

Monitoring HOME: Ensuring Program Compliance

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Funded by DHCR/HTFC



Agenda

- Overview: HOME compliance
- Compliance issues by stage of project:
 - Project selection
 - Project implementation
 - Occupancy & ongoing compliance
- Recordkeeping & DHCR monitoring



HOME Background



HOMEspeak

- NAHA: Nat. Aff. Housing Act of 1990
- Part 92 or 92.____: HOME rules @ 24 CFR 92
- CHDO: Community Housing Development Org.
- PJ: Participating Jurisdiction
- HAU: HOME-Assisted Unit
- IDIS: Integrated Disbursement & Information System
- AMI: Area Median Income (defined by HUD)
- LI: Low Income (80% AMI)
- VLI: Very Low Income



What's a Quickfinder?

- Program rules at a glance
 - Summary of key rules...but not complete
 - Reflects Federal rules, not local policies
- Topics:
 - Eligible activities, costs
 - Terms of investment
 - Major compliance requirements



Access to Other HOME Help

- HOME Program web page:
www.hud.gov/homeprogram/
- Community Connections Clearinghouse:
 - 1-800-998-9999 or www.comcon.org
- Other Federal Requirements:
www.hud.gov/offices/cpd/affordablehousing/lawsandregs/fedreq/index.cfm
- Regulations: www.access.gpo.gov



DHCR Program Tracks

- Two funding tracks:
 - Single Site Projects
 - DHCR Regional Office staff monitor implementation & construction
 - Ongoing rental occupancy monitored by DHCR Office of Housing staff
 - Multi-Site or Local Programs:
 - Local projects administered/monitored by LPA
 - DHCR Regional Office staff monitor LPAs



Are You're a Developer or LPA?

- You're a Developer/Owner if you:
 - Develop property directly, and/or
 - Own the property receiving assistance
- You're an LPA if you:
 - Administer a local program: OOR, HBA, RRP, TBRA
 - Select properties of others for assistance
 - HOME labels for LPAs: State Recipient, Subrecipient
 - CHDO homebuyer projects are funded through the DHCR LPA track merely as a means of simplifying the application process, but doesn't change the role; CHDOs are developers



Compliance Beyond the Rules

- This seminar addresses HOME regulatory requirements for compliance
- You also are accountable for additional commitments made in application/agreement
 - Extended use periods
 - Target households served
 - Pricing
 - Services
 - Other
- Read your written agreement & legal docs



Basic HOME Compliance:

