. Send a copy of the inspection report to the owner agent. The report will identify all issues and define the correction time frame per the NSPIRE severity classifications and correction period. 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, photos, receipts, and/or invoices, along with an owner-signed affidavit attesting completion of repairs, be forwarded to IHCDA within the allotted correction time frame indicated in the inspection report.
5. Schedule a second inspection if necessary.
6. Review the correction documents for correlation with the inspection report to ensure issues are properly remedied.
7. Send a letter either indicating that no further corrective actions are needed or identifying what deficiencies still exist.

For more information, see the Inspection Process Flow Chart in Appendix D.

## C. Financial Review for HOME & HTF

For each HOME or HTF project with 10 or more units (total units, not assisted units), IHCDA must annually review the financial condition of the project to determine "the continued financial viability of the housing" in accordance with the Financial Oversight requirements of 24 CFR 92.504(d)(2). IHCDA must take actions, as feasible, to correct any problems identified through financial review.

IHCDA's underwriting staff will request the following items be submitted by the owner to conduct the financial review:

1. Property specific financial information for the previous year:
   - Most recent audited financial statements for the property (if applicable); or
   - Property's internal financial statements – including Balance Sheet and Profit and Loss Statement
2. Monthly rent rolls for the previous year
3. Property insurance and tax payments for the previous year:
   - Evidence of property insurance payment; and
   - Evidence of property tax payment.

If the project financials are incorporated into the owner entity's overall financial statements, IHCDA will request to review the owner entity's financial statements (most recent audit and/or internal financial statements) to make sure the entity has sufficient financial capacity to manage and sustain the project.

Exception: If all sufficient financial information can be gathered from the financial information submitted as part of the property's Annual Owner Certification of Compliance, IHCDA staff will not request submission of additional financial statements.

When performing a financial review, IHCDA will:

1. Notify the owner agent in writing and provide 14 days to submit the requested documents, unless sufficient information can be gathered from the Annual Owner Certification
2. Evaluate the financial capacity of the property
3. Inform the owner agent of any financial concerns. If concerns exist, the owner and/or management will be subject to more frequent financial submission (monthly or quarterly) so that IHCDA can closely monitor financial performance.

## Part 6.6 Modifications

An owner may request changes to the characteristics of the development, such as unit types, unit distribution, income and rent limits, target population, etc. A modification request must be made by submitting a formal request letter to IHCDA that includes a narrative explanation of the nature of the requested modification and a justification as to why the modification is needed. HCDA will modify any legal documents, such as the recorded lien and restrictive covenant, if the modification request is approved.

Approval of modification requests is at the sole discretion of IHCDA. IHCDA must evaluate each request to see how the change would have affected original scoring and underwriting of the project, to ensure the modification is necessary for the ongoing success and feasibility of the project, and to ensure the proposed change will not cause noncompliance with any program regulations. IHCDA will request appropriate supporting documentation when reviewing a modification request. Such documentation may include property financial statements, rent rolls, updated underwriting and project pro formas, etc.

## Part 6.7 Amendments to Compliance Monitoring Procedures

The compliance monitoring procedures and requirements set forth herein are issued by IHCDA pursuant to applicable HUD regulations and published guidance. These provisions may be amended by IHCDA for purposes of conforming with the regulations and guidance and/or as may otherwise be appropriate as determined by IHCDA. In the event of any inconsistency or conflict between this manual and code or regulations, the provisions set forth in the code or regulations shall prevail.

IHCDA periodically releases Real Estate Department (RED) Notices containing updates on policies, forms, and other issues relevant to program compliance. These notices are available online at the RED Notices Webpage.

# Section 7: Noncompliance

## Part 7.1 Types of Noncompliance

Generally, a development is out of compliance if during the period of affordability:

1. The development no longer meets the set-aside requirements of the application, the income and rent restriction requirements of the program, or other requirements for the units which are set-aside;
2. The owner fails to submit the annual utility allowance documentation, Annual Owner Certification, or tenant events, along with any applicable supporting documentation in a timely manner;
3. An ineligible household resides in a program unit (including a student ineligible household for HOME-assisted units);
4. A unit or building is no longer suitable for occupancy or otherwise in violation of NSPIRE physical inspection standards; or
5. The owner does not comply with IHCDA's requests to conduct a physical inspection or file audit.

