

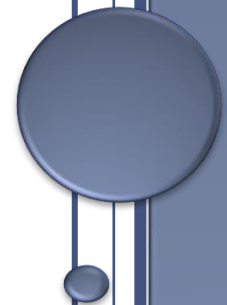
# RENTAL COMPLIANCE MANUAL

*Boulder Regional Affordable Rental Housing Program*

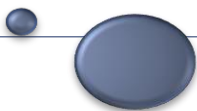
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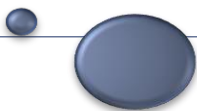




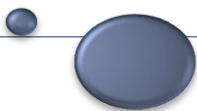


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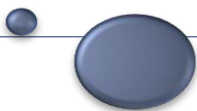
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## **INTRODUCTION**

The City of Boulder has been designated as a Participating Jurisdiction by the U.S. Department of Housing and Urban Development (HUD) to administer HOME Investment Partnership federal program funds. This manual was designed in part, to meet the requirements of the HOME program as well as locally established policies and procedures. This manual does not include a comprehensive list of all HOME program requirements. HOME Program policies and procedures can be found on the HUD Exchange website.

The City of Boulder's current affordable housing goal is to ensure that 15% of Boulder's housing stock is permanently affordable to low/moderate income household, those earning up to 60% AMI for rental housing and 10% above the HUD low-income limit for homeownership units was established by City Council in 2000. In 2016, the City Council added a goal for making housing to middle income households; a total of 3,500 units, 2,500 of which can be non-deed restricted and 1,000 of which must be permanently affordable.

The City of Boulder and several of the region's jurisdictions are entering into an Intergovernmental Agreement (IGA) that establishes a regional homeownership and rental compliance program administered by City of Boulder staff in the Department of Housing and Human Services. The purpose of the initiative is to centralize compliance and homeownership program services through the Boulder County Regional Housing Partnership (BCRHP). Currently, the following local jurisdictions are a part of the BCRHP: Louisville, Lafayette, Erie, and the Boulder County Housing Authority. The BCRHP's goal is to ensure that 12% of housing stock within the Region is permanently affordable.

The Boulder Regional Affordable Rental Housing Program (BRARHP) has been developed to not only ensure long-term compliance and preserve permanent affordability, but to also ensure that all publicly supported rental housing projects serve the most vulnerable residents of the Region.

## **CONTENTS OF THIS MANUAL**


Due to the long-term nature of the Region's commitment to affordable housing, the Region's compliance requirements take a long-term and broad view of compliance in developing the BRARHP. The Region's policies and procedures are established to lay the foundation for ensuring compliance and success at the earliest stage of a project and throughout the period of affordability.

Publicly supported projects are often financed with a combination of funds. When combining multiple sources of funds, the Owner/Manager must comply with the requirements of all applicable programs. Generally, this can be achieved by complying with the most restrictive requirement. The manual is designed to answer questions regarding the policies, procedures, rules, and regulations that govern the permanently affordable rental housing units under Covenant with the city. It is important to note that this manual is to be used as a supplement to existing laws and rules.

## **WHO SHOULD READ THIS GUIDE?**

This manual is intended to be used as a training and reference guide to ensure compliance





with the BRARHP. The manual also serves as a guide for the BRARHP which focuses on expanding affordable housing throughout the region and establishes a centralized compliance program for rental housing led by the City of Boulder. This manual may be superseded by changes in the local policies, federal program requirements and technical revisions. Partners will be notified of these revisions via email and publication on the city's website. Partners will be given thirty (30) days to provide feedback, questions and comments prior to final adoption of the proposed changes/updates.

## **GLOSSARY OF KEY TERMS**

***Annual Income*** – All amounts, monetary or not, anticipated to be received during the next 12-month period by all members of the household eighteen years of age and older. Annual income includes amounts derived from assets to which any member of the household has access.

***Annual Income Exclusions*** – Amounts that HUD is required by federal statute to exclude as income for determining eligibility or benefits. On January 31, 2024, HUD published an updated list of income and asset sources specifically required by Federal law to be excluded from consideration as income for purposes of determining eligibility or benefits in a HUD program. The updated list adds new exclusions and removes exclusions that are now codified in HUD's 24 CFR Part 5 income regulations.


***Area Median Income (AMI)*** – The AMI reported annually for households of various sizes by the United States Department of Housing and Urban Development (HUD), or by any successor United States Government department, agency or instrumentality, for the Primary Metropolitan Statistical Area "PMSA" which includes the City of Boulder, Colorado. The AMI limits are published annually by HUD and submitted to Owners, managers and partners by the Housing Senior Compliance Manager. A copy of these limits may be accessed via the city's website.

***Assets*** – Cash or non-cash resources with economic value that an individual owns or controls with the expectation that it will provide future benefit.

***Asset Limits*** –. Households with assets of more than \$100,000 at the time of initial application or annual re-certification are not eligible to occupy or renew their lease for a permanently affordable rental housing unit or participate in the BRARHP.

***Extremely Low Income*** – Person or household whose incomes are no greater than 30% of the AMI, as determined by HUD.

***Foster Adult*** - A member of the household who is 18 years of age or older and meets the definition of a foster adult under State law. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.



**Household** – One or more persons occupying a permanently affordable rental housing unit.

**Income** - means the definition of income under §92.203(c) and §5.609. All amounts, not specifically excluded in §5.609(b), received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age, except live-in aids, foster children and foster adults.

When the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

**Live-In Aid** - means a person who resides with one or more elderly persons, or nearly-elderly persons or persons with disabilities who is 1) determined to be essential to the care and well-being of the person, 2) is not obligated for the support of the persons, and 3) would not be living in the unit except to provide the necessary supportive services.

**Low Income** – Persons or households whose incomes are no greater than the maximum income required to meet the U.S. Department of Housing & Urban Development low-income guidelines, commonly referred to as “HUD Low”.

**Maximum Income** – At initial occupancy, the combined household income may not exceed the AMI as outlined in the Agreement and/or Covenant. After initial occupancy the combined household income may not exceed 84% AMI.

**Maximum Rent** – The maximum rent is the rent amount published annually by the City of Boulder based on AMI and bedroom size. The published rent limit includes the tenant-paid rent plus utility allowance plus any non-optional charges. Therefore, tenants generally cannot be charged the maximum rent unless all utilities are paid by the owner and there are no additional non-optional charges. Maximum rent may never exceed the maximum published rent unless the unit receives a rent subsidy.


**Non-Renewal** – The end of a lease or rental agreement without an option to renew the lease.

**Over-Income** – A combined household income that exceeds 140% of 60% AMI (or 84% AMI), after initial occupancy.

**Participating Jurisdiction “PJ”** – Any State or local government that has been designated by HUD to administer the HOME program grant.

**Participating Jurisdictions (Regional Housing Partnership)** - A partnership between Louisville, Lafayette, Erie, and the Boulder County Housing Authority.

**Publicly Supported Unit** - A unit created or preserved using subsidy(ies), resulting from the Regional Affordable Housing Program regulatory requirements (e. g., funding, annexation,



Inclusionary Housing), and/or maintains any Covenant restrictions.

**Rental Subsidy** – a household that receives rental assistance such as Section 8, Housing Assistance Payment or any other type of rental assistance payment. The total paid rent (tenant paid rent + utility allowance + rent subsidy = total paid rent) may exceed the applicable maximum rent published annually by the City of Boulder, provided that the total “*tenant paid rent*” does not exceed the applicable maximum rent allowed.

If a HOME-assisted unit receives Federal or State project-based rental subsidy and the household pays as a contribution toward rent not more than 30 percent of the family's adjusted income, then the maximum rent (*i.e.*, tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

**Student** – An individual 18 years of age or older who is enrolled in an institution of higher education during the calendar year regardless of part-time or full-time enrollment status.

**Termination of Tenancy** – A termination of the lease or rental agreement prior to the expiration of the lease term.

**Utilities** – The average monthly cost of services for electricity and heating. Utilities do not include water, sewer, and trash services.

**Utility Allowance** – The reasonable estimate cost of utilities in the area, given the type of building, and the size of the unit. Annually, the city will establish a monthly Utility Allowance for Boulder. Each Participating Jurisdiction is responsible for establishing their own Utility Allowance for their Jurisdiction or per affordable property, as applicable.

