HUD HOME & NATIONAL HOUSING TRUST FUND COMPLIANCE PLAN

EQUAL HOUSING OPPORTUNITY

August 2025

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Contents

HUD HOME and HUD Housing Trust Fund Monitoring

During the period of affordability at HUD HOME and HUD Housing Trust Fund (HTF) rental housing, Housing New Mexico will perform on-site inspections and compliance monitoring to determine compliance with property standards and to confirm applicant/resident eligibility and program requirements.

Property Standards § 92.251

Through-out the affordability period, Housing New Mexico will perform site inspections to ensure that the project meets or exceeds National Standards for the Physical Inspection of Real Estate (NSPIRE).

The first on-site inspection must occur within 12 months of project completion and at least once every three years thereafter during the period of affordability.

Ongoing property standards

The property owner must maintain throughout the period of affordability housing as decent, safe, sanitary, and in good repair. Housing New Mexico will monitor to ensure the Owner is in compliance with HUD requirements and all applicable State and local code requirements and ordinances.

Carbon monoxide and smoke detection

A carbon monoxide alarm must be installed in the housing unit in a manner that meets or exceeds the carbon monoxide detection standards set by HUD through Federal Register publication.

Smoke detectors must be maintained in the housing unit in accordance with the requirements contained in 24 CFR 5.703(b) and (d).

Units inspected

Inspections must be based on a random sample of the HOME/HTF-assisted units in the project with a mix of unit sizes (*e.g.,* a mix of one-bedroom, two-bedroom, and three-bedroom units) in accordance with the chart contained in this paragraph. All inspections must include the inspectable areas for each building containing HOME/HTF-assisted units. For projects with one-to-four HOME/HTF-assisted units, Housing New Mexico must inspect 100 percent of the HOME/HTF-assisted units and the inspectable areas for each building with HOME/HTF-assisted units.

Number of HOME/HTF-assisted units in the HOME/HTF project	Number of units that must be selected in the random sample (*i.e.*, minimum unit sample size)
1-20	4
21-25	5
26-30	6
31-35	7
36-40	8
41-45	9

46-50	10
51-55	11
56-60	12
61-65	13
66-70	14
71-75	15
76-80	16
81-85	17
86-90	18
91-95	19
96-100	20
101-105	21
106-110	22
111-115	23
116-120	24
121-125	25
126-130	26
131-166	27
167-214	28
215-295	29
296-455	30
456-920	31
921+	32

Health and safety deficiencies

Health and safety deficiencies must be corrected immediately. A more frequent inspection schedule for properties that have been found to have health and safety deficiencies will be considered depending on the results and follow-up of the inspection. Deficiencies for which correction can be verified by third party documentation (e.g. paid invoice or work order) follow-up on-site inspection will not be required to verify that deficiencies are corrected with the exception of the following items noted on physical inspection report for the following Life-Threatening deficiencies:

- Electrical Hazards - Exposed Wires/Open Panels
- Electrical Hazards - Water leaks on/near Electrical Equipment
- Security Bars Prevent Egress
- Misaligned Chimney Ventilation System

Annual Certification

The property owner must annually certify to Housing New Mexico that each building and all HOME/HTF-assisted units in the project are suitable for occupancy, taking into account State and local health, safety, and other applicable codes, ordinances, and requirements, and the ongoing property standards established by Housing New Mexico.

Lead-Based Paint Hazard Reduction

Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as Title X, to protect families from exposure to lead from paint, dust, and soil. Section 1018 of this law directed HUD and EPA to require the disclosure of known information on lead-based paint and lead-based paint hazards before the sale or lease of most housing built before 1978.

Before ratification of a contract for housing sale or lease, sellers and landlords must:

- Give an EPA-approved information pamphlet on identifying and controlling lead-based paint hazards ("Protect Your Family From Lead In Your Home" pamphlet, currently available in, Spanish, Vietnamese, Russian, Arabic, Somali).
- Disclose any known information concerning lead-based paint or lead-based paint hazards. The seller or landlord must also disclose information such as the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.
- Provide any records and reports on lead-based paint and/or lead-based paint hazards which are available to the seller or landlord (for multi-unit buildings, this requirement includes records and reports concerning common areas and other units, when such information was obtained as a result of a building-wide evaluation).
- Include an attachment to the contract or lease (or language inserted in the lease itself) which includes a Lead Warning Statement and confirms that the seller or landlord has complied with all notification requirements. This attachment is to be provided in the same language used in the rest of the contract. Sellers or landlords, and agents, as well as homebuyers or tenants, must sign and date the attachment.