Homebuyer & Rental Project Requirements
Monitoring Requirements



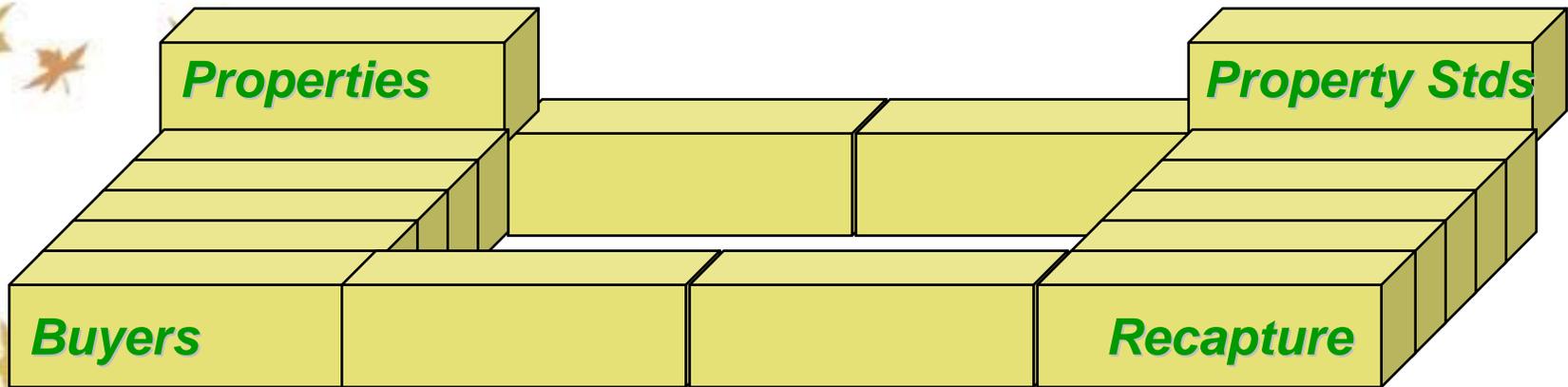
HOME Assisted Units

- HOME assists units, not projects
 - Rental fixed v. floating
 - Mixed income: If < 100% assisted, CPD-98-02 allocation
- HOME-Assisted Units (HAU) must meet:
 - Low Income occupancy
 - Property standards
 - Rent limits or price/value limits (owner-occupied)
 - Compliance period: 5 - 20 years (exc. OOR)
- Unassisted units not subject to compliance



Cornerstones: Homebuyer & Owner

- Four “cornerstone” compliance issues for homebuyer & owner projects:



HOMEbuyer Cornerstones

1. Eligible buyers: less than 80% AMI
2. Eligible properties:
 - Single/family, 2 - 4 unit, coop, condo
 - Value less than FHA 203(b) limit *
 - Lease-purchase: complete w/in 3 yrs.



HOMEbuyer Cornerstones

3. Property Standards:

- No health/safety violations on occupancy
- Home must pass HQS(codes) w/in 2 yrs*

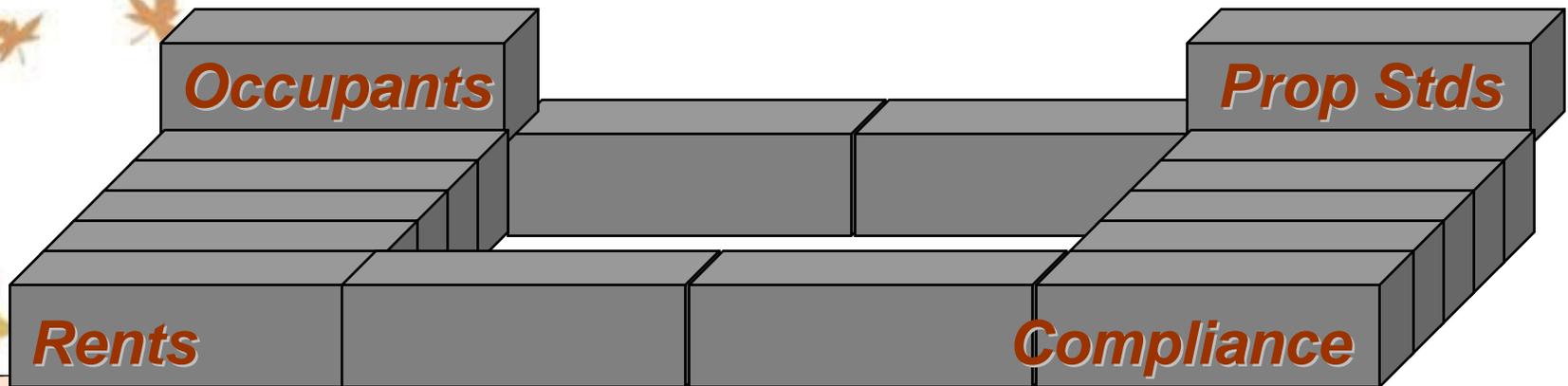
4. Compliance requirements:

- Principal residency
- Resale to low income or recapture \$
 - amortization optional
- Compliance period: 5 - 15 years
 - homebuyer only; no minimum period for OOR
- No ongoing HQS or income certification



Statutory Cornerstones: Rental

- Can acquire, rehab, or construct
- Four "cornerstone" compliance issues:



Rental Rules I

1. Occupancy:

- all assisted units at 80% (LI)
- (if 5+) 20% @ 50% of median (VLI)
- 90% of initial occupants at 60%