**Very Low-Income** – A household whose annual income does not exceed 50% of the AMI, as determined by HUD.



# Chapter 1: Publicly Supported Housing

## 1.1 OVERVIEW

The city's Department of Housing & Human Services administers a Housing Investment Program and Inclusionary Housing Program which partners with affordable housing owners and developers to create and preserve housing opportunities. The primary goal of these partnerships is to provide housing choices at every income level of the affordable housing continuum. Currently, the Housing Investment Program focuses its financial resources to serve the lower end of the income spectrum, targeting the following populations:

- Households with children;
- Households with working members who earn a low or moderate wage;
- Non-student Households; and
- Special population groups including:
  - Homeless
  - People with disabilities
  - Chronically mentally ill
  - Frail elderly

Permanently affordable rental housing units are produced, acquired and preserved through either a grant allocation from the City of Boulder, to satisfy Inclusionary Housing or as part of an annexation. All of which are subject to compliance and eligibility requirements in perpetuity. These requirements are formally agreed to by the signing of a Low-Income Rental Housing Covenant prior to the drawdown of any funds or issuance of building permits. These covenants run with the land and may only be amended with the agreement of all signing parties.

## 1.2 SOURCES OF FUNDS

The City of Boulder currently has five funding sources whereby affordable housing units are acquired. These sources include:

- Affordable Housing Fund (AHF)
- Community Development Block Grant (CDBG)
- Commercial Linkage Fee
- Community Housing Assistance Program (CHAP)
- HOME Investment Partnership (HOME)

These funding sources have been combined to create a pool of funds that support a variety of housing developments and programs. Apart from the Community Development Block Grant program, each fund promotes affordable housing as its primary goal. Different requirements and restrictions apply, yet the potential for complementary uses exists and is often utilized. For example, CHAP funds support housing for persons earning 15% - 60% AMI; HOME and CDBG funds may be used for households with incomes up to the HUD low-income limit. Together, fund sources can be used on a mixed income housing development which provides for households with very low incomes, middle incomes and market rate housing.



## Chapter 2: Roles & Responsibilities

### **2.1 BOULDER REGIONAL AFFORDABLE RENTAL HOUSING PROGRAM**

The City's Department of Housing and Human Services' Compliance Team is responsible for oversight of the City of Boulder permanently affordable rental housing program and the Boulder Regional Affordable Rental Housing Program (BRARHP). For the purpose of this manual, this includes developing policies, procedures and establishing affordable rental housing program compliance requirements.

The BRARHP is designed to ensure that all publicly supported rental housing is permanently affordable, serves low and very-low-income households, and that properties are maintained to meet local and federal property standards.

### **2.2 HOUSING SENIOR COMPLIANCE MANAGER**

The Housing Senior Compliance Manager is responsible for managing the City of Boulder and BRARHP to ensure that all projects and programs are in compliance with applicable local and federal regulations. The Housing Senior Compliance Manager serves as a primary contact for information and questions related to compliance monitoring as well as questions that may arise from project implementation to lease up and on-going compliance. Risk Assessments, Project/Program Performance Analysis, and Annual Report Audit will be conducted by the Housing Senior Compliance Manager to ensure all projects maintain long-term viability and programs maintain long-term compliance. The Housing Senior Compliance Manager provides supervision and day to day oversight of the city's and BRARHP Compliance Team and provides leadership, training and guidance to the BRARHP.

### **2.3 GRANTS ADMINISTRATOR**


The Grants Administrator serves as a liaison with HUD, manages the city's reporting and tracking for federally funded projects. This position also serves as a project manager for federal and locally funded projects, provides guidance in matters of compliance to affordable housing and community development projects.

### **2.4 HOUSING PROJECT MANAGER**

The Housing Project Manager serves as a project manager for all federally funded projects, provides guidance, training and technical assistance to HHS Project Managers as well as Owners/Managers. This position also serves as a Coordinator for Section 3, Section 504 and individuals with Limited English Proficiency (LEP).

### **2.5 COMPLIANCE & MONITORING ADMINISTRATOR**

The Compliance & Monitoring Administrator is responsible for ensuring that permanently affordable rental units are leased and maintained in accordance with funding conditions, covenants and agreements. The Compliance & Monitoring Administrator works directly with property managers to ensure compliance with all programs and projects. The Compliance & Monitoring Administrator sends requests for all documentation which is to be submitted to the Department of Housing & Human Services for compliance monitoring purposes. The Compliance & Monitoring Administrator also serves as a contact for information and



questions about compliance monitoring and questions that may arise as it relates to long term monitoring. Regular on-site, remote monitoring reviews, necessary follow-up reviews and unit/property inspections will be conducted by the Compliance & Monitoring Administrator in order to verify compliance. The Compliance & Monitoring Administrator will assist in providing training and technical assistance for the Owner/Manager.

## **2.6 REGIONAL COMPLIANCE & MONITORING ADMINISTRATOR**

The Regional Compliance & Monitoring Administrator is responsible to ensure that permanently affordable rental units within the Regional Affordable Housing Program Participating Jurisdiction are leased and maintained in accordance with funding conditions, covenants and agreements. The Regional Compliance & Monitoring Administrator works directly with Participating Jurisdictions, Developers, Owners and Property Managers to ensure compliance with all policies and procedures. The Regional Compliance & Monitoring Administrator is responsible for all monitoring and reporting within each Participating Jurisdiction and also serves as a contact for questions about compliance monitoring and questions that may arise as it relates to long term monitoring.

## **2.7 OWNER**

The Owner of a permanently affordable rental housing project or their designee is responsible to ensure compliance with all requirements outlined in the covenants executed for the property as well as the local rules and policies adopted by the City of Boulder. In order for the city to allocate grant funds to an affordable housing project, the project must meet the following criteria:

- Remain affordable in perpetuity to the established population as defined in the covenant.
- Be well maintained and cared for and meet all housing quality standards, rehabilitation standards and City of Boulder housing codes, as applicable.
- Meet Affirmative Marketing & Fair Housing requirements.
- Comply with all federal, state and local regulations that may apply to the project.


The Owner is ultimately responsible for assuring compliance with all applicable rules, regulations and policies that govern the property, notwithstanding notification from the City of Boulder as to any changes in such requirements. If the Owner determines that the development is not in compliance with City of Boulder program requirements, the Housing Senior Compliance Manager must be notified immediately.

It is the responsibility of the Owner/Manager to ensure that all property management staff receive adequate training to ensure compliance with the terms outlined in the Covenant, Rental Compliance Manual and city policies.

To ensure compliance, the Owner should provide property management personnel with copies of the Covenant, Agreement and Rental Compliance Manual. Additionally, if there is a change in management, the Owner is responsible for providing all information and previous tenant files to the new property management company.

## **2.8 PROPERTY MANAGER/ PROPERTY MANAGEMENT COMPANY**

The Property Manager is responsible for ensuring that once the development has been placed in



service, it is properly managed and maintained so that at all times it is suitable for occupancy. As an authorized representative of the Owner, the Property Manager must adhere to all the compliance requirements as referenced above.

It is the responsibility of the Property Management company to report any changes in staffing, property assignments and staff turnover. This information must be reported to the Housing Senior Compliance Manager within thirty (30) days of such changes.

The Property Management Company must ensure that all property management staff are properly trained in local and federal rental compliance requirements. The Compliance & Monitoring Administrator will provide support to the Property Management Company in their training efforts by providing technical assistance upon request.

## **2.9 REGIONAL HOUSING PARTNERSHIP PARTICIPATING JURISDICTION**

The Boulder Regional Affordable Housing Program consists of Participating Jurisdiction's which include the City of Boulder, Louisville, Lafayette, Erie, and the Boulder County Housing Authority. Each Participating Jurisdiction is responsible for ensuring Owners, Developers, and managers of affordable units within their jurisdiction is informed of these policies and procedures. Participating Jurisdictions will keep the City of Boulder informed of the names and contact information of all relevant parties for monitoring and reporting purposes. They must also ensure that all permanently affordable properties and units are inspected annually in accordance with HUD regulations as outlined in this manual.

## **2.10 CHANGES IN OWNERSHIP OR MANAGEMENT OF PROPERTY**

If a change in ownership or management occurs, the Participating Jurisdiction and Owner are responsible for reporting such a change to the Compliance & Monitoring Administrator. In addition, the Owner/Manager must notify the Compliance & Monitoring Administrator of any changes in ownership or management contact information including names, titles, address, email, phone and fax number.





## CHAPTER 3: REGULATORY REQUIREMENTS

### 3.1 RENTAL HOUSING LICENSING

The City's Boulder Revised Code and Property Maintenance Code requires all rental properties in Boulder to maintain a valid rental license. The code also establishes minimum standards for the use and safe occupancy of dwellings to protect, preserve, and promote physical and mental health of residents.

Obtaining a rental license is the responsibility of the property owner. The discovery of an unlicensed rental property will result in legal action. Additional information regarding rental licensing requirements may be found on the following link: <https://bouldercolorado.gov/plan-develop/rental-housing-licensing>.

