2018

Department of Housing and Community Affairs

HOME PROGRAM RENTAL COMPLIANCE GUIDE

ANITA HAMILTON, COMPLIANCE MANAGER

DHCA

HOUSING AND COMMUNITY AFFAIRS | 1401 Rockville Pike, 4th Floor; Rockville, MD 20852

Contents

Introduction

Purpose of this Manual

This manual contains the basic program guidelines and describes the way Montgomery County reviews and awards HOME Investment Partnerships Program ("HOME") funds for residential rental developments. It does not include information pertaining to the use of HOME funds to provide home purchase or rehabilitation financing assistance to homeowners and new homebuyers. This manual also provides an overview of the ongoing affordability provisions property owners must comply with during the development's Period of Affordability. The manual is intended to be used with information provided on the County's Multifamily Housing Production and Compliance at: https://montgomerycountymd.gov/DHCA/housing/multifamily/.

Disclaimer

The information presented is not intended to be an all-inclusive list of the regulations and requirements governing the County's HOME program for rental housing. The County may request other information to evaluate a new project for HOME funding or to determine compliance with HOME federal regulations and guidelines for existing projects. In the event of a conflict or inaccuracy, the HOME regulations described in 42 U.S.C. §12701 - §12839, et seq., and regulations promulgated thereunder by the United States Department of Housing and Urban Development ("HUD") as amended from time to time, will control. Applicants and developers assume all risks associated with changes that may occur in the County's or HUD's HOME Program rules and regulations or policies concerning this program.

Program Focus

The County's HOME program for rental housing is designed to increase affordable housing choices for low- and very low-income households. HOME funds are loaned to non-profit and for-profit developers for a variety of affordable rental housing activities including acquisition, rehabilitation and new construction. Financing is provided only in the form of repayable loans – grants are not offered. Since 1998, the Department of Housing and Community Affairs ("DHCA") has focused much of its efforts and program funding on renovating deteriorating multi-family properties. However, funds are available for the construction of new projects as opportunities arise. In fiscal year 2019, Montgomery County received $1,963,701 in HOME funds, and expects to receive an additional $500,000 in program income. Since 1993, more than $51 million has been spent or committed to acquire, rehabilitate and construct over 3,000 units, of which nearly 2,000 were affordable for persons at or below 60% of the Area Median Income.

Any Questions or Comments should be directed to:

Anita Hamilton, Compliance Manager
Department of Housing and Community Affairs
240-777-3603

SECTION I – HOME Program Overview

Background

Montgomery County is the most populous county in the state of Maryland. As of the 2010 census, the County's population was 971,777, increasing by 9.0% to an estimated 1,058,810 in 2017. Montgomery County is included in the Washington–Arlington–Alexandria, DC–VA–MD–WV Metropolitan Statistical Area. It is home to incorporated cities of Rockville and Gaithersburg, but also to populated unincorporated communities like Silver Spring and Bethesda. As one of the most affluent counties in the United States, Montgomery County also has the highest percentage (29.2%) of residents over 25 years of age who hold post-graduate degrees. The County has been ranked as the one of the wealthiest in the United States. Like other inner-suburban Washington, D.C. counties, Montgomery County contains many major U.S. government offices, scientific research and learning centers, and business campuses, which provide a significant amount of revenue for the county.

Housing costs in Montgomery County are high. According to the 2014 American Community Survey One-Year Estimates, the Washington Metropolitan Statistical Area median monthly homeownership costs are $2,202 and median monthly gross rent is $1,525. More than 30% of households pay more than one-third of their incomes to satisfy these monthly housing costs. According to the 2015 U.S. Census American Community Survey, 49.4% of renters are "housing burdened" in that they pay more than one-third of their income for housing. Without affordable and decent housing, individuals and families cannot hope to improve their health, their education, or their financial security. Affordable housing is the basic building block to a just and productive society and has therefore been one of the County's top priorities.

The County's Department of Housing and Community Affairs (DHCA) is charged with planning and implementing activities that prevent and correct problems that contribute to the physical decline of residential and commercial areas; ensuring fair and equitable relations between landlords and tenants; increasing the supply of affordable housing; and maintaining existing housing in a safe and sanitary condition. Montgomery County Government receives HOME funds directly from HUD under its formula allocation for Participating Jurisdictions ("PJs"). DHCA is the unit within the County Government responsible for administering the federal requirements and regulatory guidelines of the HOME program to expand the supply of quality affordable housing and stabilize neighborhoods. The PJ is accountable to HUD for the performance and compliance of the properties and activities it finances with HOME funds. The property owner, in turn, is accountable to the PJ for the performance and compliance of its HOME-assisted rental properties.

