

# HOME PROGRAM REQUIREMENTS OWNER'S GUIDE

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## **INTRODUCTION**

The purpose of this guide is to provide owners of buildings rehabilitated using HOME funds with information on the various requirements of the HOME program. The primary goal of the HOME program is to provide affordable housing for low and very low-income households. It is essential that participating owners verify and document the eligibility of all tenants selected for occupancy in a HOME-assisted unit. Accordingly, emphasis in this guide is placed on tenant income and rent limits. Owners should carefully review the information in this guide pertaining to income and rent limits.

**As indicated throughout this guide, HPD's website (see link below) includes updated Income & Rent Limits (including utility allowances), as well as compliance forms that Owners should use:**

<https://www1.nyc.gov/site/hpd/services-and-information/tax-credit-and-home-compliance.page>

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## 1.0 ABOUT THE PROGRAM

### 1.1 PROGRAM BACKGROUND

The HOME Investment Partnerships Act (The HOME Act, Title II of the Cranston-Gonzalez National Affordable Housing Act) was signed into law on November 28, 1990, and created the HOME Investment Partnership Program to expand the supply of decent, affordable housing for low and very low-income households. Since enactment, the original statute has been amended four times and a final rule was issued in 2013.

The Department of Housing Preservation and Development utilizes federal HOME funds to finance the construction of new and the rehabilitation of existing housing, including vacant and occupied single room occupancy buildings (SRO), small homes (buildings with fewer than 12 units) and multi-family buildings. The use of HOME funds requires owners to meet certain federal requirements indicated below.

- Rent Levels
- Relocation of Tenants
- Home Unit Designation
- Housing Quality Standards
- Environmental Standards
- Lead Paint Notification and Abatement
- Labor Standards/ Prevailing Wages
- Affirmative Marketing

### 1.2 PROGRAM OVERVIEW

In general, a HOME project can be viewed as going through three stages:

- 1) PRE-DEVELOPMENT
- 2) CONSTRUCTION/PROJECT COMPLETION
- 3) POST-COMPLETION MONITORING

Below is a brief description of each stage. It is important for owners to consult with their HPD Loan Program Officer to ensure that all of the HOME requirements are met during the Pre-Development and Construction stages. This will help ensure that subsequent Post-Completion Monitoring will not result in any findings of non-compliance.

#### STAGE 1: PRE-DEVELOPMENT:

Preliminary Tenant Certification:	For <b>occupied</b> buildings only, a preliminary certification of tenant incomes must be conducted by the owner to allow the HPD Loan Program Officer responsible for the project to determine the potential number of eligible HOME tenants, the amount of HOME funds, and the number of HOME units in the project. Owners must distribute and collect income certifications for all tenants in the project and submit the completed certifications to HPD. Owners are strongly advised to secure third party verification of tenant incomes at this stage (See Sections 2.5 and 2.6 on determining and documenting annual income). Collecting income documentation at an early stage will provide greater certainty in calculating the HOME subsidy at project completion.
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Project Set-Up:	To begin a project, a Project Set-Up Report must be completed by HPD and sent to HUD. The report contains information about the cost of the project, the estimated number of HOME units, and information gathered from preliminary tenant certifications.
Environmental Clearances:	Any HOME-funded project must have an environmental clearance that includes a flood plain review and a Landmarks Preservation Commission review. Your HPD Loan Program Officer will ensure compliance with these requirements.
Lead Paint Notice:	Except for occupants of SRO's, tenants must be notified by the owner of the dangers of lead paint, especially if children under the age of seven reside in the project. If lead paint exists, it must be abated. Your HPD Loan Officer will provide information concerning lead paint that must be distributed to existing tenants. Prior to a construction loan closing, the owner must submit a certification to their HPD Loan Officer stating that they have read and distributed the informational material to their tenants.
Relocation Letters:	In accordance with the Uniform Relocation Assistance and Real Property Acquisitions Act, tenants (residential and commercial) must be notified prior to loan closing that federal funds are being used to rehabilitate their building. They must further be notified that they will not be permanently relocated and must be notified of their rights to receive compensation for any temporary relocation. If tenants have to be temporarily relocated, the moving expenses must be paid by the owner and the owner must also pay the difference, if any, between the higher new rents for the temporary replacement dwelling and old rents for the units from which the tenants are displaced. Commercial tenants are entitled to the costs of permanent relocation. Your HPD Loan Program Officer will provide material regarding HPD's Tenant Assistance Policy, which includes information concerning relocation. The owner is required to distribute this material to existing tenants and secure tenant signatures that document that they have received this information.
HOME Written Agreement:	Before HOME funds can be used for a project, HPD and the owner must enter into a HOME Written Agreement. The HOME Written Agreement is usually executed at the construction loan closing. The agreement details most of the legal requirements of the HOME Program and remains in effect during the affordability period. The agreement also specifies the number of HOME units by apartment size. (The actual designation of specific units as HOME-assisted is made at the time of the completion report). It is extremely important that owners be familiar with the terms and conditions of the HOME Written Agreement for their projects.