**NOTE:** Regional Affordable Housing Participating Jurisdictions will follow their own rental licensing requirements, as applicable.

### 3.2 PERIOD OF AFFORDABILITY

The period of affordability is the length of time during which specific compliance requirements apply to the assisted rental property.

#### A. Regional Affordable Housing Program Period of Affordability

All properties restricted by a City of Boulder or Regional Affordable Housing Covenant require permanent affordability, e.g., in perpetuity.

#### B. HOME Period of Affordability


A HOME funded rental project requires a period of affordability that is determined by the type of activity and the average per unit HOME investment. The HOME Agreement for each HOME assisted project outlines the period of affordability that applies to the project. Upon expiration of the HOME period of affordability, the Low-Income Rental Housing Covenant for the property will govern all units specified within the Covenant. All units under Covenant will remain permanently affordable.

HOME Investment	HOME POA
<\$15,000	5 years
\$15,000 - \$40,000	10 years
>\$40,000	15 years
Refinancing of Rental Housing (with rehabilitation)	15 years
New Construction	20 years

#### C. Combined Local, HOME & Low-Income Housing Tax Credits

When HOME and Low-Income Housing Tax Credits (LIHTC) are combined in a locally funded property, the Owner/Manager of the property must comply with the requirements of each program for the duration of the program's affordability/compliance period. Generally, the HOME Program imposes more restrictive requirements. However, there are some locally imposed rules and policies that are more restrictive than the HOME and LIHTC Programs. To ensure





compliance with all program requirements, the Owner/Manager must adhere to the most restrictive compliance requirements in any given circumstance.

### **3.3 UNIT MIX**

Many permanently affordable rental projects require a mix of unit sizes, bedrooms and assign a maximum AMI limit for the unit. The Owner/Manager must ensure that the appropriate unit mix is maintained at all times. When HOME funds are used to finance the property, the HOME Agreement also requires a specific number of units to be maintained as HOME-assisted units throughout the HOME period of affordability. The Owner/Manager must maintain the appropriate unit mix at all times.

#### **A. HOME Unit Designation**

HOME-assisted properties require a certain number of the total units in a property to be designated as HOME-assisted units. The Owner/Manager must designate which units within the property are HOME-assisted units. These units must be identified in the tenant file and on the Annual Tenant Report.

#### **B. Floating Unit**

Properties with a mix of AMI's (i.e., 30% 50% and 60%) may float the unit AMI designation among permanently affordable units within the same property provided that the required unit AMI and bedroom mix, is maintained at all times as required in the Covenant.

#### **C. Floating HOME Units**

Properties with floating HOME-assisted units do not have specific units that are designated HOME-assisted units for the duration of the period of affordability. Instead, the HOME-assisted unit designation may change, or "float" among comparable assisted and non-assisted units during the HOME period of affordability in order to keep the original mix of assisted and non-assisted units.

#### **D. Maintaining Unit Mix When Units "Float"**

When re-designating units, in order to maintain the required unit mix, the Owner/Manager must substitute the HOME-assisted unit designation to a non-assisted comparable unit. The Owner/Manager may choose to substitute a "greater" unit for a "lesser" unit. A "greater" unit is one that might be considered more preferable because of larger size, additional bedrooms, or amenities. However, the Owner/Manager is never permitted to substitute a "lesser" unit for a greater one.

Maintaining the unit mix in properties with HOME-assisted units is achieved by changing the unit designation when the next HOME-assisted or non-assisted unit becomes available. For example:

- A property has an over-income tenant in a HOME-assisted unit. When the next non-assisted unit becomes available, it is designated as HOME-assisted and rented to an income eligible tenant.
- The unit occupied by an over-income tenant is re-designated as a non-assisted unit.



When the designation of a unit changes, the Owner/Manager must ensure that the tenant lease is revised accordingly.

**NOTE:** If a household occupies a newly designated HOME-Unit, be sure to obtain a Declaration of Citizenship for each member of the household upon re-certification of income or prior to the designation of a HOME-Unit, whichever comes first.

### **3.4 FAIR HOUSING & EQUAL OPPORTUNITY**

Title VIII of the Civil Rights Act of 1968 makes it unlawful to discriminate in any aspect relating to the rental of dwellings, or in the provision of brokerage services or facilities in connection with the rental of a dwelling, because of *race, color, gender, religion, or national origin*, (protected classes). The Fair Housing Amendments Act of 1988 expanded coverage of Title VIII to prohibit discriminatory housing practices based on *disability and familial status* (protected classes). Owners/Manager should be aware of the individual laws that may have established “protected classes”.

### **3.5 NONDISCRIMINATION IN HOUSING**

Federal Fair Housing laws prohibit discrimination in housing based on a person’s race, color, religion, sex, familial status, national origin, age and disability. Fair housing laws prohibit discrimination in all housing, housing-related activities and housing programs regardless of whether or not the housing receives Federal financial assistance. The Owner/Manager cannot discriminate in the rental of units, in establishing terms and conditions of property rentals, or in advertising the availability of rental housing units. The Housing Discrimination Complaint Form ([Appendix III-A](#)) should be made available to all applicants and residents. Additional information regarding the complaint process may be found in the following link:

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/disabilities/sect504complaint](https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/sect504complaint)

### **3.6 EQUAL ACCESS RULE**

Owners/Managers must ensure equal access to housing regardless of sexual orientation, gender identity, or marital status.

- 1.) General equal access provision: Housing must be made available without regard to actual or perceived sexual orientation, gender identity, or marital status (24 C.F.R. 5.105 (a)(2)).
- 2.) Definition of family: Must include persons regardless of actual or perceived sexual orientation, gender identity, or marital status.
- 3.) Inquiries: Prohibits inquiries of an applicant’s or occupant’s sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available.

Owners/Managers may inquire about an individual’s gender identity to determine the most appropriate placement for someone seeking housing in shelters and facilities with physical limitations or configurations that require shared sleeping quarters or shared bathing facilities. Owners/Managers must ensure that individuals are not subjected to intrusive questioning or asked to provide anatomical information or documentary, physical, or medical evidence of an individual’s gender identity.



### 3.7 CITY OF BOULDER HUMAN RIGHTS ORDINANCE

The City of Boulder Human Rights Ordinance is a local law that protects against illegal discrimination within the city limits of Boulder. The Ordinance specifically affords protection against discrimination in three areas:

- Housing
- Employment
- Public Accommodation

Within these three areas, the Human Rights Ordinance prohibits discrimination on ancestry, color, creed, gender variance, genetic characteristics, immigration status, marital status, mental disability, national origin, physical disability, race, religion, sex, sexual orientation and source of income, in housing. It also prohibits discrimination based on custody of minor child, parenthood and pregnancy, in employment, it also prohibits discrimination based on age, specifically age 40 years and older. A copy of the Human Rights Ordinance can be found on the city's website or by contacting the City of Boulder Office of Human Rights at 303-441-4197.

**NOTE:** This Ordinance is only applicable to the City of Boulder.


### 3.8 ADA, SECTION 504 & FAIR HOUSING ACCESSIBILITY

There are several different laws that Owners/Managers must be familiar with as they apply to various permanently affordable housing types within the BRARHP. Federal programs and the age of the property determine which laws apply.

- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) protects race, religion, sex and national origin.
- The Fair Housing Amendments Act of 1988 (Amendments Act - FHAA) added disability and familial status.
- The Fair Housing Amendments Act of 1998 protects people from discrimination when they are renting, buying, or securing financing for any housing. The prohibitions specifically cover discrimination because of race, color, national origin, religion, sex, disability and the presence of children.
- The Americans with Disabilities act (ADA) of 1990 addresses public accommodations (rental offices and common areas are considered public accommodations)
- Section 504 of the Rehabilitation Act of 1973 (Section 504) applies to those receiving federal assistance.
- Persons with disabilities have their rights protected under three main laws (ADA, FHAA, and 504).

### 3.9 AMERICANS WITH DISABILITIES ACT (ADA)

Title III of the ADA covers public and common use areas at housing developments when these public areas are, by their nature, open to the general public. For example, it covers the rental office since the rental office is open to the general public. Title II of the ADA applies to all programs, services, and activities provided or made available by public entities. This includes housing when the housing is provided or made available by a public entity. For example, housing covered by Title II of the ADA includes public housing authorities that meet the ADA definition of "public entity".