Federal Regulations and Requirements

The HOME program was authorized by the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 U.S.C. 12721 *et seq*.), known as NAHA. The regulations for the HOME program are codified in 24 CFR part 92. States and local governments first received funds in federal fiscal year 1992. It is the largest Federal block grant to States and local governments that is designed exclusively to create affordable housing for low-income households. The HOME program provides formula grants to states and localities that communities use to fund a variety of housing activities to:

- Expand the supply of decent, safe, sanitary and affordable housing, particularly rental housing for low- and very low-income households;
- Strengthen the ability of state and local governments to design and implement strategies for achieving affordable housing;
- Promote the development of partnerships among governments, non-profit organizations and the private sector to utilize all available resources to produce affordable housing; and
- Encourage matching contributions from Participating Jurisdictions ("PJs) for each housing unit assisted with HOME funds. PJs must provide matching contributions from non-federal sources.

HOME funds may be used for the acquisition, new construction, or rehabilitation of affordable rental housing. HOME-assisted rental units must be occupied by income eligible tenants and carry rent and occupancy restrictions for varying lengths of time depending upon the amount of HOME funds invested per unit.

The 2013 HOME Final Rule

In July 2013, HUD published a Final Rule in the Federal Register to amend the HOME program regulations. In general, the amended requirements apply to projects to which HOME funds are committed to on/after August 23, 2013. These amendments, representing the most significant changes to the HOME program in 17 years, were intended to:

- Clarify existing regulatory requirements and codify existing policy guidance previously issued by HUD
- Establish new requirements to increase accountability and performance, accelerate the timely production and occupancy of assisted housing, improve monitoring and oversight, address Community Housing Development Organization (CHDO) capacity/performance issues
- Achieve alignment with other federal housing programs, where possible

The HOME Program regulations are found at 24 CFR Part 92. The Electronic Code of the HOME regulations may be found here.

SECTION II – Underwriting Policies and Procedures

Underwriting for the HOME program involves the analysis of project assumptions and risks to determine if the County's investment is reasonable and the project can be expected to meet all applicable program requirements. During the underwriting review, DHCA evaluates cost reasonableness, market demand, developer capacity and the commitment of other funding sources to ensure that each project is financially sustainable over its affordability period. Loan requests are presented for review by the Housing Loan Review Committee (HLRC) which is comprised of a diverse group of private citizens and designated county staff knowledgeable in affordable housing development, finance and/or management. The committee makes recommendations to Director of DHCA regarding the allocation and conditions for funding the proposals. The Director determines which proposals will be funded and sets the terms of the loan based on the needs of the project. All housing proposals must be consistent with the threshold criteria and funding guidelines established in the County's Consolidated Plan to expand and strengthen partnerships with the private sector in the development of affordable housing.

HUD created the Consolidated Plan to serve as the planning document (comprehensive housing affordability strategy and community development plan) of state or local grantee governments and to support their applications for funding under HOME and any of the Community Planning and Development formula grant programs. The Consolidated Plan serves as the framework for the County's identification of housing and community development priorities. HOME's emphasis on consolidated planning expands and strengthens partnerships among all levels of government and the private sector in the development of affordable housing.

Application and Review Process

Eligible Applicants

Developers and owners of affordable rental housing – including for-profit developers and nonprofit developers are eligible to apply for HOME funding. The Multifamily Loan Application for developers can be found here.

Project Location

Projects must be located within the geographic jurisdiction of Montgomery County, Maryland.

Project Types

Funds may be provided for acquisition, new construction and rehabilitation of multifamily residential rental projects. In practice, most projects will also require other public investment to be economically feasible. This may include projects also funded with other federally-regulated affordable housing programs such as, but not limited to, LIHTC, HUD Section 202, Section 811, HOPE VI, or Choice Neighborhood.

Parameters of HOME Funding

DHCA establishes a maximum cap on the HOME investment in a single development based on the availability of funding and the County's housing priorities. Subsidy layering is a component of project underwriting, which involves assessing whether the proposed level of HOME assistance is appropriate given the level of project investment by other financing sources. Under the provisions of §92.250(b) of the HOME Rule, the County may not invest any more HOME funds, alone or in combination with other governmental assistance, than is necessary to provide quality affordable housing that is financially viable for the period of affordability required by the HOME regulations. The maximum per unit subsidy in HOME is published each year by HUD.

Rental units rehabilitated or constructed with HOME funds must remain affordable to income qualified households for varying lengths of time depending on the type and amount of HOME funds invested per unit as defined in the following table. All loans must be secured by a mortgage lien.