Financial Oversite

During the period of affordability, the Housing New Mexico will examine at least annually the financial condition of HOME/HTF-assisted rental projects with 10 units or more to determine the continued financial viability of the housing and must take actions to correct problems, to the extent feasible.

Qualification as Affordable Housing: Rental Housing §92.252

The HOME/HTF-assisted units in a rental housing project must be occupied by households that are eligible as low- income families and must meet the requirements of this section to qualify as affordable housing.

Occupancy Document Requirements

For HOME/HTF projects, responsibility for long-term compliance with these requirements is vested with the property owner. The Housing New Mexico monitoring staff must confirm that the property owner has adequate processes to ensure the following for all projects:

- Annual reviews of rents and utility allowances (92.252(f));

- Annual re-certification of tenant incomes – property owners must keep this information on file and be responsible for its completeness and accuracy - even if others perform the verifications (92.252(h)); and

Documentation regarding change in occupancy of HOME/HTF-assisted units must be maintained and available for review by Housing New Mexico monitoring staff. As units are vacated and re-rented, the activity should be noted in these records. This will enable Housing New Mexico staff and the property owner to determine if re-renting practices are appropriate to ensure maximum program compliance. HOME/HTF program documentation must be maintained in the project's files throughout the project's affordability period to meet the recordkeeping requirements of HOME regulations 24 CFR, Part 92 and Housing Trust fund regulations 24 CFR, Part 93.

Rent Limitation

HUD provides the following maximum HOME rent limits. The rent limits apply to the rent plus the utilities or the utility allowance. The maximum HOME rents (High HOME Rents) are the lesser of:

- The fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or
- A rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit. The HOME rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions.

Housing New Mexico will publish the approved maximum rent and income limits on their website and provide notice of the approved update to property owners of the HOME/HTF projects.

Annual Rent and Utility Allowance Reviews

Housing New Mexico will review the property owner's annual submission of utility allowances to ensure that the rents charged do not exceed the maximum HOME/HTF rents and that the utility allowances used are up to date and reasonable. Acceptable utility allowance methods are limited to:

- HUD Utility Schedule Model
- Public Housing Authority (PHA) Utility Allowance
- Multifamily Housing Utility Analysis or Actual Consumption Estimate
- Energy Consumption Model (Engineer Model) (26 CFR 1.42-10(B)(4)(E))

Income Determinations (92.203)

Income Limits

The income limits applicable used at the HOME/HTF project (adjusted for family size) produced by the Department of Housing and Urban Development. New Mexico limits can be found on our web page at: https://housingnm.org/property-owners-agents-and-managers/tools-resources-1/rent-and-income-limits

Income Determination

To determine eligibility for HOME/HTF program, the HOME/HTF regulations require a household's annual income to be projected. While the HOME/HTF regulations permit a PJ to use one of two definitions for annual income, Housing New Mexico has elected to use 24 CFR 5.609 definition (also commonly referred to as the Part 5 or Section 8 definition of income) for this Program.

Income Inclusions 24 CFR 5.609(a)

Annual income includes, with respect to the household:

- All amounts, not specifically excluded in 24 CFR 5.609, received from all sources by each household member who is 18 years of age or older, or is the head of household or spouse of the head of household;
- Unearned income by or on behalf of each dependent who is under 18 years of age; and
- Imputed income must be calculated on net household assets exceeding $50,000 (adjusted annually using the CPI-W) when the value of the actual returns from a given asset cannot be calculated. Imputed returns are based on the current passbook savings rate, as determined by HUD. (Note: if it is possible to calculate actual returns from an asset, the entity should use that amount as income).

Earned Income

Earned Income includes earnings and income received from wages, tips, salaries, other employee compensation. If a household member's wages are garnished, levied or withheld to pay for restitution, child support, tax debt, student loan debt or other debts, the gross income prior to deductions is counted.

Self-employment income from the operation of a business is included. Annual income of self-employment includes the net income after allowable deductions are deducted from gross income. An allowance for depreciation of assets can be deducted. Cash withdrawals are considered income unless the cash is used for reimbursement or reinvestment in the business. Expenditures for business expansion and amortization of capital indebtedness cannot be used as deductions.

The unearned income including income from assets of every person counted as a household member should be included in the tax credit income calculation. In addition, the gross amount (before payroll deductions) of earned income of all members of the household, ages 18 and over or an emancipated minor except full-time students.

Unearned Income

Unearned Income includes amounts received by or on behalf of any adult or minor in the household from child support, alimony, pensions, annuities, transfer payments including welfare assistance, social security and government subsidies for certain benefits and any cash or other monetary in-kind benefits that are not specifically excluded.