The City of Boulder’s ADA Title I Policy is provided in ([Appendix III-B](#)) and Notice Under the Americans with Disabilities Act provided in ([Appendix III-B.1](#)) which outlines the city’s compliance with ADA. The city’s Grievance Procedures and Complaint form may be found in ([Appendix III-B.2](#)). These forms may also be accessed through the city’s website. For additional information on Section 504 compliance please contact the Section 504 and ADA Coordinator Wendy Litman at (720) 576-2506 or litmanw@bouldercolorado.gov in the city’s office of Risk Management.

**NOTE:** Regional Participating Jurisdictions should develop and implement their own Policy, Grievance and Complaint Procedures.

### **3.10 SECTION 504 & DISABILITY RIGHTS IN HOUSING**

Section 504 provides that no qualified individual with a disability should, only by reason of his or her disability, be excluded from participating in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

#### **A. Definition of Disability:**

Federal laws define a person with a disability as *"Any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment."*

In general, a physical or mental impairment includes hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex, and mental retardation that substantially limits one or more major life activities. Major life activities include walking, talking and hearing, seeing, breathing, learning, performing manual tasks, and caring for oneself.

Disability Rights in Private and Public Housing regardless of whether you live in private or public housing, Federal laws provide the following rights to persons with disabilities:


#### **B. Prohibits Discrimination of Persons with Disabilities**

It is unlawful for an Owner/Manager of permanently affordable rental housing to refuse to rent to a person simply because of a disability. An Owner/Manager may not impose different application or qualification criteria, rental fees or, and rental terms or conditions than those required of or provided to persons who are not disabled.

**Example:** An Owner/Manager may not refuse to rent to an otherwise qualified individual with a mental disability because they are uncomfortable with the individual's disability. Such an act would violate the Fair Housing Act because it denies a person housing solely on the basis of their disability.

#### **C. Section 504 of the Fair Housing Act - Reasonable Accommodations**

The Fair Housing Act requires Owners/Managers to make reasonable accommodations and modifications when necessary to afford a person with a disability the equal opportunity to rent an affordable rental housing unit. Owners/Managers of permanently affordable rental properties must ensure that their program and units are accessible to and usable by people with disabilities



which include:

- Ensure effective communication with applicants, tenants and members of the public.
- Make reasonable accommodations.
- Wheelchair access to program in-take/application offices, public hearings and tenant meetings, etc.

For purposes of the Fair Housing Act, disability is defined as a person who has:

- A physical or mental impairment which substantially limits one or more of such person's major life activities, or
- A record of having such an impairment; or


The Owner/Manager may verify the disability ([Appendix III-C](#)) only to the extent necessary to document that the applicant/tenants have a need for the requested accommodation. The Owner/Manager may not require applicants/tenants to provide access to confidential medical records or to submit to physical examination. The Owner/Manager may not specifically ask for or verify the nature and extent of the disability. The verification form used must be signed by the applicant/tenant to authorize release of such information and should request that the source identify (1) whether the applicant meets the definition of disabled as provided above and (2) whether the requested accommodation or modification relates to the person's specific needs. Receipt of Social Security disability payments is adequate verification of an individual's disability status, but the correlation between the disability and the requested accommodation or modification may still need verified.

#### **D. Reasonable Accommodations**

A reasonable accommodation is a change, exception, or adjustment in rules, policies, practices, or services when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces.

Per the Fair Housing Act, Owners/Managers must allow a Request for Reasonable Accommodation ([Appendix III-D](#)) unless doing so will be an undue financial burden or fundamentally alter the nature of the Owner's/Manger's operations. When a reasonable accommodation will result in an undue financial burden, the Owner/Manager must provide all other accommodation up to the point at which further accommodation will result in the undue financial burden. For more information on reasonable accommodation, refer to the HUD and Department of Justice Joint Statement "reasonable Accommodation Under the Fair Housing Act" released May 17, 2004.

A common type of reasonable accommodation involves service animals. The city uses the term service animals in this manual to broadly describe a category that also includes therapy animals, companion animals, emotional support animals, and assistance animals. These types of animals are not pets and therefore must be permitted even in "no-pet" housing, assuming that the individual has requested an accommodation to the "no-pet" rule and that the need for the service animal can be verified. In addition, the Owner/Manager cannot charge an upfront security deposit or a fee for the service animal. However, the Owner/Manager can charge the tenant the cost of



repairing any damaged caused by the service animal. Another common example of reasonable accommodation is a live-in care attendant/ live-in aid.

### **E. New Construction 504 Regulations**

In covered multifamily housing consisting of 4 or more units with an elevator built for first occupancy after March 13, 1991, all units must comply with the following seven design and construction requirements of the Fair Housing Act:

- Accessible Entrance on an Accessible Route
- Accessible Public and Common-Use Areas
- Usable Door
- Accessible Route Into and Through the Dwelling Unit
- Accessible Light Switches, Electrical Outlets, Thermostats, and Environmental Controls
- Reinforced Walls in Bathrooms
- Usable Kitchens and Bathrooms
- In multifamily housing covered by 504 regulations without an elevator that consists of 4 or more units built for first occupancy after March 13, 1991, all ground floor units must comply with the Fair Housing Act's seven design and construction requirements.

For information on how to comply with the physical accessibility requirements of the Fair Housing Act, visit the Fair Housing Accessibility FIRST Web site: <http://www.fairhousingfirst.org>.

### **3.11 HOUSING FOR OLDER PERSONS**


The Housing for Older Persons Act of 1995 (HOPA) exempts certain types of “housing for older persons” from the Fair Housing Act’s prohibition against discrimination because of familial status. Therefore, Owners/Managers may have designated housing for older persons in one of the following ways and not be in violation of Fair Housing:

- 100% of the units are restricted for households in which all members are age 62 or older (see 24 CFR Part 100.303); or
- At least 80% of the units in the property are restricted for households which at least one member is age 55 or older. The remaining 20% of the units may be restricted for households in which at least one member is 55 or older, may have a lower age restriction, or may be left open without any age restriction. This determination is left up to the Owner/Manager. The policy elected by the Owner/Manager in regard to the remaining 20% of the units must be implemented equally for all applicants and must be placed in writing as part of the properties Tenant Selection Plan. In addition, the remaining portion of units not counted for purposes of meeting the 80% requirement may not be segregated within the community or facility.

### **3.12 AFFIRMATIVE MARKETING**

Affirmative Fair Housing Marketing Regulations (24 CFR 200.600) ensures that persons of similar income levels in a housing market area have a like range of housing choices available to them, regardless of race, color, religion, sex, or national origin.






The BRARHP's policy is to provide information and attract eligible persons to available housing without regard to race, color, national origin, sex, religion, familial status (persons with children under 18 years of age, including pregnant women), or disability. The procedures followed are intended to further the objectives of Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), and Executive Order 11063, which prohibits discrimination in the sale, leasing, rent and other disposition of properties and facilities owned or operated by the federal government or provided with federal funds.

In accordance with the Affirmative Marketing regulations of the HOME Program 24 CFR 92.351, the BRARHP has established an Affirmative Marketing Guide ([Appendix III-E](#)) to ensure that all Owners/Managers employ a marketing plan that promotes fair housing and ensures outreach to all potentially eligible households, especially those least likely to apply for assistance.

The Owner/Manager must ensure compliance with affirmative marketing responsibilities as enumerated pursuant to 24 CFR 92.351. Such procedures are subject to approval of the City. The Owner/Manager shall comply with the BRARHP's requirements to affirmatively market all permanently affordable units available for rent in a manner to attract tenants without regard to race, color, national origin, sex, religion, familial status or disability, per the Affirmative Marketing Plan. The Owner/Manager agrees, in soliciting tenants, to do the following:

- a. Use the Equal Housing Opportunity logo in all advertising;
- b. Solicit applications for vacant units from persons who are not likely to apply for the housing without special outreach e.g., use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies etc.
- c. Display a Fair Housing poster in the rental leasing office;
- d. Where appropriate, advertise, use media, including minority outlets, likely to reach persons least likely to apply for the housing;
- e. Maintain files of the Owner/Manager's affirmative marketing activities for five (5) years and provide access thereto to the Compliance Staff;
- f. Not refrain from renting to any tenant holding a Section 8 Existing Housing Certificate, except for good cause, such as previous failure to pay rent and/or to maintain a rental unit, or the tenant's violation of other material terms and conditions of tenancy;
- g. Comply with Section 8 Existing Housing Regulations when renting to any tenant holding a Section 8 Existing Housing Certificate; and
- h. Exercise affirmative marketing of the units when vacated.

The Owner/Manager is required to develop and maintain an AFHMP specific to the property. Any AFHMP that includes preferences must be reviewed and approved by HUD prior to implementation. A copy of the approved AFHMP must be provided to Compliance staff prior to



lease-up. The procedures must be in writing and consistent of actions that provide information and otherwise attract eligible persons to available housing without regard to race, color, national origin, sex, religion, familial status or disability. The affirmative marketing requirements also apply to properties targeted to persons with special needs.