Construction Type	HOME Assistance Per Unit	Period of Affordability
Rehab	Less than $15,000 $15,000 - $40,000 More than $40,000	5 years 10 years 15 years
New Construction	Any amount	20 years

To expand and maintain the supply of decent, safe, sanitary and affordable housing, particularly rental housing for low and very-low income persons and families, Montgomery County may establish longer terms of affordability restrictions that extend for the life of the HOME loan – typically 30 to 40 years. This period is longer than the minimum period required by HUD under the HOME program.

Development Gap Subsidy and the Maximum Amount of Assistance is based on the project proforma and the County's maximum per unit subsidy limit per unit based on its evaluation of the proforma. The interest rate charged generally is three percent, however the rate can be set as low as one percent, or as high as prevailing market rates. Loan repayments can amortize monthly, be deferred for a period, or be based on a property's available cash flow.

Eligible Costs

A wide variety of rental development costs can be paid for with HOME funds provided that these costs are incurred in the context of an eligible project. Eligible direct rental project costs may include:

- Labor, materials, and other construction costs;
- Energy efficiency improvements;
- Utility connections;
- Inspection, testing, and abatement of lead-based paint;
- Relocation costs for assisted properties;

- Soft costs such as: financing fees; credit reports; title binders and insurance; surety fees; recordation fees; transaction taxes; legal and accounting fees, including cost certification; appraisals; architectural and engineering fees, including specifications and job progress inspections; environmental reviews; builders' or developers' fees; affirmative marketing; and handicap accessibility improvements.

Costs funded with HOME funds must be eligible according to HOME Final Rule 24. CFR 92.206. The following additional limitations also apply:

- HOME funds may not be used to pay operating costs or to capitalize reserves with the following exception: HOME may be used, subject to DHCA's approval, to establish a rent-up reserve to cover initial operating deficits allowed under 24 CFR 92.206(d)(5) and 24 CFR 93.201(d)(5).
- HOME funds may not be used for non-residential accessory structures such as free-standing community/leasing buildings, garages, carports, or maintenance structures. HOME funds may be used for community space or common laundry facilities included in residential buildings.
- HOME funds may not be used for off-site infrastructure costs, including any costs associated with extending infrastructure to the project site. The cost of connecting to public infrastructure located in an adjacent right-of-way (e.g., water or sewer tap) is an eligible cost.
- HOME funds may not be used for organizational costs such as partnership formation or syndication costs associated with transactions using equity from LIHTC, historic tax credits, or other similar tax incentives.

Cost Reasonableness

Per the requirements of 92.250(b), all project costs must be reasonable, whether paid directly with HOME funds. DHCA will review all project costs, including hard and soft costs, to evaluate their reasonableness and may, at its option, require applicants to obtain additional quotes, bids or estimates of costs. A costs analysis will be conducted to determine cost reasonableness and applications may be determined ineligible if access to information related to the analysis is not provided or costs are determined to be unreasonable

Identity of Interest

Owners must disclose any identity of interest situations that may occur when contracting with related companies during either the development or ongoing operation of the project.

Environmental Review Requirements

Applying for HOME funds triggers environmental review requirements under 24 CFR Part 58 which prohibits developers from undertaking or committing or expending any HOME funds (including non-federal funds) to any physical or choice-limiting actions on the site prior to receipt of an environmental clearance.

Labor Standards – Davis Bacon Act for HOME Funded Projects

Labor standards, including Davis-Bacon federal prevailing wage requirements apply to all rental housing projects with 12 or more units assisted with HOME funds. Under Davis Bacon, all laborers and mechanics employed in the project must be paid an hourly rate not less than the minimum rate specified in the applicable wage decision issued the Department of Labor (DOL) for each project. In determining whether Davis Bacon applies, when combining HOME assistance with other federal sources, developers must follow the Davis-Bacon standards of the program that applies the standards to the smallest number of units.

Property Standards

All developments funded with HOME funds must at the time of completion, at a minimum, comply with all applicable Montgomery County building codes, rehabilitation standards, energy efficiency requirements, ordinances, zoning and federal regulations regarding hazardous materials. All projects must meet applicable Section 504/UFAS requirements. Additionally, covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements required by the Fair Housing Act as outlined in 24 CFR 100.205.

All buildings of five or more residential units in new construction or substantial rehabilitation HOME projects must include the installation of "broadband infrastructure" as defined by 24 CFR 5.100. In limited circumstances, DHCA may, in a rare instance, waive this requirement if the project's location makes such installation infeasible or creates an undue financial burden.

All projects must have a fully-equipped laundry room if washer/dryer connections are not provided in each unit.