## STAGE 2: CONSTRUCTION/PROJECT COMPLETION:

Rehabilitation:	During this stage the rehabilitation of the project is carried out.
UPCS Inspection:	Shortly after the completion of the rehabilitation, each HOME-assisted unit in the building is inspected by HPD to verify compliance with Uniform Physical Condition Standards (see Section 5.4).
Rent-up & Final Tenant Income Certification:	<p>Prior to the completion of construction, the owner must begin the final tenant certification process. The process is slightly different for vacant and occupied projects:</p> <p><b>Vacant Units/Projects:</b> For these, the owner must select tenants in accordance with an affirmative marketing plan (see Section 5.3). Owners must discuss with their Loan Program Officer the required procedures regarding tenant selection. Before leasing a vacant HOME unit, the owner must secure from the tenant a certification of income and household composition (see HPD website for form). The owner must secure documentation of all income sources indicated on the tenant's certification before the tenant moves into the unit. This will prevent leasing a HOME</p>

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unit to an ineligible tenant should a discrepancy in the household's reported income be discovered. The owner must submit the tenant certifications along with a certified rent roll (see HPD website for form) to the HPD Loan Program Officer responsible for their project. The certified rent roll will serve to designate which units are HOME-assisted.

**Occupied Units/Projects:** The owner must secure from each tenant who will reside in a HOME-assisted unit a final certification of annual income and household composition (see HPD website for form), along with verification of all income sources indicated. The owner must submit the tenant certifications along with a certified rent roll (see HPD website for form) to the HPD Loan Program Officer responsible for their project. The certified rent roll will serve to designate units as HOME-assisted. If a tenant has become ineligible since the date of the preliminary certification, documentation supporting the tenant's earlier income eligibility determination must also be provided with the certified rent roll. If no documentation was obtained with the preliminary certification, the tenant is not eligible. As a result, it will be necessary to either designate a new HOME-assisted unit that is occupied by an eligible tenant or reduce the number of HOME units in the project. This should be discussed with your Loan Program Officer.

HOME Unit Designation:	At completion, the owner must designate which units in the project will be HOME-assisted. The number and size of the units designated must be consistent with the HOME Written Agreement. As previously discussed, the required number of HOME units is based on the amount of HOME funds allocated to the project. The certified rent roll submitted by the owner will serve to designate which units are HOME-assisted. Upon designation, HOME units remain fixed throughout the length of the affordability period.
Project Completion Report:	Within 120 days of the final drawdown of HOME funds for a project, a Project Completion Report must be submitted by HPD to HUD. The tenant income and rent information contained in the report is based on the certified rent roll and tenant certifications provided by the owner. As previously indicated, the owner must ensure that all the required information is submitted to the appropriate HPD Loan Program Officer. A delay in the submission of the certified rent roll and tenant certifications will result in a delay in the commencement (and completion) of the Affordability Period (see Section 5.2).