The Owner/Manager must maintain documentation of all advertising and outreach activities. This documentation should be used as reference when completing the Affirmative Marketing Compliance Report which demonstrates, the Owner/Manager efforts to comply with Affirmative Marketing requirements.

### **3.13 LIMITED ENGLISH PROFICIENCY (LEP)**

Persons who, as a result of national origin, do not speak English as their primary language and who have limited ability to speak, read, write or understand English (“Limited English Proficiency” or “LEP”) may be entitled to language assistance under Title VI of the Civil Rights Act of 1964 in order to receive a particular benefit or service. In accordance with Title VI, its implementing regulations and Executive Order 13166, the Owner/Manager should take reasonable steps to ensure meaningful access by LEP persons which apply and live in permanently affordable rental housing.

#### **A. LEP Reasonable Steps**

Any of the following actions may constitute “reasonable steps” depending on the circumstance. This is not, however, an exhaustive list of possible actions:


- Acquiring translators to translate vital documents, advertisements, or notices
- Acquiring interpreters for face-to-face interviews with LEP persons;
- Placing advertisements and notices in newspapers that serve LEP persons;
- Partnering with other organizations that serve LEP populations to provide translation, interpretation, or dissemination of information regarding the permanently affordable property;
- Hiring bilingual employees or volunteers for outreach and intake activities; or
- Contracting with a telephone line interpreter service.

#### **B. LEP Services, Procedures & Training**

The Owner/Manager is responsible for ensuring that property management staff are aware of LEP services and procedures and are trained to work effectively with interpreters. The Owner/Manager may demonstrate effective outreach to the LEP in the community by:

- Notifying LEP persons about the availability of free language assistance services, when applying and/or residing in permanently affordable housing;
- Provide notices in the correct language(s) to reach Regional Participating Jurisdiction’s LEP populations;
- Posting signs in common areas, offices and anywhere else where applications are received for permanently affordable housing;
- Provide appropriate statements in outreach documents (brochures, booklets, posters, etc.) that language services are available without cost;
- Providing a telephone voice mail menu in the most common languages encountered;



- 
- Publish notices in/on local non-English media (i.e., newspapers, radio, and television stations).

### **3.14 LANGUAGE ACCESS PLAN**

As a recipient of federal funds, the City of Boulder must comply with specific language access requirements as established by Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits recipients of federal financial assistance from discriminating based on national origin, among other things. Title VI and Executive Order 13166 – Improving Access to Services for People with Limited English Proficiency require that recipients of federal financial assistance take reasonable steps to provide LEP individuals with meaningful access to programs, services, and activities. The Owner/Manager must ensure compliance with the [City of Boulder Language Access Plan](#).

<p><b>NOTE:</b> Regional Participating Jurisdictions must develop and implement their own Language Access Plan.</p>
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### **3.15 MARKETING REQUIREMENTS**

#### **A. Advertising & Marketing Efforts**

The Owner/Manager of permanently affordable rental housing units must conduct marketing and advertising activities in accordance with applicable fair housing laws, in addition to specific HOME requirements that relate to affirmative marketing. These fair housing and affirmative marketing requirements ensure that Owner/Manager provide the opportunity to rent permanently affordable units to *all* eligible applicants. Marketing efforts should be sent to a variety of sources. Limiting efforts to one source is not acceptable. Using the internet must not be relied upon as the only source of marketing as some people do not have access to the internet.


#### **B. Program Marketing**

The Owner/Manager must conduct marketing and advertising activities to inform persons within the housing market area of the availability of programs, services and permanently affordable rental housing opportunities. Marketing and advertising activities must include the Equal Housing Opportunity logo or non-discrimination statement, or both.

#### **C. Marketing Vacant Units**

Advertising of vacant units must include the Equal Housing Opportunity logo or slogan, or both. Advertising may include but not limited to:

- Newspapers
- Radio
- Television
- Brochures
- Leaflets
- On-site Poster
- Websites



Advertising must be targeted to persons within the housing market that are least likely to apply for affordable housing without the benefit of special outreach efforts. In general, persons who are not of the race/ethnicity of the residents of the neighborhood in which the affordable units are located shall be considered those least likely to apply.

Owners/Managers must analyze the local housing market to identify persons who are least likely to apply and then formulate marketing techniques to reach the persons identified. The housing market should be re-assessed annually to determine who are least likely to apply for housing. Resources for targeted outreach may include, but not limited to.

- Community Organizations
- Employment Centers
- Fair Housing Groups
- Housing Counseling Agencies
- Social Service Centers


Marketing techniques utilized from the previous year should be analyzed to determine effectiveness in reaching those persons identified. Marketing efforts should be modified based on the results of this analysis, to increase participation from those persons identified as being least likely to apply for affordable housing. Owners/Managers must maintain a file documenting all marketing efforts (i.e., copies of newspaper ads, memos of phone calls, printed emails, copies of letters and posters, etc.).

#### **D. Marketing Accessible Units**

In addition, the Owner/Manager must take certain additional steps to make accessible units available to persons with disabilities. The Owner/Manager of properties with accessible units that are built in accordance with Section 504 requirements must develop procedures to ensure that information regarding the availability of accessible units reaches eligible individuals with disabilities. Reasonable, nondiscriminatory steps must be taken to make sure that available, accessible units are offered:

- First, to a current occupant of the property who might require or benefit from the accessibility feature(s) of the unit
- Second, to an eligible qualified applicant on the waiting list who requires the accessibility of feature(s) of the unit
- Market the unit to attract a new disabled applicant
- Last, to a nondisabled person on the waiting list

A nondisabled tenant may rent an accessible unit only when the Owner/Manager has made all reasonable efforts to attract a tenant with a disability and has followed the steps outlined above. Our recommendation is that the property manager contacts the Center for People with Disabilities (CPWD) at 303-442-8662 or 1-888-929-5519 to let the agency know that an accessible rental housing unit is available to income qualified households. CPWD staff can inform their eligible clients of the limited accessible housing inventory, and counsel them to apply for rental housing and be on your waiting list. The BRARHP recommends this approach to optimize specially designed housing resources by providing them first to households who need them with the goal



of making the most of our affordable housing programs.

#### **E. Fair Housing Poster, Logo & Non-Discrimination Clause**

The Owner/Manager must prominently display and maintain the required Fair Housing Opportunity Poster ([Appendix III-F](#)) so it is readily apparent to all persons seeking housing. The Fair Housing Equal Opportunity Logo ([Appendix III-F.1](#)) and non-discrimination clause should be displayed on all program material and published on the Owner/Manager's website, as applicable.

#### **F. Maintaining Records of Marketing & Outreach Efforts**

The Owner/Manager is responsible to maintain records of all marketing and outreach efforts related to the property including newspaper ads, printed emails, photos of posters/signs, copies of publications, etc.

### **3.16 TENANT SELECTION GUIDELINES**

The Owner/Manager is responsible for establishing tenant selection procedures specific to each property that are in compliance with Tenant Selection Guidelines ([Appendix III-H](#)). The Owner/Manager must treat applicants and tenants fairly and equitably by:

- Establishing and following standard tenant selection procedures;
- Using leases that protect tenant's rights; and
- Using established procedures to resolve conflicts with tenants

### **3.17 TENANT SELECTION PLAN**


The BRARHP seeks to reduce barriers to accessing housing. To further that goal, all permanently affordable rental housing properties under Covenant must develop a Tenant Selection Plan that adheres to the BRARHP's Affirmative Fair Housing Marketing Guide and Tenant Selection Plan Guidelines and have a Tenant Selection Plan in place prior to leasing of units.

### **3.18 PREFERENCES**

As referenced earlier in this manual, the BRARHP focuses its efforts at targeting special population groups. In support of these efforts the Owner/Manager may give preference in a tenant selection process to persons with special needs, such as the homeless individuals, elderly and persons with disabilities. However, the Owner/Manager may not give preference to persons with a *specific type* of disability. Permanently affordable housing for persons with disabilities must be equally available to all persons with disabilities regardless of the nature of their disability. Preferences must not violate HUD's anti-discrimination policies. Preferences must be clearly outlined in the Tenant Selection Plan and Affirmative Fair Housing Marketing Plan. Supplemental documentation must be submitted with the AFHMP to provide a justification for applying preferences. The proposed plans must be reviewed and approved by HUD and/or Fair Housing Equal Opportunity Office (FHEO) prior to implementation. A copy of the approved plans must be submitted to the Housing Senior Compliance Manager for review and approval prior to implementation.