Rental Rules II

- 2. Rent limits:
 - HUD publishes annually (Fall - Winter)
 - VLI units: Low HOME Rent
 - lower of 30% at 50% S8 FMR
 - Other (LI) units: High HOME Rent
 - lower of FMR or 30% at 65%
 - Utility Allowance (local Section 8 sch.)
 - Only exception: PBA in VLI units



Rental Rules III

3. Property Standards

- Local codes
- Section 504/FHAA accessibility
- LBP (if pre-1978)
- Ongoing codes/HQS compliance during affordability period



Rental Rules IV

4. Compliance period:

- less than \$15,000 HOME/un 5 yrs
- \$15,000 - \$40,000 10 yrs
- greater than \$40,000 15 yrs
- new construction 20 yrs

– During compliance period:

- annual income certifications & rent limits
- HQS inspections every 1 -3 yrs



HOME Monitoring Requirements

- Development phase: 92.504(a)
 - Ensure funds “used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise.”
 - Contractor/subrecipient performance “reviewed at least annually”



Monitoring Requirements, cont

- Ongoing Occupancy:
 - 92.252(f)(2): owners must provide info annually
 - 92.504(d) “must perform **on-site** file review & inspections”:
 - every **3** yrs for **1 - 4** units
 - every **2** yrs for **5 - 25** units
 - every **1** yr. for **26+** units
 - Inspections: “sufficient sample”



Beyond Compliance Monitoring

- The “repayment” issue
 - Compliance monitoring doesn’t help prevent foreclosure
- HUD intends to specify monitoring for viability
- Possible considerations:
 - Annual financial reporting (I&Es)
 - Rent increases
 - Review of reserves
 - Planned/preventive maintenance
 - Management funding
 - Property conditions: marketability



Compliance Monitoring Stages:

1. Project selection
2. Project implementation
3. Occupancy



Compliance Issues for Project Selection & Funding



Selection & Funding Issues

- Issues:
 - Eligible & ineligible costs
 - Designating HOME Assisted Units
 - Layering
 - Environmental review
 - Written agreement & legal docs



Eligible Uses of HOME \$

- Capital Expenditures
 - Acquisition & site improvements (off-site connections)
 - Rehabilitation & new construction (non-luxury)
 - Project soft costs & fees (including relocation)



Ineligible Uses of HOME

- Ineligible project types:
 - Shelters
 - Fed public housing
 - Title VI (expiring use)
 - Commercial space
 - Non-low-income housing
- Ineligible costs:
 - reserves (except IOD)
 - off-site infrastructure (except connections)
 - project-based assistance



HOME Assisted Units

- HOME assists units, not projects
 - Designation rules/methodology
 - Fixed v. floating units
- HOME-Assisted Units must meet:
 - Low income occupancy
 - Property standards
 - Rent limits
 - Compliance period: 5 - 20 years
- Unassisted units not subject to rules



Designating Assisted Units

- Inputs:
 - HOME assistance amount
 - Eligible Costs per Unit (excl ineligible & match)
 - Maximum HOME subsidy per unit
- Calculation of min. assisted units
 - Use lower of Eligible Cost/unit or Max Subsidy
 - Divide into HOME assistance amount
 - Equals: minimum assisted units (round up)
- Tradeoffs:
 - No. of assisted units credited
 - HOME \$/unit affects compliance period; 12 HAU=Davis Bacon



What is Layering?

- HUD Reform Act of 1989
 - More than 1 Federal source
- HOME: 92.250
 - HOME + 1 public source
 - PJ must adopt guidelines
- What is it?
 - Underwriting with all subsidies (CPD-98-01)



Environmental Review

- 92.352 applies 24 CFR Part 58
 - Notice CPD-01-11
- Two levels of govt review
 - Responsible Entity (RE): State Recipient or State
 - Review Authority: HUD or State (if St Recipient)
- DHCR procedures:
 - www.dhcr.state.ny.us/ocd/pubs/ocdeau0.htm
 - Combines SEQR and Federal requirements