### **STAGE 3: AFFORDABILITY PERIOD/POST COMPLETION MONITORING:**

Affordability Period:	The affordability period for a HOME project can be 5, 10, 15 or 20 years, depending on the type of project (see Section 5.2). During this period, the HOME-assisted units must meet the affordability requirements regarding rent and income.
Recertification:	The owner must conduct an annual income recertification for each tenant in a HOME-assisted unit during the affordability period (see Section 2.4).
Inspections:	Periodic inspections of HOME-assisted units will be conducted by HPD to ensure compliance with federal Uniform Physical Condition Standards (see Section 5.4).
Compliance Monitoring:	In order to ensure compliance with the HOME requirements on rent, income and other matters covered by the HOME Written Agreement, the project will be subject to HPD's compliance monitoring.

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## 2.0 TENANT ELIGIBILITY

### 2.1 INCOME TARGETING

The income requirements indicated below must be met by all projects receiving HOME funds. (For HOME projects that combine Low-Income Tax Credits, the income requirements are slightly different. See Section 6.0: HOME AND TAX CREDITS).

- At least 20% of the families occupying HOME-assisted units must have incomes at or below 50% of median income. Note: This applies to projects with 5 or more HOME units.
- At least 90% of the families occupying HOME-assisted units must have incomes at or below 60% of median income (includes the above 20%).
- 100% of the families occupying HOME-assisted units must have incomes at or below 80% of median income (includes the 20% and 90% noted above).

**EXAMPLE:** for a project with 50 units, of which 40 are HOME-assisted:

NUMBER OF UNITS	TENANT INCOME LIMIT	CUMULATIVE %
8	At or below 50% of median income.	20%
28	At or below 60% of median income.	90%
4	At or below 80% of median income*.	100%
<u>10</u>	Unrestricted	N/A
Total: 50		

### HOME INCOME LIMITS

Owners are advised to check HPD's website for updated versions of Income & Rent Limits, including Utility allowances at <https://www1.nyc.gov/site/hpd/services-and-information/tax-credit-and-home-compliance.page>, as they may change throughout the year.

### 2.2 INITIAL TENANTS

In order to move into a HOME-assisted unit, a household must be income-eligible, as defined in the previous section. **An owner may not lease a HOME-assisted unit to an ineligible household.** The selection of initial tenants for unoccupied projects must be done in accordance with an affirmative marketing plan (See Section 5.3). Prior to approving a new tenant, the owner must secure from each household that will occupy a HOME-assisted unit a written certification indicating the household's size and gross annual income (see HPD website for form). The owner must also verify and document all of the income sources indicated on the household's certification. This will prevent leasing a HOME-assisted unit to an ineligible tenant should a discrepancy in the household's reported income be discovered.

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## 2.3 VACANCIES

When a vacancy occurs in a HOME-assisted unit, the owner must comply with the same selection requirements applicable for initial tenants (i.e., the owner must: (a) conform to an affirmative marketing plan (Section 5.3), (b) maintain the distribution of tenant incomes as described in Section 2.1 above, and (c) select tenants who meet the household income requirements. Prior to approving a tenant or signing a lease, the owner must secure from the household a written certification indicating the household size and total gross annual income (see HPD website for form). The owner must verify and document all of the income sources indicated on the household's certification. The verification of a household's income should be made **before** the tenant moves into the unit.

## 2.4 RECERTIFICATION

The owner of a HOME project must develop procedures to ensure that the incomes of all tenants occupying HOME-assisted units are recertified annually. Each year, the owner must secure a written certification from each household indicating its size and gross annual income (see HPD website for form). The owner must then review each certification to determine if the household's income is still within the program limits.

While all HOME tenants must recertify their income every year, all owners are not required to obtain third party documentation of income annually. The owner of a project with an affordability period of 10 years or more is only required to secure income documentation in the first year of the affordability period and every six years thereafter unless there is evidence that a household's written certification failed to accurately and completely disclose information about the household's size or income. For example, for a HOME-assisted project with a 20-year affordability period, income source documents must be collected from HOME tenants in year 1, year 7, year 13 and year 19. (Note: If a project has a long lease-up period, an owner may need to collect income source documents in consecutive years from tenants who were qualified and moved in prior to year 1 of the affordability period.)

The owner of a project with an affordability period of less than 10 years is required to secure income documentation each year. Regardless of the term of the affordability period, documentation of income is required for all new tenants.