### **3.19 NOTICE APPLICANTS**

The Owner/Manager must provide prompt notification to the applicant in writing of the denial of their application and specify the reason for the denial. Prompt notification is generally



considered to be within 30-days of application.

### **3.20 WAIT LIST REQUIREMENTS**

The Owner/Manager must provide applicants with the opportunity to complete an application for a permanently affordable rental unit. Applications must be available through the property management office and available by mail, email or fax. The Owner/Manager must accommodate persons with disabilities, who as a result of their disabilities cannot utilize the Owner/Manager's preferred application process by providing an alternative method of taking applications. Through the Owner/Manager's screening process the Owner/Manager must maintain a waiting list of eligible applicants and select applications from the waiting list in chronological order to fill vacancies.

#### **A. Creating & Maintaining Waiting List**

Upon receipt of an application for tenancy or assistance, the Owner/Manager must indicate on the application the date and time received. The Owner/Manager must either process the applicant for admission, place the applicant on the waiting list, or based on preliminary eligibility determination, reject the applicant.

The Owner/Manager must collect information about the preferences for which the applicant qualifies so that they are able to select applicants from the waiting list in accordance with preferences established for the property.


#### **B. Opening & Closing Waiting List**

The Owner/Manager should monitor the vacancies in their properties and their waiting list regularly to ensure that there are enough applicants to fill vacancies. The Owner/Manager should monitor their waiting list to make sure they do not become so long that the wait for a unit becomes excessive.

- **Opening Waiting Lists:** When the Owner/Manager agrees to accept applications for a waiting list, notice of this action must be announced in a publication likely to be read by potential applicants. The notification should be extensive, and the rules for applying and the order in which applications will be processed should be stated. Advertisements should include where and when to apply and conform to the advertising and outreach activities described in the Affirmative Fair Housing Marketing Plan.
- **Closing Waiting Lists:** The waiting list may be closed for one or more-unit sizes when the average wait is excessive (e.g., one year or more). When the Owner/Manager decides to no longer accept applications, the Owner/Manager must publish a notice to that effect in a publication likely to be read by potential applicants. The notice must state the reasons for the Owner/Manager's refusal to accept additional applications.

#### **C. Nondiscrimination When Matching Applicants to Available Units**

Although the Owner/Manager may establish preferences to admit households with specific characteristics from the waiting list, the Owner/Manager must never base applicant selection or denial of assistance upon any of the following:

- 
- Membership into a socio-economic class (e.g., welfare recipients, single parent households) or lack of membership in the sponsoring organization;
  - Familial status;
  - Race, color, religion, sex, or national origin of household members;
  - Whether the household has a member with a specific disability (unless restricted by program statute);
  - Family size (However, if the family size requires a unit size that does not exist in the property, the family must be denied assistance.
  - Age (unless restricted by program statute)

### **3.21 INTEREST LIST**

Any Owner/Manager that chooses to utilize an online (web-based) Interest List must also make the Interest List available to individuals without internet access and accessible to people with disabilities.

### **3.22 DECLARATION OF CITIZENSHIP**

The Personal Responsibility and Work Opportunities Act of 1996 (PRWORA) prohibits HOME-assisted properties from providing assistance to persons who are other than United States citizens, nationals, or certain categories of eligible noncitizens either applying to or residing in a federally assisted property. This includes HOME-assisted units that require compliance during the required period of affordability.

The Owner/Manager is required to have each household member of a HOME-assisted unit, complete a Declaration of Citizenship ([Appendix III-H](#)) and provide all required documentation. A copy of the Declaration of Citizenship and all required documentation must be maintained in the tenant file for each member of the household. Non-profit organizations, overnight shelters and transitional housing units are exempt from this rule.

**NOTE:** A Declaration of Citizenship is only required for HOME-assisted units. It is not required for locally funded units. When a HOME-assisted unit designation floats to a new unit, all occupants of the newly designated HOME-assisted unit must comply with the Declaration of Citizenship requirement.

### **3.23 RACE & ETHNICITY**

The Owner/Manager must offer tenants the opportunity to complete the Race and Ethnicity Data Reporting form ([Appendix III-I](#)) or Supplemental Demographic form ([Appendix III-I.1](#)). This form is to be completed at the initial application or at lease signing. Once the form is completed it does not need to be completed again unless the head of household or household composition changes. There is no penalty for persons who do not complete the form. However, the applicant/tenant must have signed, date and state that they decline to complete the form. Parents or guardians are to complete the form for children under the age of 18.

Owners/Managers are not required to use the Race & Ethnicity form published by HUD as long as the form used contains the same information outlined in the HUD form.



## CHAPTER 4: ELIGIBILITY REQUIREMENTS

Potential tenants of permanently affordable rental housing units should be advised early in the application process that there are maximum income and asset limits along with restrictions on student occupancy and ownership of real estate. The Owner/Manager should explain to the applicants that the income, assets and student status of *all* persons over eighteen who will occupy the unit must be verified prior to occupancy. The Owner/Manager should also explain that once the person or household is determined to no longer meet the eligibility requirements upon annual recertification, they will not be eligible to renew their lease. Please see Section 5.9 for more information.

### 4.1 ELIGIBILITY REQUIREMENTS

Some of the eligibility requirements outlined in this manual are different from the requirements of the HOME and LIHTC Programs. Please note that in some instances, the BRARHP policies are more restrictive than HOME and LIHTC requirements. The Owner/Manager must use the most restrictive requirements and processes to determine eligibility.

### 4.2 AUTHORIZED GUESTS & VISITORS

Residents may allow a guest/visitor to reside in their unit up to 14 consecutive days with prior approval from the Owner/Manager. However, the guest/visitor cannot occupy the unit for more than 21 nights total in any one year (12-month period, not calendar year). Residents shall not allow any person to occupy their unit other than individuals that are listed on the lease. It is important to note that allowing an authorized guest/visitor to stay in the unit longer than allowed is a violation of the Rental Compliance Manual

### 4.3 RESTRICTIONS ON SHORT-TERM RENTAL & SUBLETTING

Short-term rentals (STR) are units that are rented to a visitor for less than 30-days. Residents living in permanently affordable rental housing units are prohibited from renting their unit out for any length of time. Residents are prohibited from assigning their lease or subletting the unit.


### 4.4 ELECTRONIC SIGNATURES & DOCUMENT TRANSMISSION

The BRARHP has determined to adopt the HUD Multifamily Guidance regarding electronic signatures and document transmission [Notice H 20-4](#) published on May 26, 2020 for permanently affordable rental housing units under Covenant with the city. The city permits but does not require Owners and Managers to accept electronic signatures. Owners and Managers must also provide applicants and tenants the option to use wet signatures and paper documents upon request. The city also permits electronic transmission of required documents when local, state and federal law permits.

### 4.5 STUDENT POLICY

Affordable housing is intended to assist low-income community members of each Regional Participating Jurisdiction. The Regional Affordable Rental Housing Program goals for affordable rental housing include assisting low-income households, providing workforce housing and assisting those with disabilities. Most post-secondary students are short-term members of the community and have access to resources other than earned income for living expenses and therefore their low incomes are not a primary community concern.





It is the BRARHP's intention that permanently affordable rental housing units' s support residents working towards self-sufficiency and through life transitions. The city may consider the following exceptions to the Student Policy ([Appendix IV-A](#)) upon submission of a Student Exception Request ([Appendix IV-A.1](#)) and supporting documentation. Please note that households occupying HOME designated units are not eligible for exceptions 7 through 9 as outlined below. A final determination of eligibility is at the BRARHP's sole discretion.

1. The student is 24 years of age or older,
2. The student is a veteran of the U.S. Military, or
3. The student is a person with disabilities, or
4. The student has dependent child(ren), or
5. The student is living with a parent who is determined to be eligible; or
6. The student is married, or
7. The student receives assistance under the Title IV of the Social Security Act, also known as Temporary Aid for Needy Families (TANF), or
8. The student is enrolled in a job training program receiving assistance under the Workforce Investment Act (formerly known as the Job Training Partnership Act) or under a similar federal, state, or local program, or
9. The student was previously under the care and placement responsibility of the State agency responsible for administering a plan under Title IV of the Social Security Act (i.e., Foster Care).

#### **A. Review Process & Determination of Eligibility**

A Student Exception Request must be completed by all household members 18 years of age and older enrolled in an institution of higher education prior to lease-up and annually upon lease renewal. Student eligibility is determined on an individual basis, regardless of full-time, part-time enrollment or employment status or household composition.