Key Steps in Environmental Review

- Determine category of activity: Fed & SEQR
- LPA/Developer collects/submits info
- RE conducts environmental assessment
- RE publishes (FONSI/NOI-RROF or FOSI/EIS)
 - if converted to exempt, not published
- RE submits to HUD (State, if State Recipient)
- Approval: HUD issues release (7015.16)
- Then can commit funds; incur costs



Commitment

- No commitment or expenditure of HUD or non-HUD project funds until approval, exc.:
 - Exempt activities (e.g., planning, design, env review)
 - Options
 - Relocation
- Conditional commitments permitted
 - Safe harbor language (CPD-01-11, p. 10)
- Limiting actions: includes acquisition



Multi-Family (5+ units) Actions

<i>M/F Actions</i>	<i>NEPA</i>	<i>Other Authorities</i>
- New Construction	Environ. assessment	Compl Determination
- Major Rehabilitation >75% RC; 20%+ density; or conversion	Environ. Assessment	Compl Determination
- Minor Rehab	Excluded	Compl Determination
- Acquisition	Excluded	Compl Determination
- Refinancing/no rehab -If ConPlan permits	Excluded	Excluded



Single Family (1 – 4 unit) Actions

<i>SF (1-4 un) Action</i>	<i>NEPA</i>	<i>Other Authorities</i>
Density > 4 un Land use change Wetland/floodplain footprint change	Environmental Assessment	Compliance Determination
Other Single Family actions	Excluded	Compliance Determination (exc. Homebuyer assist.)*



Written Agreements

- Owner/beneficiary agreement[92.504(c)(1)]
 - execute prior to set-up/drawdown
 - environmental review
 - cover all points in 92.504(c)(3) - (5)
 - (c)(3): property owners
 - (c)(4): contractors
 - (c)(5): home buyer/owner, TBRA tenants



Written Agreement v. Recorded Docs

Written agreement:

- Loan agreement/contract between PJ & developer
- Execute prior to IDIS setup
- Governs pre-disbursement planning activities
- Defines developer & PJ roles & responsibilities
- Delineates compliance obligations during planning (& implementation)



Recorded documents:

- HB/OOR: note/mortgage, RH: deed covenant (+ mortgage), maybe repurchase agreement
- Recorded at closing
- Governs disbursements & occupancy or disposition
- References compliance obligations (implementation & post-occ)
- Basis for enforcement

Requirements: Written Agreement

- Required prior to IDIS set-up/drawdown
- Required elements:
 - Subrecipients: 92.504(c)(2)
 - Developers (incl. CHDOs): 92.504(c)(3)
- Conditional commitment: if pre-env review
 - Use CPD-01-11 p. 10 language
- Compliance checklist: for developer/CHDO agreements



Written Agreement Advice

- Too important to be left to the lawyers: it's the basis of the business relationship
- "CDBG Subrecipient style" agreements don't work for HOME developers
- Delineate roles & responsibilities: what each party will do to get to closing
- Go beyond compliance & 92.504:
 - Procurement, conflict of interest, performance standards
- Remember pre-env ROF clauses



Recorded Docs: Rental

- Deed covenant or equivalent
 - Covenants running with land
 - Land trust?
 - Purchase option, assignable right of 1st refusal?
 - Other method approved by HUD
- Note & mortgage
 - Not required, but needed to enforce repayment
 - Prepayment doesn't release restrictions
 - Amortization?



Construction Compliance



Construction Issues

- Relocation
- Procurement & contracting
 - Conflict of interest
 - Labor standards
 - Section 3
 - MWBE outreach
- Property standards
 - Local codes & Section 8 HQS
 - Lead-based paint
 - Accessibility (504 & FHAA)



Relocation

- Program goal: minimize displacement
 - 92.353: URA & Section 104(d) HCDA74
- Requirements:
 - Notices (1st notice due at "agreement")
 - Advisory services
 - Financial assistance (temp, perm, econ displacement)
- Risk assessment issues:
 - Relocation costs are eligible, incl "ineligible" occupants
 - Budgeting relocation costs (tenant income surveys)



HOME Conflict of Interest

- Potential C of I: “financial interest”
 - Contracts for services/goods
 - Occupancy of unit with HOME assistance
- Actual or presumed C of I:
 - Actual C of I: inside information/undue influence
 - Presumed C of I: officer/empl./agent/imm. Family
- PJ & Subrecipients: broad coverage
- Developers: only rental occ (92.356(f))
 - Rule requires “exception” in advance by PJ
 - HUD intends to expand CHDO C of I language
 - Don’t wait for HUD to act – expand developer C of I coverage!