## Part 7.2 Consequences

Penalties include, but are not limited to, the following:

1. Recapture of award funds (see Part 7.6 below);
2. Negative points on future applications;
3. Rejection of future applications (i.e., suspension or debarment);
4. Repayment of rent overages;
5. Mandatory attendance at an IHCDA sponsored compliance training; and/or
6. An increase in the frequency of IHCDA audits/inspections

## Part 7.3 Notification of Noncompliance to Owner by IHCDA

IHCDA will provide written notice of noncompliance to the owner agent if:

1. Any required submissions are not received by the due dates;
2. Tenant files including Tenant Income Certification, Income Questionnaires, supporting verification documentation, and rent records are not made available during an audit or not submitted when requested by IHCDA; and/or
3. The development is found to be out of compliance through physical unit inspection, Annual Owner Certification review, file audit, or other means.

IHCDA will not provide documentation for specific awards to more than one contact person in an ownership entity for each award. If other individuals within an ownership entity wish to receive such documentation, they must obtain it from the contact person designated as the "Primary Owner" contact.

## Part 7.4 Notification of Noncompliance to IHCDA by Owner

If the owner agent determines that a unit, building, or an entire development is out of compliance with program requirements, IHCDA should be notified immediately. The owner agent must formulate a plan to bring the development back into compliance and advise IHCDA in writing of such a plan. The owner agent must keep documentation outlining: the noncompliance issue, date the noncompliance issue was discovered, date that noncompliance issue was corrected, and actions taken to correct noncompliance.

Additionally, the owner agent is responsible for replacing temporarily noncompliant HOME units (units where the household exceeds 80% AMI) as per the guidelines in Part 3.1 C.

## Part 7.5 Correction Period

Should IHCDA discover (through physical inspection, file monitoring, Annual Owner Certification review, or in any other manner) that a development is out of compliance with program requirements, IHCDA shall notify the owner agent. The owner agent must commence appropriate action to cure such noncompliance.

The owner shall have a maximum of 30 days from the date of notice to cure the noncompliance. If IHCDA determines that there is good cause, an extension may be granted.

For physical inspections, the maximum correction period under NSPIRE standards is 24 hours for life-threatening or severe issues, 30 days for moderate severity issues, or 60 days for low severity issues.

## Part 7.6 Recapture

If funds are recaptured because the housing no longer meets affordability requirements, regardless of entity or activity, these funds must be returned to IHCDA.

The award recipient must ensure that a lien and restrictive covenant is executed against every property constructed, rehabilitated, or acquired, in whole or in part, with HOME, HTF, CDBG, CDBG-D, or NSP funds. Upon occurrence of any of the following events during the Affordability Period, the entire sum secured by the lien, without interest, shall be due and payable by developer and/or owner upon demand. Repayment may be demanded upon: (1) Transfer or conveyance of the real estate by deed, land contract, lease, or otherwise, during the Affordability Period; (2) Commencement of foreclosure proceedings by any mortgagee (or deed in lieu of foreclosure), within the Affordability Period; (3) Units not being used as a residence by a qualifying tenant or not leased according to the program affordability requirements. The award recipient will be responsible for repaying IHCDA for any HOME, HTF, CDBG, CDBG-D, or NSP funds utilized for any housing constructed, redeveloped, rehabilitated, or acquired that does not meet the affordability requirements throughout the Affordability Period.

## Part 7.7|Tenant Misrepresentation or Fraud

If fraud/misrepresentation of information is discovered while processing an application for residency, the applicant should be denied. Handling tenant fraud becomes more problematic when the fraud is 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. For more information on termination of tenancy, see Part 5.6 E.

If tenant fraud/misrepresentation is discovered the following steps should be followed immediately.

1. Notify IHCDA that an incident of tenant fraud has been identified and provide a written explanation of what happened. As long as the incident was identified prior to an IHCDA audit and a corrective plan is in placed, the incident will not be considered noncompliance.
2. 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 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. By including such language, the recipient is showing a zero tolerance policy for tenant fraud.