Federally Mandated Income Exclusions 24 CFR 5.609(b)

Amounts that HUD is required by federal statute to exclude as income for determining eligibility or benefits. HUD will publish an updated notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

Category	Exclusion	CFR	Description
Other	Federally Mandated Income Exclusions	24 CFR 5.609(b)(22)	Amounts that must be excluded by federal statute. HUD will publish a Federal Register notice that includes the qualifying benefits.
Assets	Imputed Income from Assets	24 CFR 5.609(b)(1)	Any imputed return on an asset when net household assets total $50,000 (adjusted annually) or less and no actual income from the net household assets can be determined.
Non-recurring income	Non-recurring income	24 CFR 5.609(b)(24)	Income that will not be repeated in the coming year based on information provided by the household.
Self-employment	Gross Self-employment Income	24 CFR 5.609(b)(28)	Gross income received through self-employment or operation of a business
Dependents	Minors (children under the age of 18 years)	24 CFR 5.609(b)(3)	All earned income of all children under the age of 18, including foster children.
Dependents	Adoption assistance payments	24 CFR 5.609(b)(15)	Adoption assistance payments for a child in excess of the amount of the dependent deduction.
Students	Earned Income of Dependent Students	24 CFR 5.609(b)(14)	Earned income of dependent full-time students in excess of the amount of the dependent deduction.
Students	Title IV HEA Assistance	24 CFR 5.609(b)(9)(i)	Any assistance that Section 479B of the Higher Education Act (HEA) of 1965, as amended, requires to be excluded from household income.
Students	Other Student Financial Assistance	24 CFR 5.609(b)(9)(ii)	Student financial assistance, not excluded under the HEA, for actual covered costs of higher education.
Students	Educational Savings Account	24 CFR 5.609(b)(10)	Income and distributions from any Coverdell educational savings account of or any qualified tuition program under IRS section 530 or any qualified tuition program under section 529.
Baby bonds	Baby bonds	24 CFR 5.609(b)(10)	Income earned by government contributions to, or distributions from, 'baby bond' accounts created, authorized or funded by federal, state or local government.
Foster children / adults	Payments for Foster Children / Adults	24 CFR 5.609(b)(4)	Payments received for the care of foster children or adults, including State kinship, guardianship care payments, or tribal kinship payments.
Foster children / adults	Income of foster children / adults	24 CFR 5.609(b)(8)	Income of a live-in aide, foster child, or foster adult as defined in 24 CFR 5.403 and 5.603.
Live-in Aide	Income of a Live-in Aide	24 CFR 5.609(b)(8)	Income of a live-in aide, foster child, or foster adult.
People with Disabilities	ABLE accounts	24 CFR 5.609(b)(22)	Will be included in federally mandated excluded amounts. Notice PIH 2019-09/H-2019-06 details when ABLE account income is excluded.
People with Disabilities	State Payments to Allow Individuals with Disabilities to Live at Home	24 CFR 5.609(b)(19)	Payment made by an authorized by a state Medicaid managed care system or other state agency to a household to enable a household member to live in the household's assisted unit.