Davis-Bacon

- Triggered at 12 or more HOME assisted units in a project or construction contract
- HUD letter: http://www.hud.gov/olr/olr_9602.html
- Contractors Guide: Hdbk 1344.1
<http://www.hud.gov/olr/olrwrpcp.html>



Section 3

- 24 CFR Part 135
 - <http://www.hud.gov/fhe/fhesect3.html>
 - Jobs to Section 3 residents
 - Purchases from Section 3 businesses
- Thresholds: rehab/construction
 - Recipient: HUD assistance > \$200,000
 - Contractors: above & contract > \$100,000
- Recipients/subrecipients must:
 - Notify residents/contractors
 - Facilitate training
 - Assist/cooperate with HUD compliance



Property Standards

- All applicable local codes
 - Construction: local codes or model
 - Need to certify compliance
 - DHCR: Units must meet Section 8 HQS as the applicable standard
 - Ongoing: local codes or HQS
- Accessibility
- Lead-Based Paint



Lead-Based Paint

- If pre-1978 & not exempt
 - Acquisition: Visual assessment, paint stabilization, clearance (35.1000)
 - Rehab: Interim controls v. abatement depending on amount of Fed rehab assistance (2 calcs) (35.900)
- LBP Records
 - Notices to occupants:
 - Rehab records: SWP & clearances
 - Ongoing maintenance plan -- Annual visual assessment, worker SWP training, clearance



LBP Rehab Standards

Fed Rehab Funds per Unit	\$5,000 or less	\$5,001 - \$25,000	\$25,001 +
<i>Safe Work Practices *</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Test Det/Dist Surfaces **</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Risk Assessment</i>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Interim Controls</i>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <i>Exterior</i>
<i>Abatement</i>			<input checked="" type="checkbox"/>
<i>Clearance</i>	<input checked="" type="checkbox"/> <i>Worksite</i>	<input checked="" type="checkbox"/> <i>Unit</i>	<input checked="" type="checkbox"/> <i>Unit</i>

* *except below de minimus levels*

** *or presume LBP*



Accessibility Statutes

- Rehabilitation Act (1973) Section 504
 - No “qualified individual with disabilities” excluded from participation in fed-assisted program/activity
- Fair Housing Amendments Act (1988; amended CRA68)
 - Disability is prohibited basis of discrimination
 - Accessibility standards for new projects
- Americans with Disabilities Act (1998)
 - Title II: equal opportunity to benefit from State/local programs



Fair Housing Act Standards

- New construction rental 4+ units
 - Public & common use areas
 - Passageways
 - Ground floor & elevator accessible units (4+ un)
 - Accessible route
 - Accessible switches
 - Grab bar reinforcements
 - Maneuverable kitchens/baths
 - Rules/policies: reasonable accommodations; allow reasonable modifications



Section 504 Requirements

- New construction:
 - Multi-family rental 5+ units
 - Minimum: 5% physically impaired & 2% sensory impaired
- Substantial rehabilitation:
 - 15+ units & > 75% of replacement cost
 - Minimum: 5% physically impaired & 2% sensory impaired
- Other rehab: "to the maximum extent feasible"



Other 504 Standards

- Program Accessibility
 - Non-discrimination
 - Outreach for acc units
 - Waiting list/priority for acc units
 - Reasonable accommodation
 - Information dissemination
 - Offices/activity locations accessible
- Visitability – to maximum extent feasible
 - 1 accessible route
 - Interior doors 32" +