**If a HOME-assisted unit is also a Tax Credit unit, the owner must follow the Tax Credit rules regarding annual income documentation.**

**Again, the owner must verify and document the income of all new tenants.**

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## 2.5 DEFINITION OF ANNUAL INCOME

For the purpose of initial certification and annual recertification, the HOME Program requires owners to determine the **anticipated** gross annual income of all HOME-assisted families.

**Exception Permitting Use of Historical Income:** In certain situations an owner may project annual income using the household's past income. For example, if the owner is unable to project a household's annual income using current information because the household reports little to no income or because the household's income fluctuates from month-to-month, the owner may use the household's actual past income to project the household's likely income for the following year. In that case, the owner could look at a household's income over the past 12 months to project what income the household is likely to have for the next 12 months.

The definition of annual income for the HOME Program is the same as the gross (not adjusted) income for Section 8 Program. Below are the HOME Program INCOME INCLUSIONS and INCOME EXCLUSIONS:

- **INCOME INCLUSIONS:**

The following sources of income **must be included** when determining a household's gross annual income:

- 1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services for all adult household members (include earned income up to \$480 per year for full-time students aged 18 or older who are not the head-of-household or the spouse of the head-of-household);
- 2) The net income of the operation of a business or profession;
- 3) Interest, dividends and other net income from real or personal property. Where the household has net household assets in excess of \$5000, annual income includes the greater of the actual income derived from the household assets or a percentage of the value of such assets based on the current passbook rate as determined by HUD;
- 4) The full amount of periodic payments received from Social Security, SSI, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of receipts, including a lump-sum payment for the delayed start of periodic payments, except SSI and Social Security;
- 5) Payments in lieu of earnings, such as unemployment, workers compensation and severance pay;
- 6) The full amount of welfare assistance, including amounts designated for shelter;
- 7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling;
- 8) All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head-of-household or the spouse of the head-of-household;
- 9) Relocation payments received by the household.

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- **INCOME EXCLUSIONS:**

The following sources of income **should not be included** when determining a household's gross annual income:

- 1) Income from employment of children (including foster children) under the age of 18. Earned income over \$480 of full time students 18 years of age and older is not counted, except where the student is the head-of-household or the spouse of the head-of-household;
- 2) Payments received for the care of foster children and payments received as adoption subsidies;
- 3) Lump-sum additions to household assets, such as inheritances, insurance payments (including payments under health and accident insurance, worker's compensation, SSI and Social Security), capital gains and settlement for personal or property loss;
- 4) Amounts received by the household that are specifically for, or in reimbursement of, the cost of medical expenses for any household member;
- 5) Income of a live-in aide, as defined in 24 CFR Part 813.102;
- 6) Amounts of educational grants or scholarships;
- 7) The special pay of a household member serving in the Armed Forces who is exposed to hostile fire;
- 8) Temporary, nonrecurring or sporadic income, (including gifts);
- 9) Reparation payments made by foreign governments in connection with the Holocaust;
- 10) Payments made by state agencies to families that have developmentally-disabled children or adult family members living at home that are intended to offset the cost of service and equipment needed to keep the developmentally-disabled family member at home rather than placing the family member in an institution;
- 11) Value of the allotment provided to the household under the Supplemental Nutrition Assistance Program (SNAP) pursuant to the Food Stamp Act;
- 12) Certain Public Subsidies:
  - a. Amounts received under training programs funded by HUD,
  - b. Amounts received by a disabled person that are disregarded for a limited time for the purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self Sufficiency (Pass),
  - c. Amounts received by a participant in other publicly-assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses.

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## 2.6 DOCUMENTATION OF ANNUAL INCOME

Owners are required to document all of the income sources for all new tenants and, when required, during annual recertification (See Section 2.4). The chart below lists the acceptable forms of income documentation, ranking them from 1 through 3. The ranking is based on the likely degree of accuracy the documentation provides. Owners should always attempt to secure the documentation listed in ranking 1. **To facilitate this, owners must develop verification of income forms to send to third parties.** Alternate documentation should only be accepted when the documentation listed in ranking 1 cannot be obtained. Documentation of income must be current, not more than 90 days old.