People with Disabilities	Plan to Attain Self-Sufficiency (PASS)	24 CFR 5.609(b)(12)(i)	Amounts set aside for use under a Plan to Attain Self-Sufficiency (PASS).
People with Disabilities	Reimbursements for Health and Medical Care Expenses	24 CFR 5.609(b)(6)	Amounts for, or in reimbursement of, health and medical care expenses for any household member.
Trusts	Trust distributions	24 CFR 5.609(b)(2)	Any distributions of a trust's principal are excluded. PHAs and owners must count any distributions of income from an irrevocable trust or a trust not under the control of the household (e.g., distributions of earned interest) as income to the household with the expectation of distributions used to pay the health and medical care expenses of a minor.
Insurance	Insurance payments and settlements for personal or property loss	24 CFR 5.609(b)(5)	Insurance payments and settlements for personal or property loss including, but not limited to: payments through health insurance, motor vehicle insurance, and workers' compensation.
Retirement	Retirement plan	24 CFR 5.609(b)(26)	Income received from any account under an IRS-recognized retirement plan. However, periodic payments are income at the time of receipt.
Military	Hostile fire special payment	24 CFR 5.609(b)(11)	The special pay to a household member serving in the Armed Forces who is exposed to hostile fire.
Veterans	Veterans aid and attendance payments	24 CFR 5.609(b)(17)	Payments related to aid and attendance for veterans under 38 U.S.C. 1521.
Lawsuits	Lawsuit Settlements	24 CFR 5.609(b)(7)	Amounts recovered in a civil action or settlement based on malpractice, negligence and other breach of duty claim resulting in a household member becoming disabled.
Lawsuits	Reparations for Persecution	24 CFR 5.609(b)(13)	Reparation payments paid by a foreign government for claims by people persecuted during the Nazi era.
Lawsuits	Tribal Claims Payments	24 CFR 5.609(b)(21)	Payments received by tribal members from claims relating to the mismanagement of assets held in trust by the United States.
Lawsuits	Lawsuits related to civil rights	24 CFR 5.609(b)(25)	Civil rights settlements or judgments, including settlements or judgments for back pay.
Reimbursements	Reimbursements from publicly assisted programs	24 CFR 5.609(b)(12)(ii)	Amounts received by a participant in other publicly assisted programs for or in reimbursement of expenses to allow program participation (e.g., special equipment, clothing, transportation, child care, etc.).
Resident Services Stipend	Resident Services Stipend	24 CFR 5.609(b)(12)(iii)	Resident service stipends of $200 or less per month for performing a part-time service for the PHA that enhances the quality of life in the development.
Employment training programs	Employment training programs	24 CFR 5.609(b)(12)(iv)	Incremental earnings and benefits from training programs HUD and qualifying employment training programs and training of a household member as resident management staff.
FSS	Family Self Sufficiency Account	24 CFR 5.609(b)(27)	Income earned on amounts placed in a household's FSS account.
Housing gap payments	Housing "gap" payments	24 CFR 5.609(b)(23)	Replacement housing "gap" payments to offset increased rent and utility costs to families displaced from one federally subsidized housing unit and another.
Benefits	Deferred Supplemental Security Income, SS income and benefits,	24 CFR 5.609(b)(16)	Deferred periodic amounts from: SSI, Supplemental Security Income and benefits or VA disability benefits that are received in a lump sum or prospective monthly amounts.

	or VA disability benefits		
Property tax rebates	Property Tax Rebates	24 CFR 5.609(b)(18)	Refunds or rebates under state or local law for property taxes paid on the dwelling unit.
Loans	Loan Proceeds	24 CFR 5.609(b)(20)	The net amount disbursed by a lender to a borrower or a third party (e.g., educational institution or car dealership).

Safe Harbor Verification

The property owner may determine a household's annual income, including income from assets, prior to the application of any deductions based on income determinations made within the previous 12-month period, using income determinations from the following types of means-tested federal public assistance programs:

- The Temporary Assistance for Needy Families block grant (42 U.S.C. 601, et seq.).
- Medicaid (42 U.S.C. 1396 et seq.).
- The Supplemental Nutrition Assistance Program (42 U.S.C. 2011 et seq.).
- The Earned Income Tax Credit (26 U.S.C. 32).
- The Special Supplemental Nutrition Program for Woman, Infants, and Children (42 U.S.C. 1786).
- Supplemental Security Income (42 U.S.C. 1381 et seq.).
- Other programs administered by the Secretary.
- Other means-tested forms of federal public assistance for which HUD has established a memorandum of understanding.
- Other federal benefit determinations made by other means-tested federal programs that the Secretary determines to have comparable reliability and announces through a Federal Register notice.

If a property owner elects to use the annual income determination from one of the above-listed forms of means-tested federal public assistance, then they must obtain the income information by means of a third-party verification. The third-party verification must state:

- the household size
- must be for the entire household (i.e., the household members listed in the documentation must match the household's composition in the assisted unit, except for household members), and
- must state the amount of the household's annual income. The annual income need not be broken down by household member or income type. Annual income includes income earned from assets, therefore when using Safe Harbor to verify a household's income, the property owner will neither further inquire about a household's net household assets, nor about the income earned from those assets, except with respect to whether or not the household owns assets that exceed the asset limitation in 24 CFR § 5.618.

The Safe Harbor documentation will be considered acceptable if any of the following dates fall into the 12-month period prior to the receipt of the documentation by the property owner:

- Income determination effective date;
- Program administrator's signature date;

- Household's signature date;
- Report effective date; or
- Other report-specific dates that verify the income determination date.

Assets 24 CFR 5.603(b) "Net Family Assets" Para. (1)

Net Household Assets is the net cash value of all assets owned by the household, after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment.

The HOTMA definition includes the cash value of all household assets with the exception of the expanded and enumerated exclusions.

Determining net family assets 24 CFR 5.603(b) "Net Family Assets" Para. (2)

Subrecipients must include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application or reexamination, in excess of the consideration received.

In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the homeowner receives consideration not measurable in dollar terms.

Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify an exclusion from family assets.

Income from Assets 24 CFR 5.609(a)

In general, income from assets is considered income. If it is possible to calculate actual returns from an asset, the subrecipient should use that amount.

