

Indiana Housing Conference

Indiana's must-attend conference for affordable housing professionals.



Ongoing Rental Oversight

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Indiana Housing & Community Development Authority

Welcome & Introductions



- Delivered by Steve Lathom, TDA Consulting
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- Session Objectives
 - Review Minimum HUD Oversight Requirements
 - Best Practice Considerations
 - Risk Based Approach
 - Preventative Medicine & Acute Care



Perspectives on Ongoing Oversight



- Regulatory imperative
 - HUD requires monitoring
 - Noncompliance can lead to repayment by PJ
- Beyond HUD
 - Is public purpose being served?
 - Ensure owners are “good neighbors” locally
- Compliance v. Asset Management
 - Narrow v. broad view
 - Regulatory v. financial
 - Financial trouble = leading indicator of regulatory failure



2013 HOME Rule



- Explicitly requires risk-based approach
- Financial oversight if 10+ HOME units
- Change in on-site monitoring schedule
 - 1st yr following completion; then not less than every 3rd yr
 - Reinspection w/in 12 months for deficiencies
- Utility allowance methodology
- Ability to charge annual monitoring fee
 - Only projects post-Aug 2013, must be part of underwriting



Minimum HUD Requirements: Annual



- Distribute income & rent limits
- Specifically approve rents & utility allowances
- Obtain & review owner's annual reporting on rents and occupancy
 - Addresses income recertifications, steps to maintain unit mix, etc.
- Financial oversight/review for projects with 10+ HOME-assisted units



Generally done remotely

Minimum HUD Requirements: Periodic



- On-site monitoring, not less than every 3 yrs
 - Tenant files – verify annual reporting
 - Income documentation, lease provisions, etc.
 - Physical inspections
 - Other procedural items (*sometimes included in annual remote reporting*)
 - Tenant Selection Plan, Affirmative Marketing, Lease Form & Provisions, VAWA, CHDO Tenant Participation



Minimum Isn't Maximum



- PJs can always be more restrictive
- Many...
 - Monitor on-site more frequently
 - Require financial reporting from all projects
 - Include ongoing oversight of reserves
 - Disbursements, adjusting deposit requirements, conducting capital needs assessments
- Begin with the end in mind
 - Strong written agreement
 - Retain rights to update reporting unilaterally
 - Auto-amendment language for new HUD guidance or monitoring findings



The 5 P's of HOME Compliance



People – income



Price –rent limits and utility allowances



Property –property standards



Period – 5 to 20 year affordability period



Policies & **P**rocess – policies, procedures & paperwork



Compliance Concerns: People



■ Income

- Wrong charts, HOME on its own schedule
 - Not with “HUD” chart issued for Sec. 8 and others
 - HOME limits can go down – different treatment than LIHTC at project level
- 2 months source documentation
 - Even if using 3rd-party verifications
- Recertification cycle mistakes/misunderstanding



Compliance Concern: Price (Rents)

- HOME ≠ LIHTC, most restrictive applies
 - Low-HOME may be lower
 - High-HOME sometimes higher
- Rent assistance
 - Tenant-based (e.g. HCV), published HOME limit applies
 - Project-based, only Low-HOME units can take higher rent
- Annual utility allowance updates
 - See HOMEfires Vol. 13, No. 2
- Mandatory fees prohibited



People & Price: Over-Income Tenants



- Fixed v. Floating in written agreement
 - If not, memorialize now
- If all units in project are HOME, fixed rules apply
- Fixed
 - Low-HOME over 50% below 80%
 - Convert next available High-HOME to Low-HOME
 - Then increase over-income tenant's rent to High-HOME
 - Low- or High-HOME over 80%
 - Increase over-income tenant's rent to 30% adjusted income
 - Replace next available HOME unit with eligible tenant (replacing Low-HOME units first)



People & Price: Over-Income Tenants



- Floating
 - Low-HOME over 50% below 80%
 - Convert next available unit to Low-HOME
 - Then increase over-income tenant's rent to High-HOME
 - Low- or High-HOME over 80%
 - Increase over-income tenant's rent to 30% adjusted income or "market" rent, whichever is lower
 - Replace next available unit with eligible tenant (replacing Low-HOME units first)
- In all cases, if LIHTC, not required to increase rent beyond LIHTC limits



Compliance Concerns: Property



- 2013 HOME Final Rule – lots of confusion
 - Guidance still pending, esp. for UPCS
- Ongoing point of emphasis, state/local codes
 - Codes that regulate construction (e.g. building code)
 - *Codes that compel maintenance activity (e.g. property maintenance code)*
- Lack of clear follow-up, documentation of clearance
- Risk-based principles
 - Deficiencies require reinspection
 - Serious/repeat deficiencies trigger more frequent on-site



Period & Process/Paperwork



- **Period:**
 - Remember, compliance period countdown only starts with IDIS completion
- **Policy, Procedure & Paperwork**
 - Prohibited lease terms
 - OIG report, every project had violations
 - Best practice is use of HOME Lease Addendum
 - Failure to review, update, or follow
 - Tenant selection plan
 - Affirmative marketing plan
 - Maintenance of CHDO status



Financial Oversight



- Rule requires for projects w/10+ HOME units
- But repayment required for noncompliant project, regardless of size
 - Esp. if restrictions removed via foreclosure
- HUD hasn't provided detail; best practices include:
 - Budget review/approval (re-trend crossover point?)
 - Approval of cash flow distributions & requirements to replenish reserve balances
 - Capital needs assessments



Interventions



- Monitoring and typical corrective actions
 - Provide technical assistance
 - Require more formal training
 - Enhanced oversight (e.g. income review by PJ before move-ins)
- Require change in property management
- Restructure HOME loan (as appropriate)
 - Defer payments to rebuild reserves



New Options in 2013 Rule



- Convert HOME unit to on-site manager's unit
 - Only if all units HOME
 - Rerun cost allocation v. max. per-unit subsidy
- §92.210 options
 - Award additional HOME for rehab or reserves
 - Reduce number of HOME units to min. per cost allocation
 - Requires HUD HQ approval, usually TA assigned
 - May have to extend affordability period or increase number of HOME units



Monitoring Fees



- Only for projects under 2013 HOME Final Rule
 - Must be included in project underwriting
 - Treated as “applicable credit”
- Fee based on “average actual cost” of monitoring, must document calculations
 - Expect more guidance from HUD, but
 - Consider project vs. unit-driven cost elements
 - Consider “average” frequency of on-site monitoring over affordability period
 - Account for full breadth of enhanced



Questions?

