

# TAX CREDIT HOUSING MANAGEMENT

A Legal Compliance  
Guide for the Low-Income  
Housing Tax Credit  
Community

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# insider

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## HUD Releases Final Rule for the HOME Investment Partnerships Program

*The rule aligns rental limits and strengthens  
tenant protections.*

**O**n Jan. 6, HUD published a final rule to update, streamline, and authorize new flexibilities in the regulations governing the HOME Investment Partnerships (HOME) Program. As the largest federal block grant for affordable housing, the HOME program is an important tool

for addressing the ongoing housing affordability crisis.

HOME program funds and LIHTCs are often used together to finance affordable rental housing sites. To establish affordable rents in many markets, a site's rents may not be enough to pay off a conventional

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## Tenant protection

**THIS IS THE MOST  
SIGNIFICANT  
UPDATE TO THE  
HOME PROGRAM  
SINCE 2013.**

mortgage. As a result, the equity raised from tax credits may not be sufficient to provide all of the additional capital required by the site. Often, HOME funds can be used to finance the remaining gap. If you own or manage a site that combines these two sources of funds, you must comply with the requirements of both programs.

The latest rule represents the most significant update to the HOME program since 2013. One change is to allow LIHTC rents to be acceptable for Low HOME units, effectively removing the Low HOME rent cap on LIHTC units. HOME units are considered to be either High HOME units or Low HOME units, and rents could not exceed HUD's published High or Low HOME rents. Previously, Low HOME rent caps were often lower than LIHTC rents. Allowing LIHTC rents to apply to low HOME units simplifies operations for sites that rely on both funding sources.

In addition to aligning rental limits, the final rule strengthened tenant protections. We'll go over these expanded protections and highlight HUD's decision to not extend the notice to evict to 60 days as originally proposed.

### **HOME Tenancy Addendum Requirement**

The final rule introduced the HOME tenancy addendum requirement, which standardizes tenant protections across all HOME-assisted rental housing. The HOME tenancy addendum is a required attachment to all leases for tenants in HOME-assisted rental units. It establishes a uniform set of tenant protections that owners must adhere to, strengthening the rights of tenants and ensuring compliance with HOME program regulations.

The mandatory tenancy addendum ensures tenants' rights are explicitly included in their lease agreements. The addendum builds on existing HOME requirements for leases, such as the inclusion of provisions from the Violence Against Women Act (VAWA), by adding more comprehensive protections covering tenant rights. HUD has not yet published the updated HOME lease addendum that incorporates these provisions.

### **Tenant Notice Requirements**

Under the Final Rule, owners participating in the HOME program must provide clear, detailed written notices to tenants

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**YOU CAN'T EXCLUDE  
HOME-ASSISTED  
TENANTS FROM  
AMENITIES  
AVAILABLE TO  
MARKET-RATE  
TENANTS.**

whenever an adverse action is proposed. An adverse action can include a range of decisions that affect tenants, such as lease terminations, non-renewals, rent increases, or charges for tenant-caused damages. By standardizing the process, HUD wants to make sure tenants are given adequate notice and an opportunity to understand and respond to these actions. The new requirements mandate that adverse action notices include:

- A detailed explanation of the reason for the proposed action, such as a lease violation, nonpayment of rent, or other good cause;
- The specific date on which the action will take effect, allowing tenants adequate time to prepare or respond; and
- Information on tenants' rights to contest or remedy the issue, where applicable.

The final rule preserves the 30-day notice period for lease terminations or non-renewals, as established in the HOME statute. HUD had initially proposed extending the notice period to 60 days to provide tenants with additional time to find alternative housing, but feedback from stakeholders led to the decision to keep the original time frame. In addition, the rule requires that tenants be notified within five business days of any changes in ownership or management of the property. For impending property sales or foreclosures, tenants must be given at least 30 days' notice, enabling them to prepare for potential disruptions.

#### **Unit Entry, Access to Common Areas**

Among the revisions in the final rule are enhanced rules governing an owner's right to enter a tenant's unit and tenant access to common areas in HOME-assisted rental housing.

**Unit entry.** HUD has established stricter guidelines for when and how owners or their agents may enter a tenant's unit.

These rules are designed to protect tenants' privacy while allowing staff to perform necessary maintenance, inspections, or emergency repairs. The rule says owners must provide tenants with at least two days' notice before entering their unit, except in emergencies. This notice must specify the purpose of the entry, ensuring that tenants are fully informed and prepared. For example, if the owner needs to conduct routine maintenance, inspect a unit, or show the property to prospective renters, the reason must be clearly communicated in advance.

In cases of emergencies, such as a fire, flood, or gas leak, property owners are permitted to enter the unit without prior notice. However, if the tenant and all adult household members are absent during such an entry, the owner must leave a written statement in the unit detailing the date, time, and purpose of the entry.