Occupancy Deadlines

In accordance with 24 CFR 92.252, HOME-funded rental project must comply with the following deadlines and requirements as evidenced by occupancy of tenants with a written lease that complies with the requirements of 24 CFR 92.253:

- Within *6 months* of the date of project completion, every HOME-assisted rental housing unit must be occupied by income-eligible tenants. If a unit is not leased up, the property owner must provide marketing information to DHCA and, if appropriate, prepare and submit documentation of a new marketing plan to HUD. The County will impose a schedule on the owner for undertaking these steps.
- Within *18 months* of the date of project completion, if efforts to market the units are unsuccessful and units remain unoccupied by an income-eligible tenant, the property owner is required to repay all HOME funds invested in the unoccupied HOME unit(s). A unit that has not

served a low- or very low-income household, as applicable, has not met the purposes of the HOME program. Therefore, the costs associated with the unit are ineligible.

Project completion, defined at §92.2, means that title transfer requirements and construction work have been performed, the project complies with all HOME requirements, and the final drawdown of HOME funds has been disbursed. For purposes of implementing this definition, the County tracks deadlines using the date that a project is completed in HUD's Integrated Disbursement and Information System (IDIS).

These occupancy deadlines and marketing requirements apply to projects to which HOME funds are committed on or after August 23, 2013.

Lease Requirements

In accordance with the provisions of 24 CFR 92.253, tenants of HOME-assisted units must be protected by a written lease. Owners of rental housing assisted with HOME funds must ensure that the leases do not exceed the HOME rent limits and do not contain any clauses that are prohibited by the HOME Rule.

Lease Term

The HOME program requires that lease terms for HOME-assisted units must be for a minimum of 1 year, unless the tenant and owner mutually agree to a specified shorter period. However, Chapter 29 of the Montgomery County Code requires landlords to offer each lease for an initial term of 2 years and at renewal, the landlord must also offer a 2-year lease, unless the landlord has reasonable cause to offer a different term. *Reasonable cause is defined as a situation whereby a 2-year lease would cause undue hardship or expense for a landlord. For example, sale of the unit with settlement likely to occur within 2 years.*

Lease Termination

The HOME program stipulates that property owners may not terminate a tenant's lease nor refuse to renew his or her lease without good cause. Even with good cause, the owner must provide the tenant with a thirty-day advance written notice before terminating the lease. For projects located in Montgomery Count, Chapter 29 of the Landlord-Tenant Relations of the Montgomery County Code, amended by Bill 19-15 effective March 13, 2017, requires landlords to give a tenant 60 days' notice to vacate at the expiration of the lease – unless a tenant is in breach of the lease or the landlord does not intend to offer an existing tenant a renewed lease term.

HOME Regulatory Agreement

Prior to disbursing any HOME funds for a project, the County and the property owner enter into a written agreement that includes all the required provisions of the HOME regulations at §92.504(c). The executed written agreement evidences the County's commitment of HOME funds. The agreement is legally binding and must be signed and dated by all parties to the agreement. The written agreement is a separate document from the financing documents (e.g., mortgage or deed of trust, promissory note, security instruments, or other agreements that might be used to convey payment terms) because the agreement imposes the HOME affordability restrictions which must remain in force until the end of the Affordability Period and is recorded in Montgomery County land records. The written agreement may vary depending upon the type of project undertaken, however, it must detail basic provisions to ensure compliance with the following requirements:

Purpose of the HOME Loan

Describes the amount and use of the HOME funds including the type and number of units to be funded, tasks to be performed, a schedule for committing funds, completing tasks, a budget for the project and any requirement for matching contributions. These items must be in sufficient detail for the County to effectively monitor performance under the agreement.

Term of Agreement

Specifies the duration of the agreement based on the type of loan, without regard to the term of the Leasehold Deed of Trust Note or any repayment thereof.

Occupancy Requirements

Requires compliance as applicable with the type of project assisted, the terms of repayment and provisions relating to leases and resident protections.

Affirmative Marketing

Requires the project owner to conduct marketing and advertising activities in accordance with 24 C.F.R. §92.351, applicable fair housing laws, and the affirmative marketing standards established by the County prohibiting discrimination in housing and employment including (1) the establishment of affirmative marketing procedures which effectively prohibit any exclusionary practices; (2) compliance with the Fair Housing Act and the Age Discrimination Act of 1975; (3) the display of the "Fair Housing" logo at the leasing or sales office; (4) the written submission of plans to solicit applications of persons who are unlikely to apply without special outreach; and (5) the maintenance and annual submission of a list of characteristics of tenants renting HOME-assisted units.

Disbursement of Funds
Specifies that the project owner may not request disbursement of HOME funds under the written agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

Records and Record Keeping
Specifies the records and documents the project owner is required to maintain and the information or reports that must be submitted to assist the County in meeting its recordkeeping and reporting requirements. Tenant income, rent and inspection information must be kept for the most recent five years, until five years after the affordability period.