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.

## Part 7.8|Owner Fraud

If IHCDA 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:

1. The entity will placed on IHCDA's suspension list until further investigation is completed.
2. If warranted, IHCDA will debar the entities involved as outlined in Part 7.9.
3. If warranted, IHCDA will recapture the funds as outlined in Part 7.6.

Other noncompliance penalties such as increased auditing, rejection of future applications, etc. as outlined in Part 7.2 may also apply.

## Part 7.9 Suspension and Debarment

### A. Purpose of Policy

As a recipient of federal and state funds, IHCDA has a moral and legal obligation to ensure that those funds are used as intended. To fulfill this duty, IHCDA must have the discretion to suspend or debar those who misuse, abuse, or otherwise fail to use funds correctly.

The purpose of this policy is to define suspension as it relates to noncompliance misuse of funds on IHCDA funded rental projects during the period of affordability and to explain how suspension is recommended, approved, and maintained.

This policy, while in alignment with the agency's overall suspension policy, applies specifically to the programs administered and monitored by IHCDA's Real Estate Development Department. These programs include Low-income Housing Tax Credits, tax-exempt bonds, the HOME Investment Partnerships Program, Tax Credit Assistance Program (TCAP), Section 1602 Exchange, Community Development Block Grants (CDBG & CDBG-D), the Neighborhood Stabilization Program (NSP), the National Housing Trust Fund (HTF), the Indiana Affordable Housing & Community Development Fund ("Development Fund"), Project Based Vouchers, and Section 811 Project Rental Assistance.

### B. Scope of Persons Affected

This policy applies to all persons directly or indirectly receiving, administering, or associated with funds from an IHCDA Program whether or not such person has a contractual relationship with IHCDA, including but not limited to the following persons:

- Contractors
- Sub-contractors
- Applicants
- Award/ grant recipients
- Borrowers
- Sub-recipients
- Sub-grantees
- Property owners
- Developers
- Syndicators
- Administrators
- Management companies/agents
- Individuals employed by, contracted by or affiliated with any of the persons listed

Such persons will be referred to as "affected persons" in this policy. For the purposes of this policy, the term "person" shall be interpreted broadly to mean any individual, trust, cooperative, association, organization, or any other entity.

## C. Definitions

Affected person is defined as any person directly or indirectly receiving, administering, or associated with funds from an IHCDA Program whether or not such person has a contractual relationship with IHCDA. For the purposes of this policy, the term "person" shall be interpreted broadly to mean any individual, trust, cooperative, association, organization, or any other entity. Examples of types of affected persons can be found in Part B above.

Debarment is defined as a determined period of time during which an affected person is prohibited from participating in an IHCDA Program(s). See Part K below for additional information on debarment.

Suspension is defined as 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 IHCDA's concerns and any identified issues have been resolved.

Parts D through G below discuss suspension recommendations based on noncompliance. Other scenarios resulting in the recommendation of suspension are not discussed in detail but will follow the same basic guidelines herein, including issuance of (1) preliminary issue letters giving the affected person the opportunity to satisfy concerns, (2) a suspension recommendation letter notifying the affected person that suspension has been recommended, and (3) an official notice that suspension has been invoked.

Suspension does not waive any compliance requirements or release the project from its affordability period. A suspended organization must continue to keep its project(s) in compliance and work towards remedying any issues with the project(s) that caused the suspension recommendation. Failure to do so could result in further penalties as outlined in Part L below.

Suspension list is defined as IHCDA's internal roster of entities that have been officially suspended. IHCDA will also maintain a list of entities recommended for suspension but not yet officially suspended. This may also be referred to as the "watch list."

Suspension recommendation is defined as the act of an IHCDA employee recommending (usually based on the persistence of uncorrected noncompliance) that an entity be disqualified from future IHCDA funding by being placed on the IHCDA's Suspension List. A suspension recommendation does not implement an actual suspension until approved by the appropriate IHCDA staff.