If it is not possible to calculate an actual return on an asset, and:

- The net family assets are $50,000* or less, the imputed income from that asset is excluded.
- The net family assets are over $50,000,* the PHA must impute income for the asset based on the current passbook savings rate, as determined by HUD.

Net Family Assets Scenario	Actual Income	Imputed Returns	Amount Included in Income
Assets of $50,000 or less	Included	Not calculated	Actual income only
Exceeds $50,000 and actual income can be computed for ALL assets	Included	Not calculated	Actual income only
Exceeds $50,000 and NO actual income can be computed	N/A	Calculated using HUD passbook rate for all assets	Imputed returns for all assets
Exceeds $50,000, but actual income can only be computed for some assets	Included for assets that can be computed	Calculated for any remaining assets where	Actual income that can be computed AND imputed returns

		actual income cannot be computed	for all remaining assets that cannot be computed

Excluded assets 24 CFR 5.603(b) "Net Family Assets" Para. (3) and (4)

The following assets are excluded under HOTMA. If the family owns an excluded asset, its value does not count toward the restriction due to net family assets. Most of these exclusions are new.

Category	Excluded Asset	Example(s)	Notes
Personal property	Necessary items of personal property	Medical devices, vehicle for commute	Determining what is a "necessary item" for personal property is a highly fact-specific determination. Additional guidance is forthcoming from HUD.
Personal property	Non-necessary items of personal property if the combined total value does not exceed $50,000*	Vintage baseball cards, recreational boat, coin collection, art so long as the *total* value is under the limit	This matches the value of assets that can be self-certified by the family.
Retirement account	Retirement account recognized by IRS	IRA, 401(k), 401(b) and retirement plans for self-employed individuals	
Real property	Real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located	Property subject to a lawsuit may be legally restricted from sale.	Such property does not count against the dollar amount limit or the real property limitation
Settlements	Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member, for an incident resulting in a **disability**	A drunk driver injures a family member, who then has a disability. The family sues, and the driver's insurance pays the family.	
Savings account	The value of certain education or disability support savings accounts	Under Internal Revenue Code sections 529, 529A, 530, "baby bond" accounts	Coverdell accounts, tuition programs, any "baby bond" account created, authorized, or funded by Federal, state, or local government
Real property	Interest in Indian trust land	Family has interest in land held in trust by Bureau of Indian Affairs	Existing exclusion
Real property	Equity in a manufactured home where the family receives assistance under 24 CFR 982	HCV Manufactured Home Space Rental participants	
Real property	Equity in property where the family receives assistance under	HCV homeownership participant	For real property other than manufactured homes

	24 CFR 982		
Savings account	Family Self-Sufficiency (FSS) accounts		The family does not have access to FSS funds during their participation in the program. Also excluded from income.
Tax returns	Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family	Earned Income Tax Credits (EITC)	
Trust Funds	Trust that is not revocable by, or under the control of, any member of the family or household	Non-revocable trust fund; trust fund revocable once minor child reaches age 21	As long as a trust meets this definition, it is not an asset of the family

Tenant Selection

The tenants of HOME/HTF properties must be selected in accordance with § 92.253(d). The owner must adopt and follow written tenant selection policies and criteria that:

- Limit the housing to very low- income and low-income families for HOME and limit the housing to income-eligible families for Housing Trust Fund;
- Are reasonably related to the applicants' ability to perform the obligations of the lease (i.e., to pay the rent, not to damage the housing; not to interfere with the rights and quiet enjoyment of other tenants);
- Limit eligibility or give a preference to a particular segment of the population if permitted in its written agreement with Housing New Mexico (and only if the limitation or preference is described in the consolidated plan).
- Any limitation or preference must not violate nondiscrimination requirements in § 92.350. A limitation or preference does not violate nondiscrimination requirements if the housing also receives funding from a Federal program that limits eligibility to a particular segment of the population (e.g., the Housing Opportunity for Persons with AIDS program under 24 CFR part 574, the Shelter Plus Care program under 24 CFR part 582, the Supportive Housing program under 24 CFR part 583, supportive housing for the elderly or persons with disabilities under 24 CFR part 891), and the limit or preference is tailored to serve that segment of the population.
- Do not exclude an applicant with a voucher under the Section 8 Tenant-Based Assistance: Housing Choice Voucher Program (24 CFR part 982) or an applicant participating in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such voucher or comparable HOME tenant-based assistance document.
- Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable;
- Give prompt written notification to any rejected applicant of the grounds for any rejection; and
- Comply with the VAWA requirements prescribed in § 92.359.