Enforcement of the Agreement
Specifies the means of enforcement of the Regulatory Agreement requirements and remedies for breach of the affordable housing requirements. The agreement specifies that suspension or termination may occur if the property owner materially fails to comply with any term of the agreement.

Uniform Administrative Requirements
Requires compliance with applicable uniform administrative requirements of the HOME program regulations.

SECTION III – HOME Program Requirements

HOME Income Limits

HUD requires that every HOME-assisted rental unit be occupied by a household that is low-income. For rental housing, at least 90 percent of the families benefited must have incomes that are no more than 60 percent of the area median income. In rental projects with five or more assisted units, at least 20% of the units must be occupied by families with incomes that do not exceed 50% of the HUD-adjusted median. The incomes of households receiving HUD assistance must not exceed 80 percent of the area median. The HOME Income Limits are calculated using the same methodology that HUD uses for calculating the income limits for the Section 8 program, in accordance with Section 3(b)(2) of the U.S. Housing Act of 1937, as amended. These limits are based on HUD estimates of median family income for the FMR area, with adjustments based on family size. HOME income limits are published each year by HUD and distributed by DHCA to property owners/managers in Montgomery County. DHCA requires that property owners of HOME-assisted units in Montgomery County use the Income Limits on the HUD published chart.

HOME Rent Limits

HUD requires that the rents charged for HOME-assisted units be affordable to low- and very-low income households. HUD defines what is affordable based on the applicable HOME rent limits for all Fair Market Rent areas ("FMR"), adjusted for bedroom size. Montgomery County is part of the Washington-Arlington-Alexandria, DC-VA-MD HUD Metro FMR. Rent limits for the FMR area are updated annually by HUD and distributed by DHCA to property owners/managers in Montgomery County. New rents are effective upon receipt of the new HUD published numbers. However, tenants' rents may not be adjusted until their leases are renewed and in accordance with County's guidelines for implementing rent increases. DHCA requires that property owners of HOME-assisted units in Montgomery County use the Rent Limits on the HUD published chart.

The HOME rent limit for a given unit is the maximum rent a property owner may charge for the rent. The amount of rent an owner can charge depends on whether the unit is designated as a "High" or "Low" HOME unit. When the County commits HOME funds to a project, the Regulatory Agreement will specify the total number and type, by bedroom size, of High and Low HOME Rent units in the rental property. The owner must maintain this mix of High and Low HOME Rent units throughout the affordability period.

High HOME Rent Units

Must be occupied by tenants whose incomes do not exceed the HUD published HOME low-income limits, i.e., 80 percent of area median income. Rents for these units cannot exceed the HUD-published High HOME rent limits. In general, HUD calculates the High HOME rent to be the lesser of the applicable Fair Market Rent or a rent equal to 30% of 65% of the adjusted area median income, adjusted for unit size.

Low HOME Rent Units

Must be occupied by tenants whose incomes do not exceed the HUD-published HOME very low-income limits, i.e., 50 percent of the area median income. The rents for these units cannot exceed the HUD-published Low HOME rent limits. In general, HUD calculates the Low HOME rent to be the lesser of the applicable Fair Market Rent of a rent equal to 30 percent of 50 percent of the area median income, adjusted for unit size.

Fixed and Floating Units

In addition to High or Low HOME Rent units, when the County commits HOME funds to a project, the number of "Fixed" or "Floating" HOME-assisted units in the rental property will also be designated. The designation of these units must be maintained throughout the affordability period.

FIXED UNITS are permanently designated throughout the affordability period.

FLOATING UNITS may change over time, but the total number of affordable units remains the same. The substituted units must be comparable in terms of size, features, and number of bedrooms.

Utility Allowances

The HOME statute and the regulations of 24 CFR Part 92 establish gross rent limits for HOME-assisted rental units. Gross Rent collected from a tenant includes the contract, or tenant-paid rent, plus either actual utilities or a utilities allowance (UA) for any tenant-paid utilities. Under the 2013 HOME Final Rule, rental projects for which HOME funds were committed on or after August 23, 2013 are required to use a project-specific UA. HUD has indicated that their preferred methodology is the HUD Utility Schedule Model (HUSM). The other HUD Acceptable Methods for Calculating UAs for HOME-assisted units are listed below. The staff cost of determining the initial UA, prior to project completion, can be charged as a project-related soft cost for projects to which HOME funds were committed on or after August 23, 2013 under 24 CFR 92.206(d). For properties where HOME funds were committed before August 23, 2013, owners may continue using the county-wide utility allowance schedules published annually by the Housing Opportunities Commission (HOC), the County's public housing agency.