## D. Suspension Recommendation Based on Failure to Submit Annual Owner Certification

If an Annual Owner Certification is not received for a particular project/award, IHCDA will send a notification letter to the designated contacts giving a final 10-day correction period to submit. There are two possible results following issuance of this letter:

- If the Annual Owner Certification is submitted, it will be reviewed by the assigned Compliance Auditor. Issues identified could result in a suspension recommendation.
- If the Annual Owner Certification is not submitted, the organization will be recommended for suspension.

A recommendation for suspension can be made by any Compliance Auditor by issuing the letter entitled "Notice of Suspension List Recommendation." This letter serves only as a notice that suspension has been recommended, not that suspension has actually gone into effect.

If suspension is implemented, a letter will be issued directly by the Chief Real Estate Development Officer as described in Part I below.

## E. Suspension Recommendation Based on Failure to Correct Owner Certification Issues

After review of an Annual Owner Certification of Compliance, the affected person is sent either a "no issue" or an "issues identified" letter. If issues are identified, the owner/recipient is given a 30-day correction period to respond. There are three possible results following issuance of an issues identified letter:

- If a correction response is received that adequately resolves the issues, the Annual Owner Certification is closed and an "issues resolved" letter is sent.

- If a correction response is received but the issues are not adequately resolved, a follow-up letter is sent identifying the remaining issues and giving an additional 10 days to submit additional documentation. If no response is received after this additional 10 days, a follow-up letter is sent giving a final 10-day correction period. This letter states that failure to submit the requested response will result in recommendation of suspension.
- If no response is received during the correction period, a follow-up letter is sent giving a final 10- day correction period. This letter states that failure to submit the requested response will result in recommendation of suspension.

If the response is not received after the final letter is sent, the affected person will be recommended for suspension. A recommendation for suspension can be made by any Compliance Auditor by issuing the letter entitled "Notice of Suspension List Recommendation." This letter serves only as a notice that suspension has been recommended, not that suspension has actually gone into effect.

If suspension is implemented, a letter will be issued directly by the Chief Real Estate Development Officer as described in Part I below.

### F. Suspension Recommendation Based on Failure to Cooperate with File Audit Request

If files are not submitted for a desktop request or the auditor is not given access to files for an onsite audit, IHCDA will send a notification letter giving a final 10-day correction period. There are two possible results following issuance of this letter:

- If the files are submitted, they will be reviewed by the assigned Compliance Auditor. Issues identified could result in a suspension recommendation as defined in Part G below.
- If the files are not submitted, the organization will be recommended for suspension.

A recommendation for suspension can be made by any Compliance Auditor by issuing the letter entitled "Notice of Suspension List Recommendation." This letter serves only as a notice that suspension has been recommended, not that suspension has actually gone into effect.

If suspension is implemented, a letter will be issued directly by the Chief Real Estate Development Officer as described in Part I below.

### G. Suspension Recommendation Based on Failure to Correct Audit Issues

After completion of a tenant file audit, the affected person is sent either a "no issues" or an "issues identified" letter. If issues are identified, the affected person is given a 30-day correction period to respond. There are three possible results following issuance of an issues identified letter:

- If a response is submitted that resolves the issues, the audit is closed and an "issues resolved" letter is sent.
- If a response is submitted but the issues are not adequately resolved, a follow-up letter is sent identifying the remaining issues and giving an additional 30 days to submit additional documentation. If no response is received after this additional 30 days, a follow-up letter is sent giving a final 10-day correction period. This letter states that failure to submit the requested response will result in recommendation of suspension.
- If no response is provided during the correction period, a follow-up letter is sent giving a final 10-day correction period. This letter states that failure to submit the requested response will result in recommendation of suspension.

If the response is not received after the final letter is sent, the affected person will be recommended for suspension. A recommendation for suspension can be made by any Compliance Auditor by issuing the letter entitled "Notice of Suspension List Recommendation." This letter serves only as a notice that suspension has been recommended, not that suspension has actually gone into effect.

If suspension is implemented, a letter will be issued directly by the Chief Real Estate Development Officer as described in Part I below.

### H. Suspension Recommendation Based on Physical Inspection Issues

If IHCDA is denied access to conduct a physical inspection or issues identified during an inspection are not corrected (and proof of correction provided to IHCDA) within the correction timeframe established by the NSPIRE inspection protocol, IHCDA's inspector

may issue a recommendation for suspension by issuing the letter entitled "Notice of Suspension List Recommendation." This letter serves only as a notice that suspension has been recommended, not that suspension has actually gone into effect.