**Use of common areas.** The final rule also strengthens tenants' rights to access and use the common areas in HOME-assisted properties. Common areas, such as community rooms, gyms, pools, play areas, storage spaces, and outdoor facilities foster a sense of community and improve tenants' quality of life. HUD's updates make it explicitly clear that owners must provide reasonable access to all common areas for tenants of HOME-assisted units.

Importantly, property owners are prohibited from implementing discriminatory practices that restrict tenants of HOME-assisted units from using these facilities while allowing unrestricted access for other residents. For instance, an owner cannot establish separate rules that exclude HOME-assisted tenants from a gym or pool available to market-rate tenants.

The rule also emphasizes the need for equitable access to amenities such as elevators, rooftop gardens, and storage spaces. Any attempts to segregate or deny access to these areas based on a tenant's participation in the HOME program are strictly prohibited.

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## SECURITY DEPOSITS MUST BE FULLY REFUNDABLE AND CAN'T EXCEED TWO MONTHS' RENT.

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### Physical Condition of Unit, Site

The final rule covers tenant protections related to the physical condition of units in HOME-assisted rental housing. These changes are intended to ensure that tenants live in safe, sanitary, and well-maintained homes while holding owners accountable for addressing deficiencies promptly.

**Unit standards.** The final rule mandates that owners maintain HOME-assisted units and sites in compliance with federal property standards and applicable local housing codes. Units must be safe, sanitary, and in good repair throughout the period of affordability. This requirement applies to both the physical condition of individual units and the overall site, including common areas and outdoor spaces.

Owners must provide tenants with clear timelines for completing routine maintenance and repairs, ensuring that tenants are informed about when issues will be addressed. The rule also prohibits owners from charging tenants for normal wear and tear, limiting tenants' financial responsibility to damages caused by negligence, recklessness, or intentional acts.

### Relocation for life-threatening conditions.

One significant protection introduced in the final rule is the requirement to relocate tenants if life-threatening deficiencies in their unit or the site cannot be resolved immediately. For example, if a tenant's unit is affected by issues such as severe structural damage, flooding, or exposure to hazardous materials, the owner must provide alternative accommodations.

Tenants must be relocated to a housing unit or lodging that is decent, safe, sanitary, and in good repair until the deficiencies are resolved. The relocation must be at no additional cost to the tenant, ensuring that tenants are not financially burdened by temporary housing needs. HUD anticipates that this relocation requirement will primarily apply in situations where repairs cannot be completed on the same day the deficiency is identified.

### Legal Recourse, Anti-Retaliation Protections

The Final Rule explicitly grants tenants in HOME-assisted rental housing the right to organize and participate in tenant associations. Owners are prohibited from retaliating against tenants for exercising their rights, such as reporting unsafe conditions, requesting repairs, or organizing tenant associations. And tenants have the right to contest adverse actions and seek legal remedies without fear of harassment or eviction.

**Right to organize.** This right mirrors those already established in other HUD programs, including Multifamily Housing programs. This protection ensures that tenants can:

- Convene meetings in common areas without interference from owners or managers;
- Distribute literature and information relevant to tenant concerns; and
- Advocate collectively for improvements in housing conditions, property management practices, or tenant services.

HUD notes that tenant organizations are particularly valuable in larger projects, where individual tenants may feel overwhelmed or unsupported in addressing property-wide concerns.

**Prohibitions against retaliation.** The final rule's anti-retaliation provisions protect tenants who choose to organize or participate in tenant associations, report unsafe or inadequate housing conditions, or request enforcement of lease provisions. The rule defines retaliation broadly to include any adverse action taken by a property owner or manager in response to a tenant exercising their rights. This could involve actions such as constructive eviction, which is a way to recover a unit outside of lawful eviction processes by reducing or discontinuing services to the tenant, such as maintenance or utilities. Other retaliatory actions include

harassing tenants or their lawful guests or unreasonably interfering with a tenant's comfort, safety, or enjoyment of their unit.

### **Security Deposit Requirements**

Another area of tenant protection in the final rule involves security deposits. Security deposits must now be fully refundable and cannot exceed two months' rent. The rule also explicitly prohibits the use of surety bonds or security deposit insurance as a substitute for traditional security deposits. While such alternatives have been marketed as flex-

ible solutions, HUD has determined that they could create financial risks and complexities for low-income tenants, such as ongoing premiums or hidden fees.

To further protect tenants, the final rule requires owners to provide detailed, itemized lists of any charges deducted from a tenant's security deposit. Owner must promptly refund the remaining balance of the deposit after deductions have been made, and the rule also clarifies that tenants cannot be charged for normal wear and tear or for damage not caused by their negligence, recklessness, or intentional acts.