Violence Against Women's Act (VAWA)

The property owner must include in their tenant selection and VAWA policies and procedures:

- Information about protections and covered individuals
- Provide an explanation of the certification process
- Use the VAWA lease Addendum
- Provide opportunity for bifurcation of lease
- Have a VAWA emergency transfer plan addressing external and internal VAWA transfers

HOME/HTF properties must have VAWA procedures notifying tenants of their ability to transfer internally and provide referral information for any external transfer requests. Housing New Mexico will provide referral information to other available Housing New Mexico properties when VAWA transfer requests are referred and received. Requests and results of requests received by Housing New Mexico will be saved according to HUD's Document Retention Requirements.

Affirmative Fair Housing Marketing

Property owners of HOME/HTF-Assisted projects with five or more assisted units must conduct outreach with an approved affirmative fair housing marketing plan in an effort to reach those least likely to apply.

- The property owner must have their tenant selection plan and approved affirmative fair housing marketing plan posted and available for public inspection.
- The property owner must have Fair Housing posters posted in their office. All site signs and marketing materials must have the fair housing logo or slogan.
- The marketing plan must be on HUD form 935.2A and compliant with the requirements stated in that form instruction.
- Housing New Mexico will review the property owner's compliance with marketing activities to households least likely to apply in the approved plan, marketing materials, review of the property owner's assessment of the marketing plan success, corrective actions from the assessment and requirements for fair housing training of staff.

Prohibited lease terms § 92.253

The lease must not contain any of the following provisions:

- Agreement by the tenant to be sued
- Treatment of property
- Excusing the property owner from responsibility
- Waiver of notice
- Waiver of legal proceedings
- Waiver of a jury trial
- Waiver of right to appeal a court decision
- Tenant chargeable with cost of legal actions regardless of outcome

- Mandatory supportive services

For that reason, Housing New Mexico suggests that owners use the Apartment Association of New Mexico Rental Agreement, with the Affordable Housing Addendum. That document has been approved by HUD for use in New Mexico. Property owners election to use their own lease and addenda or other lease and addenda must provide Housing New Mexico a copy of the lease, lease effective date and certification of legal review from the owner's attorney.

Projects Receiving Assistance Through Other Programs

Other Program Funding

HOME Rental projects may be receiving assistance from other federal or state housing programs. Other programs include:

- Low Income Housing Tax Credits (LIHTC)(IRS)
- Affordable Housing Disposition Program (RTC/FDIC)
- Affordable Housing Program (Federal Home Loan Bank)
- New Mexico Housing Trust Fund
- RECD/FmHA 515 Program (USDA)
- Section 8 Program (HUD)
- Section 236 Program (HUD)
- Native American Housing Assistance and Self-Determination Act (NAHASDA)(HUD)
- Local Government Financing (Bond, etc.)
- 542(c) Risk Sharing (HUD-Housing New Mexico)

Addressing Overlapping Requirements

In cases where HOME/HTF requirements differ from those of other programs, property owners should follow the most restrictive requirement. Taking this approach will ensure those property owners meet HOME/HTF requirements and their responsibilities under other applicable programs. For example, the LIHTC requires that the dwelling lease for designated qualifying units include specific provisions. If a LIHTC was purchased through HOME/HTF, the leases for TC units that are also counted as qualifying units under HOME/HTF must contain the required provisions.

LIHTC and HOME Funding and Program Rules

Tax Credit developments are often joined with other affordable housing programs as a means for providing funding. HUD's HOME Investment Partnerships Program is one of the alternative funding sources often used. When combining HOME and Tax Credit programs, property owners must possess knowledge of both sets of requirements to ensure that compliance is maintained.

Occupancy Requirements

Tax Credit projects set aside either 20% of their units for tenants with incomes at or below 50 percent (50%) of the area median (20/50 set-aside) or 40% of their units for tenants with incomes at or below 60 percent (60%) of the area median income (40/60 set-aside).

Rents

When combining the two types of funding, two sets of rules apply:

- Qualified tax credit units must not exceed tax credit rent limits, while HOME/HTF-assisted units must meet HOME/HTF rent requirements. If a unit is being counted under both programs, the stricter rent limit applies.
- When tenants receive additional subsidies through rental assistance such as Section 8, additional requirements apply.
    - Under tax credit rules, if the rental assistance program rent limit exceeds the tax credit maximum rent, the unit rent may be raised to the higher limit as long as tenants pay no more than 30% of their adjusted monthly income for housing costs.
    - HOME allows the rent to be raised to the rental assistance program limit only if the tenant pays no more than 30% of adjusted income, the subsidy is project-based, and the tenant's income is less than 50% of the area median income.
    - In a joint tax credit HOME/HTF-assisted unit, the stricter HOME/HTF requirements would apply.