HUD Acceptable UA Methodologies

HUD Utility Schedule Model (HUSM)

The HUSM enables users to calculate utility schedules by housing type after entering utility rate information (tariffs). This model is based on climate and survey information from the U.S. Energy Information Administration of the Department of Energy and incorporates energy efficiency and Energy Star data.

Multifamily Housing Utility Analysis

In 2015, HUD published Multifamily Notice H-2015-4 to provide instructions to owners and managers for completing the required utility analysis. This analysis also used for the USDA Rural Housing Service program and allowed for LIHTC projects.

Utility Company Estimate

Utility allowances based on estimates obtained from a local utility company for each of the utilities used are permitted. Estimates must be obtained in writing and must be based on the estimated cost of that utility for a unit of similar size and construction for the geographic area in which the building containing the unit is located.

LIHTC Agency Estimate

Under the IRS regulations, the tax credit allocating agency estimate entails two options: 1) an agency estimate that is a prospective projection of utility costs based on site and building characteristics, and 2) an actual usage methodology. Projects receiving both HOME and LIHTC funding may obtain a project-specific agency estimate or accept the UA approved by the LIHTC agency based on its actual usage methodology.

Energy Consumption Model (Engineer Model)

UA based on an energy and water and sewage consumption and analysis model prepared by a properly licensed engineer or a qualified professional independent from the property owner. Specified building factors must be included in the model.

SECTION IV – HOME Program Administration and Management

In Montgomery County, DHCA is responsible for managing the day to day operations of the HOME program and for ensuring that HOME funds are used in accordance with all program requirements and written agreements. In accordance with HOME regulations, the County's monitoring procedures consists of a Desk Audit and an On-Site Audit to ensure HOME funds are used to provide housing to low- and very-low income residents, meet property maintenance standards for decent, safe, and sanitary housing and the project's organizational and project performance as well as project viability (financial health, development capacity, management capability, etc.) are in compliance with all reporting requirements. While the annual project review is a requirement of the HOME program, it is also a helpful tool DHCA uses to provide the technical assistance individual projects may need to achieve program compliance and effectiveness.

Desk Audits

The Annual HOME Compliance Report

Desk audits, as the name implies, are completed at DHCA's office and principally focus on the analysis of the completed HOME Compliance Report, and other documentation requested by DHCA compliance staff, to determine the project's compliance with the ongoing affordability requirements of the HOME program. HOME-assisted rental units carry rent and occupancy restrictions specified in each project's HOME Regulatory Agreement. On an annual basis, DHCA issues an "Annual HOME Compliance Report" to each project and assigns a specified date for submission of the completed report. In accordance with the record-keeping provisions contained in the HOME regulations, the owner must provide the information required by the record-keeping provisions contained in the HOME regulations that is gathered through the report including:

- Tenant's Name, Address or Unit Number
- Number of Bedrooms in the unit
- Effective Date of Tenant's Initial Certification or Recertification
- Rent Data
- Monthly Amount of Tenant Paid Rent
- Monthly Amount of Tenant-Paid Utilities or Utility Allowance
- Monthly Amount and Source of Rental Assistance (if any)
- Tenant's Annual Gross Rent
- Designation as a High or Low HOME Rent Unit
- Demographic Data
- Household Size
- Household's Race/Ethnicity

The Desk Audit is a continuous process that includes regular, ongoing analysis of a project's implementation of HOME regulations and guidelines. Throughout the affordability period, DHCA staff maintain contact with the property owner/manager, generally by telephone, with some degree of regularity. The amount of time spent is dictated, in part, by the property owner/manager's understanding of the HOME program and guidelines.

Management Certification of Compliance

The HOME Compliance Report requires the property owner to annually certify management's compliance with the key provisions of the HUD HOME regulations and guidelines including:

Lease Requirements

All tenants in HOME-Assisted units are required to have a written and executed lease which must be maintained in the tenant's file. Unless otherwise approved by DHCA, the project is required to use the "Apartment and Condominium Lease" of Montgomery County, as approved by the Montgomery County Commission on Landlord-Tenant Affairs, updated effective March 15, 2017.

Tenant Selection Requirements

Implementation of tenant selection policies and criteria for the HOME-Assisted units in the project are required to ensure that tenants are selected for occupancy in a fair and equitable manner. The property owner must establish written procedures and make these available to DHCA and potential applicants upon request. Tenant selection plans must:

- Be consistent with the purposes of providing housing for low- and very low-income households
- Provide for the selection of tenants from a project's existing written waiting list in chronological order of their applications
- Provide for prompt written notification to any rejected applicant of the reason for their rejection
- Be based on objective criteria and must comply with the Fair Housing Act, applicable provisions of 24 CFR Part 5, and any applicable HUD guidance.