## INCOME CALCULATIONS

## How to Handle Medicare Advantage Flex Cards When Calculating Income

*Most Flex Card benefits shouldn't be counted as income when determining program eligibility.*

**M**any Medicare Advantage enrollees rely on supplemental benefits to afford essential items like groceries and medical products. Some owners may have mistakenly included all flex card benefits as income, possibly leading to income certifications that may have exceeded the maximum income limit. HUD recently issued updated guidance that provides clarification on this issue.

In a Frequently Asked Questions (FAQ) document, HUD confirmed that only Flex Card funds used for rent and utilities should be included in income calculations. All other supplemental benefits provided through Flex Cards such as those used for groceries, over-the-counter medications, or transportation should not be counted as income.

### What Supplemental Benefits Do MA Plans Offer?

Many Medicare Advantage plans provide supplemental benefits beyond standard Medicare coverage. These benefits must be primarily health-related or qualify as Special Supplemental Benefits for the Chronically Ill (SSBCI), meaning they are designed to improve the overall health and well-being of enrollees. Common Medicare Advantage supplemental benefits include:

- **Dental, Vision, and Hearing Coverage.** These are services like eye exams, prescription glasses, dental cleanings,

and hearing aids.

- **Prescription Drug Coverage (Medicare Part D).** Many MA plans include drug coverage to help reduce medication costs.
- **Wellness and Fitness Programs.** These include gym memberships, virtual fitness programs, and health coaching.
- **Transportation Assistance.** This includes non-emergency transportation to medical appointments.
- **In-Home Support Services.** These provide assistance with daily living activities, such as meal delivery and home modifications.
- **Flex Cards for Eligible Expenses.** These are preloaded debit cards that can be used for health-related expenses, groceries, and, in some cases, rent and utilities.

### Excluded Benefits

HUD has made it clear that most Medicare Advantage Flex Card benefits should not be counted as income when determining eligibility for rental assistance. Only in cases where an enrollee explicitly uses Flex Card funds to pay for rent or utilities should those amounts be included in income calculations. For everything else, whether it's groceries, over-the-counter medications, transportation, or other health-related expenses, the funds should remain excluded.

This reverses any approach that treats Flex Card benefits as additional income,

even when enrollees never used them for rent or utilities. Unless there is specific evidence or confirmation that a beneficiary has used the funds for housing costs, the amount should not factor into rent determinations.

With regard to verification, HUD says the vast majority of MA supplemental benefits will be excluded from income determinations, and thus do not need to be verified, including benefits on Flex Cards that are used for anything other than rent and utilities. This is because beneficiaries should not be expected to keep a record of all purchases made and may not have straightforward access to such records from vendors that administer benefits through a Flex Card. According to HUD, there would be too many normal commer-

cial transactions, such as using the card when checking out at the grocery store, purchasing a specialized food item recommended by their physician, or paying for over-the-counter medication.

HUD says owners should generally assume that benefits administered through Flex Cards have not been used to pay for rent and utilities unless the owner has information to suggest otherwise, or the enrollee self-reports that they are applying the funds toward housing costs. If a family reports that they receive MA benefits to help pay for rent and utilities, owners must attempt to collect third-party documentation of the expenses and may accept the self-certification when third-party documentation isn't available.

## IN THE NEWS

## FHFA Releases 2025–2027 Enterprise Housing Goals Final Rule

*The low-income housing goal remains at 61% of financed units but raises the very low-income housing goal from 12% to 14%.*

**T**he Federal Housing Finance Agency (FHFA) recently released its final rule setting housing goals for Fannie Mae and Freddie Mac (the Government-Sponsored Enterprises, or GSEs) from 2025 through 2027. Prior to the release of the final rule, FHFA had approved the GSEs' latest Duty to Serve (DTS) Underserved Markets Plans, which focus on expanding affordable housing—especially in rural areas, manufactured housing, and preserving existing affordable homes.

FHFA has required the three-year DTS Underserved Markets Plans since 2022, codifying them in a regulation that was published in 2024. The GSEs 2025-2027 DTS Plans expand liquidity to serve nearly 690,000 renter households and over 90,000 homeowner households. For the first time, the plans include strategies to help communities across the entire rural market, in addition to the highest-need rural populations defined by regulation.

These policy updates will affect LIHTC development due to GSE investments in LIHTC sites and their loan purchase activities that help finance affordable housing. The final rule sets targets for both single-family and multifamily housing, ensuring that Fannie Mae and Freddie Mac stay engaged in supporting low- and very low-income households. One notable update is the introduction of measurement buffers. These buffers are essentially built-in flexibility that allows

for market fluctuations while still holding the GSEs accountable.

For multifamily housing, the final rule keeps the low-income housing goal at 61 percent of financed units but raises the very low-income housing goal from 12 percent to 14 percent. This increase reflects the GSEs' ability to meet and even exceed prior expectations. Meanwhile, the target for small multifamily low-income housing has been reduced slightly from 2.5 percent to 2 percent, acknowledging the growing role of private-sector financing in this space.