Establishing Tenant Eligibility

Both the HOME/HTF and tax credit programs require project owners to certify tenant incomes in order to ensure that they are income-eligible and that the project is in compliance with initial occupancy requirements.

- To demonstrate eligibility under both programs, property owners must have tenants certify their income and obtain supporting documentation. This documentation must be kept in project unit files for review by Housing New Mexico.
- Under tax credit rules, only the Section 8 definition of annual gross income is used, whereas the HOME regulations allow a choice of three definitions. As a result, projects using HOME funds and tax credits must use the Section 8 definition of income. Housing New Mexico has chosen to use the Section 8 definition for all HOME activities thus aligning with the Tax Credit program.

Recertifications of Tenant Eligibility

The tax credit program does not allow the alternative methods of tenant recertification allowed under the HOME Program. Although HOME Program literature from other sources discusses the "waiver" of recertification documentation, Housing New Mexico does not offer or provide the recertification waiver. This means that the more stringent tax credit rules must always be followed at a project that combines HOME and tax credits.

Over-Income Tenants

The HOME/HTF and tax credit programs have somewhat different approaches to over-income tenants.

- The definition of an over-income tenant differs under the two programs. Tax credit rules define "over-income" as income above 140% of the project income limit. Under HOME, the tenants are considered over-income if their income rises above 80% of area median income.
- Unlike under HOME, the rent remains restricted under the tax credit program. HOME rules resolve this situation by stating that when funds from both programs are used on the same unit, the tax credit rules should be followed.

Monitoring

Both programs require monitoring to ensure compliance with program rules over the length of a pre-established affordability period. Housing New Mexico monitors both programs together whenever possible.

- Under the tax credit program, the affordability period is generally 30 years, unless the allocating agency establishes a longer one.
- Projects combining HOME/HTF funds and tax credits are subject to two sets of affordability periods. These periods may be set to be equal in length, or the project may be subject to one set of requirements for a shorter time period than the other.
- The tax credit program rules require on-site property inspections at least once every three years, and for new projects by the end of the second calendar year following the year the last building was placed in service.

RD Section 515 Funding and Program Rules

Income Determinations

Property owners may receive a below market rate loan, or Rural Development Section 515, to finance a rural Housing Credit property. If this is the case, tenant household's adjusted income must be at or below 80% of median income. The adjusted incomes for Section 515 are calculated to be the annual gross income minus certain allowed deductions such as medical expenses or childcare. (Complete listing of allowed deductions included in Rural Development's Handbook 1930-C.) Rent is then based on 30% of the adjusted income minus a utility allowance. Property owners must be careful to ensure that the household's income meets both the Tax Credit and RD Section 515 requirements. The HOME/HTF and LIHTC programs, remember, require total household income without any allowances or deductions be compared to the applicable income limit. The property owner then must be careful to NOT compare the Section 515 adjusted income to the applicable HOME/HTF and/or LIHTC income limit.

Rent Restrictions

Most households in Section 515 properties will meet the HOME/HTF Tax Credit Maximum Allowable Rent restriction because their portion of the rent is only 30% of their adjusted income. However, in some cases the household's income increases enough to make the rental assistance portion decrease and the tenant paid rental portion increase beyond the Maximum Allowable Rent. If this occurs, the property owner will have to pay the overage to RD out of his pocket. Overage is defined as the difference between the HOME/HTF Tax Credit Maximum Allowable Rent and the Section 515 calculated rent. However, if the household who initially qualified for the Tax Credit program paid an initial rent equal to or less than the Maximum Allowable Rent, the property owner will not be subject to overage payments. This means that the property owner can collect the full amount of Section 515 calculated rent and pay the overage out of the collected amount, rather than out of his own pocket. To restate, the resident had to initially qualify for the Tax Credit and HOME/HTF programs and initially pay a rent amount less than the Maximum Allowable Rent. The Act also stipulates that this ruling can only be used on buildings receiving an allocation of credits after December 31, 1989.

Tenant Income Certifications and Other Documentation

In RD projects, property owners are required to complete form TC 1944-8, which is a form of tenant income certification.

Section 542(C) "Risk Sharing" Program

The HUD Risk Sharing program was created under Section 542 of the Housing and Community Development Act of 1992 to provide new forms of credit enhancement for multifamily housing loans. The extent to which HUD directs the Housing New Mexico regarding underwriting standards and loan terms and conditions is related to the portion of risk taken by Housing New Mexico. In most cases, Housing New Mexico assumes 10% of the risk for its Risk Sharing portfolio with some variability in the percentage of risk based upon the loan to value ratio. As a result of assuming the risk, Housing New Mexico is responsible for operating the Risk Sharing program based upon our agreement with HUD. Therefore, it is of the utmost importance that Housing New Mexico ensures that property owners comply with the terms of that agreement, with their Regulatory Agreement, and with other HUD requirements.