### ACCEPTABILITY RANKING

INCOME TYPE	(1)	(2)	(3)
Wages	Completed verification of earnings form secured directly from the tenant's employer stating the anticipated gross annual earnings of the tenant.	Letter from tenant's employer provided by tenant indicating anticipated gross annual earnings of the tenant	Most recent Federal Tax Return; W2 Form; current pay stubs covering at least 8 weeks (CFR, Title 24, Sec. 92.03(a)(1)(i))
Soc. Sec./SSI, Pension	Completed verification of benefits form secured directly from the Soc. Sec Administration or Pension Administrator indicating the amount of benefits.	Benefit award notification provided by tenant indicating the amount received.	
Welfare	Completed verification of benefits form secured directly from HRA indicating the amount of benefits.	Budget letter provided by tenant indicating amount of benefits.	
Unemployment	Completed verification of benefits form secured directly from the NYS Dept. of Unemployment indicating the amount of benefits.	Benefit award notification provided by the tenant indicating the amount of the award.	
Self Employment	Most recent Federal Tax Return with all schedules.		
Recurring Contributions or Gifts	Notarized statement signed by the person providing assistance indicating dates and amounts.		
Alimony/ Child Support	Court stipulation indicating the amount of support.	Written statement from provider indicating amount of support.	
Current Net Assets and interest income	Form completed by the financial institution indicating both the principal and annual interest.	Copies of financial documents provided by the tenant that indicates both principal and annual interest (i.e. passbook, certificate of deposits, checking account statements etc.)	

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**NOTE:** If any adult (18 years of age or older) member of the household is claiming no income, a signed Affidavit of Zero Income must be provided from that household member (see HPD website for form).

### 3.0 HOME RENTS

#### 3.1 AFFORDABILITY LIMITS

Owners must ensure that the rent for all HOME-assisted units does not exceed the affordability limits indicated below. Except where indicated, HOME rents are not based on actual tenant incomes but are standard amounts set by HUD. Note that these rents are ceilings, which may not be exceeded. **The actual initial rents for your project may have been set lower than the maximum HOME rent.** Owners should consult with their HPD Loan Program Officer regarding the setting of initial rents.

- **LOW HOME RENT:** 20% of the HOME-assisted units in a project must have rents that do not exceed: 30% of 50% of median income (less applicable utility allowance), or 30% of the household's actual monthly adjusted income (less applicable utility allowance). If the unit receives a Federal or State project-based rental subsidy and the very low income household's contribution toward rent is no more than 30% of the household's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the allowable rent under Federal or State project-based rental subsidy programs such as Shelter Plus Care or the Section 8 Moderate Rehabilitation Program.
- **HIGH HOME RENTS:** 80% of the HOME-assisted units in a project must have rents that do not exceed the HIGH HOME Rent Limit:

#### **MAXIMUM HOME RENTS BY APARTMENT SIZE**

Owners are advised to check HPD's website for updated versions of Income & Rent Limits, including Utility allowances at <https://www1.nyc.gov/site/hpd/services-and-information/tax-credit-and-home-compliance.page>, as they may change throughout the year.

\* The units with Low HOME Rents must be occupied by tenants with incomes at or below 50% of the median. (See Section 2.1)

\*\* The units with High HOME Rents must be occupied by tenants with incomes between 60% and 80% of the median (See Section 2.1)

Actual contract rents (i.e. the rent that appears on the lease) may not exceed the maximum rent shown on the HPD website, less the applicable utility allowance(s) for any utilities paid directly by the tenant.

#### **UTILITY ALLOWANCE**

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### 3.2 RENT INCREASES

The maximum HOME rent limits are recalculated on a periodic basis after HUD re-determines the fair market rent and median income levels for New York statistical areas. At lease renewal, rents are governed by the HOME rent limits currently in effect, as well as the provisions of rent stabilization, if applicable.

## 4.0 COMPLIANCE MONITORING

### 4.1 GENERAL REQUIREMENTS

During the affordability period, all HOME projects are subject to Compliance Monitoring. The purpose of monitoring is to ensure adherence to the income and rent affordability requirements and the housing quality standards of the HOME program. Specifically, all newly-vacated HOME units must be rented to tenants with qualifying incomes, the owner/managing agent must comply with the annual income certification requirements for all tenants in HOME-assisted units and the owner/managing agent must comply with the HOME program's various rent restrictions. In addition, as discussed in Section 5.4 below, all HOME units are subject to an annual inspection to ensure compliance with federal Uniform Physical Condition Standards (UPCS).