HOME Income Restrictions

The maximum amount of annual gross income a household may earn to qualify for a HOME-Assisted unit is called the "HOME Max Income" limit. Owners/managers must determine the income-eligibility of the tenants' household at the time of initial application and at each annual recertification by examining at least 2 months of source documents (e.g., wage statements/pay stubs, employer verification of employment, unemployment compensation documentation, social security/SSI and pension statements. Monthly statements from the tenant's banking institutions also must be examined to determine the amount of interest income from assets.

HOME Income Targeting

In projects with 5 or more HOME-Assisted units, at least 20% of the HOME units must be occupied by very low-income tenants (at or below 50% AMI) who pay no more than the Low HOME rent limits.

Over-Income Tenants

If a tenant's household income is determined to exceed HUD HOME income limits during subsequent recertifications, the owner is required to follow HOME guidelines to restore compliance to the project. This may include increasing the tenant-paid-rent to 30% of the household's adjusted annual income. Under current HOME guidelines, the owner/manager cannot terminate or refuse to renew the lease of the over-income household. The steps that the property manager takes to restore compliance depend on whether the over-income tenant occupies a High HOME Rent unit or a Low HOME Rent unit. The property is temporarily out of compliance until the unit with an over-income tenant is vacated and can be rented to another income-eligible tenant household. An outline of the steps that must be taken by management is available from DHCA Compliance staff or on DHCA's Multifamily Website.

HOME Rent Limits

Property owners must certify that rents charged the HOME-assisted units are based on the HUD published HOME rent limits, as annually updated. If required, tenants' rents are decreased to comply with changes in HOME rent limits, or increases in the utility costs, in accordance with the terms of the tenant's lease.

Utility Allowance

Property owners must certify and provide documentation of the source or methodology of the Utility Allowance used by the project.

On-Site Audits

Tenant File Review

To verify the information submitted on the Annual HOME Compliance Report, and other HOME rental requirements, HOME rules require On-Site reviews of the tenant files of households occupying HOME-assisted units. These On-Site audits occur every 1 - 3 years as specified in the "Minimum Frequency of On-Site Audits & Housing Code Inspections" chart listed below. On-site monitoring enables DHCA to conduct a more in-depth level of review than the Desk Audit. Following the satisfactory approval of the Annual HOME Compliance Report and completion of the Desk Audit, DHCA contacts the property owner or manager to arrange a date and time to conduct the On-Site Audit of the Tenant Files in accordance with the minimum frequency requirements.

The On-Site Audit involves a visit to the project's office to verify that the property owner is maintaining records for each household occupying a HOME-assisted unit. These records must support the information submitted by owners on tenants' incomes, rents, and other HOME rental requirements for each year in the compliance period. On-Site reviews are required during the affordability period on a periodic basis. The frequency of the Tenant File Audit is based on the number of total units in the project and follows the same frequency schedule of the Housing Code Inspections indicated below.

Tenant File Documentation and Organization

Record keeping is crucial to the successful management of HOME-Assisted units. Insufficient documentation is likely to lead to monitoring findings which will be more difficult to resolve if records are missing or inaccurate. Management should develop a consistent process to organize and maintain the documentation required in all tenant files. The tenant files should be clearly divided into yearly sections with the most recent year of recertification on top, i.e., 2018, 2017, 2016, etc., so that information and documentation required for audit can be clearly identified.

Tenant Income Certification

At the time of the tenant's initial application and annually thereafter, the tenant must certify the household's income and composition by completing and signing a Tenant Income Certification (TIC). The completed TIC should be maintained at the top of the section containing each year's documentation.

A routine schedule for performing an annual recertification of the tenant's income and documentation should be implemented. This is typically based on the anniversary of the tenant's initial certification. Alternatively, management may implement an annual schedule whereby verifications for all tenant households are performed at the same time each year.

Income Verification and Source Documentation:

At least 2 months of documentation must be obtained from each income source of each tenant household member with an income.

Acceptable forms of Income Documentation include:

- Wage statements or Pay stubs
- Completed Employer Verification form
- Social Security or Pension statements
- Unemployment Compensation Statements
- Tax returns
- 1099 or Schedule C forms (for self-employed individuals)
- Zero Income forms for tenants who state they have no current form of income

Management Notes maintained in the tenant's file may be used to clarify information that cannot be verified with source documentation.

Management may terminate the lease or refuse to renew the lease of a household for failure to supply with requirements to verify the household's income.

Income Calculation Worksheet or Calculator Tape

An Income Calculation Worksheet documents the information the property manager used to determine the income amount(s) listed on the TIC.

A separate Income Calculation must be completed and maintained for each member of the tenant household with an income.