All students enrolled in an institution of higher education **must** submit a Student Exception Request and supplemental documentation which supports eligibility for exception to Property Management staff for their review to make a determination of eligibility. All Student Exception Requests and supplemental documentation must be maintained in the tenant file and made available to the Compliance & Monitoring Administrator upon request for monitoring purposes.


#### **4.6 DEFINITION OF INCOME**

The BRARHP's Income & Asset Policy ([Appendix IV-B](#)) adopts the definition of annual income found at §92.203 and §5.609(a)(b), is used by a variety of Federal programs including Section 8, HOME and LIHTC Programs. Annual income is used to determine household income eligibility.

#### **4.7 ANNUAL INCOME**

Annual income (24 CFR 5.609(a)) includes, with respect to the household:

- All amounts, not specifically excluded in the HOTMA rule, received from all sources by each member of the family 18 years or older or is the head of household or spouse of the head of household, plus
- Unearned income by or on behalf of each dependent who is under 18 years of age, and

- 
- Imputed returns on net family assets exceeding \$50,000 (adjusted annually using the CPI-W) when the value of the actual returns from a given asset cannot be calculated. Imputed returns are based on the current passbook savings rate, as determined by HUD.

#### **4.8 FEDERALLY MANDATED INCOME EXCLUSIONS**

Amounts that HUD is required by federal statute to exclude as income for determining eligibility or benefits. A comprehensive list of income that is excluded from calculations of income can be found in ([Appendix IV-B.1](#)).

#### **4.9 DETERMINING HOUSEHOLD COMPOSITION & PROJECTING INCOME**

The Owner/Manager must calculate the annual income of the household by projecting the prevailing rate of income of the household at the time the Owner/Manager determines that the household is income eligible. Annual income includes income from all persons in the household, except live-in aides, foster children, and foster adults.

#### **4.10 DETERMINING INCOME ELIGIBILITY**

Each permanently affordable rental housing unit and property under Covenant with a Regional Participating Jurisdiction, establishes a maximum income limit based on the household size and applicable AMI published annually by HUD. The Owner/Manager must implement the new income limits within forty-five (45) days of the date they are released by HUD. These limits may fluctuate from year to year in response to market conditions. The Owner/Manager must use the most recently published AMI to determine income eligibility at the time of initial occupancy and upon annual recertification of income.

Owners/Manager must determine that a prospective tenant is income eligible before renting a permanently affordable rental housing unit to the household. This means verifying the household's anticipated annual gross income and determining that it does not exceed the maximum income limit established for the unit in the Covenant executed on the property. The Owner/Manager must also determine household income eligibility on an annual basis as outlined below.

#### **4.11 INCOME CALCULATION**


Owners/Managers must ensure that the income calculation used to determine eligibility is in compliance with the Technical Guide for Determining Income and Allowances for the HOME Program ([Appendix IV-C](#)). The [Eligibility Calculator](#) and User Manual ([Appendix IV-C.1](#)) was developed by HUD to be an interactive tool that makes determining income eligibility a simple process. The calculator performs income eligibility calculations for HOME and a variety of other federal programs. The use of this tool is optional.

Any information used to determine the household's income eligibility must be documented in a way that allows Compliance staff to monitor the Owner/Manager's determination.

#### **4.12 METHODS OF DETERMINING ANNUAL INCOME**

The Owner/Manager must verify the combined household income of all members 18 years of age and older except live-in aides, foster children, and foster adults. Income and asset verification must be completed at the initial occupancy and annually thereafter. The BRARHP has adopted





the following methods for verifying household income.

- A. If a household is applying for or living in a permanently affordable rental unit, and the unit is assisted by a Federal or State project-based rental subsidy program, the Owner/Manager must accept the public housing agency or rental subsidy provider's determination of the household's annual income and adjusted income under that program's rules as outlined in 4.13(A).
- B. If a household is applying for or living in a permanently affordable rental unit, and the household is assisted by a Federal tenant-based rental assistance program (*e.g.*, housing choice vouchers, etc.), the Owner/Manager may accept the rental assistance provider's determination of the household's annual income and adjusted income under that program's rules.
- C. In all other cases, the Owner/Manager must calculate annual income in accordance with paragraphs 4.13(B) at initial occupancy and 6<sup>th</sup> year of the Placed In Service (PIS) Date. Methods 4.13(C) through (E) upon recertification.

#### **4.13 REQUIRED DOCUMENTATION FOR ANNUAL INCOME CALCULATIONS**

##### **A. Rental Subsidy Provider Income Determination**

When a household receives a rental subsidy, the Owner/Manager must use the income and asset determination completed by the rental subsidy provider ([Appendix IV-D.1](#)) in lieu of third-party verification at the time of initial occupancy and annual recertification. Using the rental subsidy provider's income determination will reduce the administrative burden on Owners/Managers.

The Owner/Manager must enter into an agreement with the rental subsidy provider and the City of Boulder prior to accepting income and asset determinations from rental subsidy providers for households occupying affordable rental units. These Agreements must be executed and submitted to the City of Boulder prior to implementation. The Rental Subsidy Provider's income determination must be accepted at initial occupancy and annual recertification.

##### **B. Third Party Verification**

Owners/Managers must conduct third-party income and verification prior to the first year of occupancy and every 6th year of the placed in-service date or HOME Period of Affordability, as applicable. Under this form of verification, a third party (*e.g.*, employer Verification of Employment, Social Security Administration or public assistance agency) is contacted to provide information to verify income and assets.

- The verifiable income of all household members 18 years of age and older must be included.
- The determination must be based on income that is anticipated in the next twelve months.
- The Owner/Manager must examine two months most recent consecutive paycheck stubs to verify the accuracy of the income information reported on the application.
- Calculations for employment income and all other sources of income must be attached to each verification in the file. This includes calculator tapes, calculation forms/spreadsheets

or handwritten calculations.

- Sample third-party income verification forms are included in this manual as:

- Rental Subsidy Provider Statement of income & Assets ([Appendix IV-D.1](#))
- Verification of Employment ([Appendix IV-D.2](#))
- Verification of Public Benefits ([Appendix IV-D.3](#))
- Certification Questionnaire – Applicants/Recertifying Residents ([Appendix IV-D.4](#))
- Applicant/Resident Statement of Assets – under 50,000 ([Appendix IV-D.5](#))
- Verification of Assets – over 50,000 ([Appendix IV-D.6](#))
- Certification of Income Self Employed & Profit/Loss Statement ([Appendix IV-D.7](#))
- Verification of Unemployment Benefits ([Appendix IV-D.8](#))
- Zero-Extremely Low-Income Affidavit ([Appendix IV-D.9](#))
- Unemployment Affidavit ([Appendix IV-D.10](#))
- Verification of Household Assistance ([Appendix IV-D.11](#))
- Financial Assistance Affidavit ([Appendix IV-D.12](#))
- Child Support & Alimony Affidavit ([Appendix IV-D.13](#))
- Tip Income Affidavit ([Appendix IV-D.14](#))
- Seasonal Worker Affidavit ([Appendix IV-D.15](#))
- Clarification Record ([Appendix IV-D.16](#))
- Employment Calculation Worksheet ([Appendix IV-D.17](#))

**NOTE:** With the exception of households receiving rental subsidy, households in the affordable property must have third party verification every sixth year of placed in service date - not sixth year of the household anniversary date.

**Example:**

PIS Year	1	2	3	4	5	6	7
HOME	3 <sup>rd</sup> party	Self-Cert	Self-Cert	Self-Cert	Self-Cert	3 <sup>rd</sup> party	Self-Cert


**C. Self-Certification**

Upon annual recertification during intervening years, Owners/Managers may accept self-certification of income and assets ([Appendix IV-D.4](#)) from tenants. Obtain from the family a written statement of the amount of the family's annual income and family size, along with a certification that the information is complete and accurate. The certification must state that the family will provide source documents upon request.

**D. Government Program Income Determination**

Obtain a written statement from the administrator of a government program under which the household receives benefits and which examines each year the annual income of the family. The statement must indicate the tenant's family size and state the amount of the family's annual income; or alternatively, the statement must indicate the current dollar limit for very low- or low-income families for the family size of the tenant and state that the tenant's annual income does not exceed this limit.

**E. Safe Harbor – Determination of Income Using Means Tested Public Assistance**



Owners/Managers may determine the household income based on income determinations at initial occupancy and annual recertification ([Appendix IV-D.3](#)) from the following means-tested forms of Federal public assistance:

- Temporary Aid for Needy Families (TANF)
- Medicaid
- Supplemental Nutrition Assistance Program (SNAP)
- Low Income Housing Tax Credit
- Special Supplemental Nutrition for Woman, Infants and Children (WIC)

Safe Harbor verification must be obtained by means of third-party verification and must state the household size, must be for the entire household (i.e., the household members listed in the documentation must match the household's composition in the permanently affordable unit and must state the amount of household annual income. Safe Harbor verification must not be mixed and matched with other income verifications, including other Safe Harbor income determinations. For example: if a household receives TANF and SNAP, only one income determination is required.