### 4.2 ANNUAL COMPLIANCE MONITORING:

Each year, the owner must submit to HPD's Compliance Unit the following information:

- A certified rent roll showing the following for all tenants in HOME-assisted units: (a) names and rents for tenants, (b) tenant incomes and household sizes, and (c) dates of income certification for tenants;
- An initial income certification and income documentation for each new tenant who has moved in during the prior calendar year; and
- A certification by the owner that the project is in compliance with all requirements of the HOME Written Agreement (form to be provided by HPD).

These documents will be reviewed by HPD for compliance. Concurrently, the results of the UPCS inspections will be reviewed to determine if there are any uncorrected violations. A written report will be prepared which describes any findings and issues, along with details of any required follow-up. Projects with any pending findings or issues will remain in the "active" workload until all outstanding problems are resolved.

In addition to the HOME Monitoring described above (which applies to all projects annually), HOME projects will also be subject to a more intensive review every 3 years after the first year initial review. Such reviews may either be conducted at the owner's office or at HPD's office. In general, the review will involve an in-depth review of leases, rents being charged, and income certification and supporting documents, as well as other procedures used by the owner to ensure compliance with the HOME Written Agreement.

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## 5.0 GENERAL PROGRAM TOPICS

### 5.1 FIXED HOME UNIT DESIGNATION

The certified rent roll submitted by the owner at the time of project completion will serve to designate which units are HOME-assisted. **HOME units' designation remains fixed throughout the affordability period.** Accordingly, the owner must ensure that vacated units designated as HOME-assisted are rented only to eligible tenants. If an eligible HOME-assisted tenant subsequently become income ineligible, no action needs to be taken by the owner to designate another HOME-assisted unit. The tenant may remain in the unit. However, if the tenant vacates the unit, it must be rented to an eligible tenant.

### 5.2 AFFORDABILITY PERIOD

The HOME-assisted units in a project must meet the affordability requirements regarding rent and income limits for not less than the applicable period indicated in the following table. The exact length of this affordability period can be found in your HOME Written Agreement (HWA) and may exceed the minimums listed below. The affordability requirements apply without regard to the term of any loan or mortgage, and begin when the Project Completion Report is submitted to HUD by HPD. (Note that the owner's assistance and cooperation is needed in preparing the completion report. If submission of the report is delayed, the affordability period is effectively lengthened.)

TYPE OF PROJECT	MINIMUM PERIOD OF AFFORDABILITY IN YEARS
Rehabilitation or acquisition of existing housing, per unit amount of HOME funds under \$15,000	5
Rehabilitation or acquisition of existing housing, per unit amount of HOME funds from \$15,000 to \$40,000	10
Rehabilitation or acquisition of existing housing, per unit amount of HOME funds over \$40,000 or rehabilitation involving Refinancing	15
New construction or acquisition of newly constructed housing	20

### 5.3 AFFIRMATIVE MARKETING

Owners of projects with 5 or more HOME units must comply with an Affirmative Marketing Plan approved by HPD when selecting tenants to fill vacant HOME-assisted units. In general, an Affirmative Marketing Plan consists of actions to provide information and otherwise attract eligible persons in the housing market to the available housing without regard to race, color, national origin, sex, religion, household status or disability. Your HPD Loan Officer will provide additional material and information on HPD's specific requirements for Marketing and tenant selection. This may include procedures for selecting homeless tenants. In some cases, the owner will be referred directly to the Marketing Unit.

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## 5.4 HOUSING QUALITY STANDARDS

Housing Quality Standards, now referred to as Uniform Physical Condition Standards (UPCS), are minimum nationwide standards applying to housing projects receiving federal assistance (including HOME). HPD applies the NYC Housing Maintenance Code, which mirrors the UPCS. UPCS inspections involve an examination of both the HOME units and all common areas in the building. In general, federal UPCS are intended to ensure that assisted units are decent and safe places to live.