Asset Verification and Documentation

At least 2 months of bank statements or statements from other financial institutions in which assets are held must be obtained from the tenant or the tenant's financial institution (e.g., credit unions, interest statements, brokerage firms, etc.).

Proof of Rental Assistance

Written documentation of the source, amount and term of all forms of rental assistance received by the tenant household.

Executed Lease

A written and fully executed Lease must be maintained in the tenant's file. Typically, the lease is maintained on one side of the tenant file separate from the recertification section of the file. A new lease is not required for each year the lease is renewed and the tenant is occupying the unit on a month-to-month basis.

An executed HOME Program Addendum to the Lease should also be signed and dated by the tenant and included in the tenant's file. The HOME Program Addendum needs to be executed only upon the initial occupancy by the tenant.

Document Change in Household Status

All actions taken by management regarding the tenant's income verification and rent determination.

Prior to finalizing the tenant's recertification, any rent adjustment required due to the tenant's change in household status, or those that are found to be over-income, must be documented. A copy of the written notice to the tenant of the amount and reason for a change in rent must be maintained in the tenant's file.

File Selection

In preparation for an On-Site Tenant File Audit, DHCA will select a sampling of files for review based on the size of the project:

- For rental projects of up to 5 units, review all tenant files
- For rental projects with more than 5 units, review 15 to 20 percent
- If the initial sampling of Tenant Files identifies potential compliance or performance issues, DHCA may decide to follow up in several ways:
- Review a larger sample of Tenant Files, to determine if the problem is widespread
- Interview program/project staff about the specific issue(s) identified
- Interview residents
- Determine Appropriate Corrective Actions needed to correct areas of noncompliance, poor management, or poor performance that are violations of the HOME statute or regulations or other deficiencies (concerns and observations) as necessary.

Written Feedback to the Project's Management

Following the completion of the audit, DHCA will prepare written feedback – typically provided as an email -- summarizing the results of the review and describing any follow-up activity required of the property owner/manager to correct the deficiencies and action dates. Compliance "Findings" (based on a violation of a HOME program requirement) and concerns are not limited to regulatory issues but also cover project occupancy/vacancies, program implementation, etc.

The monitoring process is the basis through which DHCA evaluates a project's compliance with the guidelines of the HOME program and the affordability terms stated in the Regulatory Agreement. One of the most important aspects of monitoring is the conveyance of information and ideas back to the project owner/manager. At a minimum, monitoring presents an opportunity for DHCA to assess management's efforts, make recommendations for change where appropriate, and identify areas where technical assistance is needed.

On-Site Property Maintenance Inspection

The HOME program requires that properties remain in standard condition throughout the affordability period. In Montgomery County, properties are required to meet, at a minimum, the requirements in the County's Chapter 26, Housing and Building Maintenance Standards; Chapter 48, Solid Waste; Chapter 58, Weeds, and all other applicable laws within Montgomery County Codes. These laws define how buildings, homes, apartments, yards, and vacant properties are to be maintained in Montgomery County and apply throughout the entire property, its units, and common areas.

DHCA's Code Enforcement division conducts On-Site inspections of HOME-assisted rental housing to ensure that projects continue to meet or exceed the County's property maintenance standards. Section 92.504 (d)(1) of the HOME final rule establishes a schedule for On-Site property inspections based on the total number of units in the project. The monitoring and inspection schedule is determined by the total number of units in the project rather than the number of HOME-assisted units and is based on a "sufficient sample" of units. At a minimum, the County performs On-Site property maintenance inspections based on the following schedule:

Total Number of units in Project	Frequency of On-Site Property Maintenance Inspections
1 to 4 units	Every 3 years
5 to 25 units	Every 2 years
26 or more units	Annually

The maintenance inspection of HOME projects is based on "a sufficient sample" of units. Montgomery County has adopted the HOME program's standard practice of inspecting fifteen to twenty percent of the HOME-assisted units in a project, and a minimum of one unit in every building. If compliance problems are identified in sample units, the DHCA may inspect additional units to ensure that all HOME-assisted units comply with established property standards. Once an inspection date is scheduled with a Code Enforcement Inspector, the owner/manager must provide 24-hour written notice to the tenants of the pending inspection.

Property Maintenance Violations

If the inspection results in a maintenance violation for the property, a Notice of Violation (NOV) is sent to the property owner. The NOV will specify the violations cited and the corrective actions required. Most maintenance violations are required to be corrected within 24 hours to 30 days of the property inspection unless otherwise indicated in the NOV. Deadlines for completion of the corrective actions will be indicated on the NOV. Failure to correct the property maintenance violations within the timeline specified may result in the issuance of a civil citation.