In the GSEs' 2025-2027 Duty to Serve Plans, both Fannie Mae and Freddie Mac have reaffirmed their commitment to the LIHTC market, recognizing its crucial role in keeping affordable housing investment flowing. Fannie Mae plans to support the market by purchasing loans secured by LIHTC properties, increasing liquidity for affordable housing projects. The company expects its loan purchases to support around 26,000 units in 2025, climbing to 31,460 in 2026 before settling at 27,000 in 2027. Additionally, it remains committed to LIHTC equity investments in rural areas, aiming to finance 20 to 30 properties in 2025, 28-45 in 2026, and 32-55 in 2027.

Freddie Mac is also ramping up its LIHTC efforts, planning a 2.5 percent annual increase in its loan purchases for LIHTC-financed properties. It's targeting



22 LIHTC equity investments in 2025, 23 in 2026, and 24 in 2027. Rural housing remains a priority, with six investments per year specifically for high-needs rural areas. Additionally, Freddie Mac aims to purchase 22,500 loans for high-needs rural housing over three years, increasing

liquidity in these underserved markets. To strengthen these efforts, the company will continue partnering with Community Development Financial Institutions (CDFIs) and local developers focused on rural LIHTC projects.

## Federal Funding Freeze Creates Confusion for Affordable Housing Industry

*Though the freeze memo was withdrawn, the broader executive orders behind the funding freeze remain in place.*

**O**n Jan. 27, the Trump administration issued a directive through the Office of Management and Budget (OMB), temporarily halting federal grants, loans, and aid disbursements. This move triggered immediate concern among housing advocates and developers, as it included a review of more than 100 programs administered by HUD. Two days later, the administration released a follow-up memo rescinding the initial directive.

However, White House Press Secretary Karoline Leavitt later clarified that while the memo itself was withdrawn, the broader executive orders behind the funding freeze remain in place. As a result, funding for certain areas remains paused and affordable housing programs could still be affected.

Among the HUD programs flagged for review were several initiatives that directly support low-income families, including Section 8 Housing Vouchers, Public Housing Capital and Operating Funds, Community Development Block Grants (CDBG), Choice Neighborhoods Program, and Project-Based Rental

Assistance. Two programs in particular, HUD's HOME Investment Partnerships Program and CDBG, face heightened risk, as they fund hundreds of housing initiatives nationwide.

Interestingly, the Low-Income Housing Tax Credit (LIHTC) program was not included in the funding freeze. This is likely because LIHTC is overseen by the Department of the Treasury, rather than HUD. However, even though LIHTC remains intact, uncertainty surrounding federal housing policies could still create challenges as investors may be hesitant to commit to LIHTC-funded projects due to the increased uncertainty in federal housing policy, and LIHTC developments may be delayed if they rely on multiple funding sources, including HUD's HOME program.

A federal judge has temporarily blocked parts of the funding freeze, citing legal concerns over its broad scope and potential consequences. While LIHTC remains unaffected for now, uncertainty around HUD funding could still ripple through the affordable housing market.

# Sound Off on Climate Resilience Measures, Property Insurance

*HUD's Request for Information seeks feedback on a range of pressing issues.*

**H**UD is becoming increasingly aware of the burden that increasing insurance costs are placing on providers of affordable housing. Unlike their market-rate counterparts, these providers cannot pass increased costs on to tenants, leading some to reduce insurance coverage and delay repairs. These challenges exacerbate the housing supply shortage and threaten overall affordability.

HUD recently issued a Request for Information (RFI) for comments from housing providers and other stakeholders on how HUD can increase the resilience of residential properties to natural hazards and extreme weather. The move comes as public housing authorities, multifamily property owners, and FHA borrowers face increasingly costly property insurance, reduced coverage availability, and other challenges.

The RFI can be found at [www.federalregister.gov/d/2024-30936](http://www.federalregister.gov/d/2024-30936). Commenters will have until Feb. 28, 2025, to provide their input. Responses may be submitted electronically through the Federal

eRulemaking Portal or by mail. This will in turn help HUD come up with policies that promote investment in resilience and address the increasing financial burden due to rising insurance costs.

The RFI seeks feedback on a range of pressing issues, including questions around the financial and resilience benefits associated with property modifications that mitigate these risks. HUD seeks to learn how such risk-mitigating modifications would lead to reduced costs of insurance or averted losses. HUD is also exploring state and local incentives, such as tax abatements or reduced insurance premiums, that could create further incentives for investments in resilience.

Another focus of the RFI is how to overcome the barriers to affordable insurance, as well as the potential benefits of industry standards, data availability, and successful community outreach. Commenters are invited to describe their experiences with resilience measures taken, especially on costs, benefits, and any implementation challenges.