In order to ensure compliance with UPCS, an initial inspection of all HOME units is conducted by HPD. Subsequently, all HOME units are subject to periodic inspection. Prior to the inspections, both the tenants and the owner of the HOME project will be notified of the date of the inspection. It is essential that the owner make the HOME units available for inspection on the date scheduled.

If a unit fails inspection, HPD will provide the owner with a detailed list of the items that need to be corrected and a reasonable period of time to make the repairs. Failure by the owner to make the necessary repairs can result in the project being designated as non-compliant.

## 5.5 LEASES

The lease between a tenant and an owner of rental housing assisted with HOME funds must be for a period not less than one year. Owners should include in a HOME lease a clause regarding the tenant's obligation to comply with all of the requirements of the HOME Program, including annual income recertification and UPCS inspections. Federal regulations **prohibit** the following lease provisions:

**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 NYS 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 by the tenant that the owner may institute a lawsuit without notice to the tenant;

**Waiver of legal proceedings:** Agreement by the tenant that the owner may evict the tenant or household members: (a) without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or (b) 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 otherwise challenge in court, a court decision in connection with the lease; and

**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.

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## 5.6 RECORD KEEPING

Each participating owner must establish and maintain sufficient records to enable HPD to determine whether the owner is in compliance with the HOME Written Agreement, including tenant selection procedures. The owner must maintain individual tenant files for all families in HOME-assisted units. The tenant files must contain all income certifications and verifications, along with leases and all correspondence.

## 6.0 HOME AND TAX CREDITS

HOME funds may be used in combination with Low Income Housing Tax Credits, but special income targeting requirements must be met to avoid a reduction in the amount of Tax Credit benefits.

The two primary considerations in combining HOME with Tax Credits are:

**1. Special Income Targeting:** On Tax Credit-assisted projects, owners must commit to affordability restrictions meeting the following minimums (although the actual affordability restrictions, as spelled out in the regulatory agreement, may exceed the minimums): (i) for Tax Credit-assisted projects placed in service on or prior to July 31, 2008, 25% of all of the units in the project (40% outside NYC) must be restricted to very low-income tenants (with household incomes at or below 50% of the median); and (ii) for Tax Credit-assisted projects placed in service after July 31, 2008, 25% of all of the units in the project (40% outside NYC) must be restricted to low-income tenants (with household incomes at or below 60% of the median). For example, using the 50-unit building (including 40 HOME-assisted units) referenced in Section 2.1, assuming the project also received Tax Credit assistance and was placed in service prior to July 31, 2008, then the number of apartments occupied by households with incomes below 50% of the median must meet both of the following thresholds:

- a) the HOME requirement of 20% of the HOME-assisted units (i.e., 20% of 40 = 8 units), and
- b) the LIHTC requirement of 25% of **all** the residential units (i.e., 25% of 50 = 12.5 (round up to 13))

**2. Rule Conflicts:** In any instance where the rent and income requirements for HOME conflict with those for Tax Credits, the **more restrictive** requirement must be used.

The above **example** is illustrated in greater detail below.

<b>HOME without Tax Credits</b>			
<u># Units</u>	<u>% Units</u>	<u>Max. Income</u>	<u>Max. Rent</u>
8	20% of HOME	50% of med.	Low HOME
28	70% of HOME	60% of med.	High HOME
4	10% of HOME	80% of med.	High HOME
<u>10</u>	<u>0% of HOME</u>	<u>Unrestricted</u>	<u>Unrestricted</u>
50	100%		
<b>HOME with Tax Credits (pre 7/31/2008)</b>			
<u># Units</u>	<u>% Units</u>	<u>Max. Income</u>	<u>Max. Rent</u>
13	26% of all units	50% of med.	30% of 50%
27	54% of all units	60% of med.	30% of 60%
0	0% of all units	NA	NA
<u>10</u>	<u>20% of all units</u>	<u>Unrestricted</u>	<u>Unrestricted</u>
50	100%		

\* All calculations of the number of required units must be rounded upwards

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## 7.0 QUESTIONS AND ANSWERS

### Question 1

**Q.** What happens if the income of a tenant residing in a HOME-assisted unit goes above the income limit?

**A.** The unit occupied by the over-income tenant would continue to qualify as affordable housing despite a temporary non-compliance caused by an increase in the income of the existing tenant. **IF THE TENANT SHOULD MOVE FROM THE UNIT, THE OWNER MUST RENT THE UNIT TO AN ELIGIBLE HOUSEHOLD.** Tenants that no longer qualify as low-income must pay as rent the lesser of the amount payable by the tenant under state or local law or 30 percent of the household's adjusted income (except that tenants of HOME-assisted units that have also been allocated Low-income Housing Tax Credits must pay rent governed by the Tax Credit rules).