Income Determinations

Under the Risk Sharing program, property owners must meet one of two minimum set-aside requirements that include both income and rent restrictions. For income, there are two options:

- 40% of the units must be rented to households whose annual income does not exceed 60% of area median income; and an additional 20% of the units must be rented to households whose income does not exceed 120% of area median income, adjusted for family size as determined by HUD; or
- 20% of the units must be rented to households whose annual income does not exceed 50% of area median income; an additional 5% of the units must be rented to households whose income does not exceed 80% of area median income; and an additional 35% of the units must be rented to households whose income does not exceed 120% of area median income, adjusted for family size, as determined by HUD.

Rent Restrictions

Rents must not exceed 30% of the median income levels specified for the units set aside for households earning no more than 60% of median income. Housing New Mexico has chosen to implement the same maximum rents for the Risk Sharing program as for the Low Income Housing Tax Credit program. Gross rent is defined as tenant-paid rent (excluding any Section 8 subsidy or other rent subsidy) plus the utility allowance.

Tenant Income Certifications and Other Documentation

The definitions of income and assets for the Risk Sharing program are the same as those for LIHTC and HOME/HTF, i.e., those contained in the HUD Handbook 4350.3, Chapter 5.

Occupancy and Leases

Residents occupying income-restricted units must be income eligible. Therefore, households must have their income and assets certified at move-in and annually thereafter. The requirements for recertification are the same as those provided previously for the LIHTC program. All Risk Sharing projects must use the Residential Rental Agreement Addendum - Housing New Mexico’s 542(c) Program.

Annual Management Review and Physical Inspection

As required by the Housing New Mexico’s agreement with HUD, Management staff will be responsible for completing an annual management review and physical inspection of each Risk Share property to ensure that it is being operated in compliance with the Regulatory Agreement, as well as providing safe, decent and sanitary housing. A review of tenant files and management practices will be completed during the annual review, including an evaluation of affirmative marketing requirements in the property owners approved affirmative marketing plan.

NSPIRE Inspections

In addition, all Risk Sharing properties are subject to HUD’s National Standards for the Physical Inspection of Real Estate (NSPIRE) through the Real Estate Assessment Center (REAC). Housing New Mexico orders (and pays for) the NSPIRE inspections through HUD’s on-line systems. Housing New Mexico staff makes the arrangements for the NSPIRE inspection but have no control over what units are selected or the result of the inspection. As soon as Housing New Mexico receives a copy of the NSPIRE report, the property owner will be notified. If the score is high enough, the next NSPIRE inspection will not be due for three years. Whenever possible, Housing New Mexico will attempt to schedule the NSPIRE inspection at the same time as the annual monitoring review.

Annual Reporting

Reports on the status of occupancy at the project are due to Housing New Mexico on an annual basis. The form used is the same as that provided in the Appendix to this manual “Annual Compliance Report.” In addition, a Certificate of Continuing Program Compliance must be submitted with this report.

Native American Housing Assistance and Self Determination Act (NAHASDA)

The Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) reorganized the system of housing assistance provided to Native Americans through HUD by eliminating several separate programs of assistance and replacing them with a block grant program. The regulations are published at 24 CFR Part 1000. NAHASDA uses many of the same definitions as LIHTC, HOME, HTF and Section 8, with a few differences.

PLEASE NOTE: All of the definitions listed below are subject to the Indian Housing Plan set forth by the pertinent Indian tribe.

Income Determinations

NAHASDA requires that the units be rented to households whose annual income is the greater of 80% of area median income limits for the "counties or their equivalent in which the Indian area is located; or the median income for the United States.

Rent Restrictions

Rents must not exceed 30% of the adjusted gross income for the household. The adjustments used are the same as those used in the Section 8 program.

Tenant Income Certifications and Other Documentation

The definitions of income and assets for NAHASDA are the same as those for LIHTC and HOME/HTF, i.e., those contained in the HUD Handbook 4350.3, Chapter 5.

Occupancy and Leases

Residents occupying income-restricted units must be income eligible. Therefore, households must have their income and assets certified at move-in and annually thereafter. The requirements for recertification are the same as those provided previously for the LIHTC program.

Annual Management Review and Physical Inspection

NAHASDA requires an annual review and physical inspection of each property to ensure that it is being operated in compliance with the regulations. HUD OHNAP staff, not by Housing New Mexico, will perform those reviews.

Annual Reporting

Reports on the status of occupancy at the project are due to HUD on an annual basis.