If suspension is implemented, a letter will be issued directly by the Chief Real Estate Development Officer as described in Part I below.

### I. Suspending an Organization

After a suspension recommendation letter has been sent, the recommendation will be reviewed by the Chief Real Estate Development Officer and Director of Real Estate Compliance. This review will ensure that the proper steps were taken by IHCDA staff and that the issue (1) has not been resolved and (2) warrants the suspension recommendation.

If suspension is invoked, the affected person will receive an official "Notice of Suspension" letter stating that the organization has been added to IHCDA's Suspension List effective the date of the letter. All suspension letters will come directly from the Chief Real Estate Development Officer, not from a Compliance Auditor. A copy of the letter will be sent to IHCDA's General Counsel. Copies of the suspension letter and all prior notifications will be maintained by IHCDA in the file for the applicable project/award.

Suspension is at the sole discretion of IHCDA. Unless otherwise stated, a suspension or debarment will apply to not only the affected person, but to any entity owned, controlled, or managed by the affected person or a spouse, domestic partner, child, sibling, aunt, uncle, niece, nephew, cousin, grandchild, parent or grandparent of the affected person, including "in-laws", "half" or "step" relations.

### J. Maintaining a Suspension and Debarment List

IHCDA will internally maintain a list of entities recommended for suspension, suspended entities, and debarred entities (for more information on debarment see Part K below). This list will be available to IHCDA management and appropriate staff. Because the suspension list will apply to the entire agency and be made available across departments, suspension based on performance on a Real Estate Department award could affect funding from other IHCDA departments' funding sources.

### K. Removal from Suspension List / Reinstating an Organization

An affected person can be removed from the suspension list if the original issues that invoked the suspension are sufficiently resolved, the necessary documentation proving such is submitted to IHCDA, and the project is considered otherwise in compliance.

To request removal from the suspension list, the affected person must send a letter to IHCDA's Chief Real Estate Development Officer requesting such removal and providing a narrative of how the outstanding issues have been resolved. All necessary supporting documentation to prove compliance should be attached to the letter. Upon receipt of the request, the Chief Real Estate Development Officer, Director of Real Estate Compliance, and the Compliance Auditor or inspector that originally recommended suspension (if applicable) will meet to review and make a determination. Removal from the suspension list is at the sole discretion of IHCDA.

### L. Debarment

In its sole discretion, IHCDA may debar an affected person from participation in an IHCDA Program(s) for a set of time based on reasonable evidence that the affected person has behaved or is behaving improperly with regard to an IHCDA Program(s), whether intentionally or unintentionally. The period of debarment may be permanent/in perpetuity or a set number of years.

The difference between suspension and debarment is that a suspension is used to allow IHCDA to determine whether a debarment or other action is warranted pending completion of an investigation. Therefore, suspension is an indefinite but temporary measure, while debarment is for a set amount of time.

An IHCDA decision to debar an affected person may be appealed within 30 calendar days of notice to the affected person of that decision. The appeal must be in writing and contain, at a minimum, the reasons for the appeal and supporting documentation or evidence. The appeal should be sent to IHCDA, 30 South Meridian Street, Suite 900, Indianapolis, IN 46204, Attn: Chief Real Estate Development Officer. The Chief Real Estate Development Officer will review with IHCDA's General Counsel and respond to the appeal within 45 calendar days of the receipt of the appeal. The response to the appeal is not appealable.

An IHCDA decision to suspend an affected person is not appealable because it does not represent final disposition on the matter.

IHCDA will maintain a publicly available list on its website of all debarred entities.

## M. Potential Recapture

In addition to suspension or debarment by IHCDA, affected persons found to be out of compliance with the HOME, CDBG, CDBG-D, or NSP programs are subject to all recourse under the regulations and statutes of those programs, including possible recapture of funds. If an affected person remains on the suspension or debarment list for more than 90 days and has not informed IHCDA of corrective actions in progress, IHCDA will consider that affected person noncompliant and begin the process of recapturing funds for the project(s) that invoked the suspension.