### Question 2

**Q.** What happens if a tenant refuses to cooperate with the annual recertification process?

**A.** First, it is essential that the owner communicate to the tenant all of the requirements of the HOME program at initial occupancy, including the importance of complying with the recertification process. The annual re-certification requirement must also be specified in the tenant's lease as a condition of occupancy. If, despite the forgoing, the tenant fails to cooperate, it is important to document the efforts you have made to secure information from the tenant.

### Question 3

**Q.** Can a tenant receive a Section 8 rent subsidy and still reside in a HOME-assisted unit?

**A.** Yes. However, the rent (i.e., tenant contribution plus rental subsidy) cannot be more than the HOME rent, and the tenant may not pay more than 30 percent of the household's adjusted income, per Section 8 rules.

Maximum Rent on Project-Based Rental Assistance Projects: If the HOME-assisted unit receives State or federal project-based rental assistance, and the very low-income household pays as a contribution toward rent not more than 30 percent of adjusted income, then the maximum rent is the rent allowable under the federal or State project-based rental subsidy program.

### Question 4

**Q.** Are there any restrictions on how tenants are selected for vacant units?

**A. ALL TENANTS MUST MEET THE PROGRAM INCOME GUIDELINES** and be selected in accordance with an affirmative marketing plan (Please see Section 5.3).

### Question 5

**Q.** How does rent stabilization affect HOME rents?

**A.** Units that are rent-stabilized can qualify for HOME unit designation. However, at no time can rents exceed the HOME rent limits. Rent stabilization increases are applicable, provided they do not have the effect of making the unit exceed the HOME rent.

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**Question 6**

**Q.** Can I charge the maximum HOME rents?

**A.** The HOME rents are rent ceilings and may not be the rent to which an owner is entitled. The initial rents for a given project may have been set lower than the current HOME rents. Owners should consult with their Loan Program Officer concerning questions regarding initial rent setting. After the initial rent setting, the owner may be entitled to an increase in rent based on rent stabilization lease renewal increases, provided that the rent does not exceed the current HOME rent.

**Question 7**

**Q.** How do I know if a Project Completion Report was submitted to HUD for my project?

**A.** There are a number of requirements that must be met before a Project Completion Report is submitted to HUD. First, the rehabilitation work for your project must be completed. In addition, you must have submitted to your Loan Program Officer a certified rent roll along with tenant income certifications. Remember, the affordability period for your project does not begin until a Project Completion Report is submitted to HUD. To confirm the submission of the Project Completion Report for your project, contact your Loan Program Officer.

**Question 8**

**Q.** Who can I call if I have a question?

**A.** If a Project Completion Report has not been submitted to HUD for your project, questions should be directed to the Loan Program Officer responsible for your project. Subsequently, questions can be addressed to Arabia Brown in HPD'S Tax Credit and HOME Compliance Unit, (212) 863-8204.

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## 8.0 CONTACT INFORMATION

**Internet:** IF YOU HAVE QUESTIONS, TO OBTAIN FORMS AND FOR ADDITIONAL INFORMATION VISIT THE “LOW INCOME HOUSING TAX CREDIT AND HOME COMPLIANCE” WEB PAGE ON HPD’S WEBSITE AT: <https://www1.nyc.gov/site/hpd/services-and-information/tax-credit-and-home-compliance.page>

<b><u>Contact:</u></b>	Arabia Brown, Compliance Director	212-863-8204	BROWNAR@hpd.nyc.gov
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**Fax:** Tax Credit and HOME Compliance Unit 212-863-7413

**MAIL** Dept. of Housing Preservation and Development  
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