Occupancy Monitoring



Key Occupancy Issues

- Common
 - Fair housing & affirmative marketing
 - Income eligibility documentation
- Homebuyer
 - No ongoing income or property standards
 - Only principal residency
 - Recapture on sale
- Rental
 - Unit mix; turnover/recertification
 - Rents & leases
 - Ongoing compliance monitoring



Fair Housing & Affirmative Marketing

- 24CFR5: Non-discrimination and Equal Opportunity [92.350]
- If 5+ HAUs: LPAs need affirmative marketing procedures for beneficiaries & M/WBEs [92.351(c)]
 - Identify “least likely to apply”
 - Special outreach actions
 - Records of actions



Income Eligibility

- Annually during compliance period:
 - Full source documentation at move-in
 - Tenant certification allowed in interim years
 - If 10+ yr compl. term: source documents every 6th year
- 3 permitted income methods:
 - Section 8 – most rental housing & some home buyer/owner
 - IRS 1040 – sometimes used for homebuyer
 - Census long form
- Tech. Guide for Determining Income & Allowances
 - new one coming; old one out of print
- HUD Income calculator:
 - <http://www.hud.gov/offices/cpd/affordablehousing/training/calculator/calculator.cfm>



HOME Assisted Units (HAUs): Rental

- HAUs:
 - Mix: VLI, LI, market
 - Fixed v. floating
- For compliance period, HAUs must comply:
 - Low income occupancy
 - Property standards
 - Rent limits & leases
- Resale: new owner assumes responsibilities
 - Deed covenant transfers with land
 - Prepayment if noncompliance, foreclosure or DILOF
 - Then full repayment to US Treasury account



Rents & Rent Adjustments

- Maximum rents published by HUD
 - Adjust for tenant paid utilities
 - Can't exceed except for PBA VLI units
- Adjustments:
 - Published annually by HUD HOME Program
 - Adjust at recert/lease renewal
 - Floor rents: rents limits @ initial occupancy



Leases

- Must have lease
- Must reflect tenant protections in 92.253
- Must have 30-day termination clause



Ongoing Rental Monitoring

- Report: owners must provide info annually [92.252(f)(2)]
 - Jurisdiction determines report format
- On-site file reviews & inspections" [92.504(d)]:
 - Every 3 yrs for 1 – 4 units
 - Every 2 yrs for 5 – 25 units
 - Every 1 yr for 26+ units
 - Inspections must be "sufficient sample"



Recordkeeping & Monitoring



Recordkeeping Requirements

-  Requirements in 92.508 & PJ Agreement
-  Program files (LPAs)
-  Project files (LPAs & developers/owners)



LPA Program File Contents

-  Financial (IDIS, vouchers, disbursements)
-  Affirmative marketing
-  Environmental review record (ERR)
-  Relocation
-  Project monitoring
-  Conflict of interest determinations
-  Match and program income (if applicable)



Project Files

-  Project eligibility documentation
-  Sources & Uses, disbursement records
-  Procurement/construction (if applicable)
-  Occupant eligibility/certification
-  Unit compliance with 92.252/254
-  HQS/property standards
-  Affirmative marketing (if applicable)



Retention & Access

Retain records:

-  Development records: 5 yrs. after completion or final payment
-  Compliance agreements & legal docs: 5 yrs after compliance period
-  Rental occupancy: 5 yrs. rolling base



Getting Ready for DHCR Monitoring

 DHCR Monitoring Guide

www.dhcr.state.ny.us/ocd/pubs/homemg.htm

 HOME Background

 Monitoring procedures & forms used by
DHCR to monitor subrecipients

 Project file checklists



Getting the Files Ready

 Are program files up to date?

 Admin policies/written standards

 Application processing docs (incl aff marketing, waitlists, disposition of cases)

 Financial: Invoices/Disbursements = IDIS draws

 Property standards compliance

 Wr agreements & legal docs

 Project files: use checklists in the Monitoring Guide



It's a Wrap!

- Final questions
- Evaluation
- November: CHDOs & Joint Ventures
 - Syracuse: 11/1
 - Buffalo: 11/2
 - Yonkers: 11/7
 - Albany: 11/9