**NOTE:** Per HUD, the Safe Harbor provision may not be used for HOME-assisted units.

#### **4.14 ANNUAL RECERTIFICATION**

Owners/Managers must establish systems to recertify tenant income on an annual basis. Typically, each household's income and assets will be examined on the anniversary of the original certification or at lease renewal. However, the Owner/Manager may adopt an annual schedule and perform all verifications at the same time. When Compliance staff perform Site Reviews or Remote Monitoring, staff will verify that recertification documentation is in the tenant files. As part of annual recertification, the Owner/Manager must update the Tenant Income Certification (TIC) upon annual recertification and maintain the document in the tenant file.

#### **4.15 EFFECTIVE TERM OF CERTIFICATION**


The effective term of income certification is six months. If more than six months has elapsed since the Owner/Manager determined that the household qualified as income eligible, the Owner/Manager is required to re-examine the household's income.

#### **4.16 ASSETS**

This Policy defines an asset as cash or non-cash items that can be readily converted to cash, including, taxable interest, checking, savings, stocks, bonds, and other forms of capital investment. Annual income includes amounts derived from assets to which household members have access.

##### **A. Asset Exclusions**

Personal property, educational savings accounts and trusts that is not revocable by, or under the control of, any member of the household will not be considered a net family asset. Accounts recognized as retirement accounts by the IRS are not counted as assets. Once the household begins making periodic withdrawals, the withdrawals are counted as income and the value of the account continues to be ignored as an asset. For households that receive rental assistance



payments, the Owner/Manager must accept the rental subsidy provider's asset verification in lieu of third-party verification.

**B. Verification of Assets & Calculation of Annual Income**

Owners/Managers may accept an Applicant/Resident Statement of Assets ([Appendix IV-D.5](#)) when assets equal to or less than \$50,000 and the anticipated income earned from assets without taking additional steps to verify accuracy at initial occupancy and annual recertification. The Owner/Manager must conduct third-party verification of assets ([Appendix IV-D.6](#)) at the time of application and every sixth year of the placed in-service date for households with assets that exceed \$50,000.

**C. Asset Limit**

Households with assets of more than \$100,000 at the time of initial application or annual recertification of income are not eligible to occupy or renew their lease for a permanently affordable rental housing unit.

**D. Restriction on Residential Ownership**

Applicants and/or tenants that have ownership interest in a residential property that *is suitable for occupancy* in which they *can legally reside* are restricted from occupying a permanently affordable rental housing unit. However, some exceptions may apply as outlined in the Income & Asset Policy.

**E. Asset Policy Exceptions**

The Income & Asset Policy provides an exception to the asset limit for elderly and disabled persons. Federal law defines an elderly person as an individual that is 55 years of age or older. A disabled person is defined as a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment; or is regarded as having such an impairment.

**F. Exception Request Review Process**

Any applicant/tenant seeking an exception to the Asset Policy (including the restriction on residential ownership) must submit an Exception Request and supplemental documentation which supports eligibility for exception to Property Management staff for their review to make a determination of eligibility. All Asset Policy Exception Requests ([Appendix IV-B.2](#)) and supplemental documentation must be maintained in the tenant file. Compliance staff will review this documentation during regular Site Reviews and remote monitoring. Any issues of non-compliance including corrective action will be documented in the monitoring letter.

**NOTE:** There is not an asset limit required in the HOME or LIHTC Programs. The city's Asset Limit policy was developed as a local rule. The Owner/Manager must adhere to the most restrictive requirements.

**4.17 INCREASE IN HOUSEHOLD INCOME**

The BRARHP Income & Asset Policy restricts annual household income to 140% of 60% AMI (or 84% AMI), after initial occupancy. When the Owner/Manager recertifies the combined household annual income and determines that it exceeds the limits set forth above, the household is considered over-income.



### **A. Over-Income Tenants**

Over-income households are not eligible to occupy a permanently affordable rental unit and therefore no longer eligible to renew their lease when the current lease agreement expires. Please see Section 5.9 regarding non-renewal of lease. Owners/Managers must immediately notify impacted households when they have been determined to be over-income. The Owner/Manager may execute a month-to-month lease with the household for up to one year, to allow the household to find suitable replacement housing. At the end of the one-year term, the household must either demonstrate that they are eligible for continued occupancy or vacate the permanently affordable housing unit.

### **B. Over-Income Tenants in HOME Units**

When an Owner/Manager recertifies a tenant's income, he or she may find that the tenant's income has increased. A tenant is considered over-income when the tenant occupies a unit, and the household income increases over the current AMI limit allowed for its household size.

When a tenant is over-income, the unit is no longer eligible to be designated as a HOME- assisted unit. The Owner/Manager must float the HOME-unit designation to another unit with an income eligible household in order to maintain the required unit mix. Since the unit occupied by an over-income tenant is no longer eligible to be designated as a HOME- assisted unit, the unit reverts back to a non-HOME-assisted unit which is governed by the Covenant.

## **4.18 CHANGES IN HOUSEHOLD COMPOSITION**

If an additional person moves into a permanently affordable rental housing unit, that new member must be fully certified. The household income is based on the existing resident's income at the most recent certification combined with that of the new household member. It is not necessary to recertify the entire household unless the recertification is currently due for the existing household members. The new combined household income must not exceed the maximum income limit allowed which is 84% AMI.

## **4.19 UNIT TRANSFER**


When a current qualified household transfers to another unit, the household may simply transfer to the new unit and is not required to be certified as a new move-in. The Owner/Manager must document the transfer in the tenant file by updating the Tenant Income Certification form and either amend the existing lease or execute a new lease.

## **4.20 UNIT TRANSFER WITH CHANGE IN HOUSEHOLD COMPOSITION**

When a current qualified household transfers to another unit and has a change in household composition by adding a new household member 18 years of age and older, the new household member must complete third-party income/asset verification. The new total household income is based on the existing household's most recent income/asset certification combined with the new household members income. It is not necessary to recertify the entire household unless a recertification is currently due for the existing household members.

## **4.21 DETERMINING RENTS**

Permanently affordable rental units are subject to rent limits designed to help make rents affordable to low-moderate income households. Annually, the city will publish the maximum



rents for the BRARHP based upon the number of bedrooms and applicable AMI. The maximum rents are grounded in and expanded on the CHFA maximum rent and reflect the market within the BRARHP service area. The city maintains the discretion to amend maximum rents or substitute an alternative index which shall be published annually.

The BRARHP uses the HUD-published HOME and Fair Market rent limits which are established for HOME-assisted units. These rent limits are updated every year to reflect market conditions. If the rent limits go up, the Owner/Manager may raise rents accordingly. If the rent limits go down, the Owner/Manager is required to decrease rents.

It is a violation of the Covenant if the Owner/Manager charges rents that exceed the maximum rents allowed or fails to adjust rents when the most recent published limits go down.

#### **A. Maximum Rents**

Each Agreement or Covenant executed on a property specifies the maximum rents allowed which are based on the targeted AMI and bedroom size, as published annually by the city. The total rent paid by the tenant *including* any non-optional fees and the established monthly Utility Allowance, as applicable may not exceed the maximum rents for the BRARHP and published by the City, unless the household receives rental assistance payment as outlined in paragraph 4.22(G).

#### **B. Maximum HOME Rents**

Every HOME-assisted unit is subject to rent limits designed to make rents affordable to low-income households. These maximum rents are referred to as “HOME Rents”. Per §92.252(b)(2),

Maximum *High HOME Rents* are the lesser of:


- 1) The fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or
- 2) A rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit.

Maximum *Low HOME Rents*:

In rental projects with five or more HOME-assisted rental units, at least 20 percent of the HOME-assisted units must be occupied by very low-income household and meet one of the following rent requirements:

- 1) The rent does not exceed 30 percent of the annual income of a household whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households.
- 2) A rent that does not exceed 30% of the annual income for a household whose income equals 50% of the area median income, as determined by HUD, or
  - i. A rent that is equal to 30% of a household’s income.



- 
- ii. If the unit receives Federal or State project-based rental subsidy and the household pays as a contribution toward rent not more than 30 percent of the family's adjusted income, then the maximum rent (*i.e.*, tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

### C. Calculating Maximum Rents

The rent maximum rent for a permanently affordable rental housing unit is calculating using the following factors:

- Applicable Unit AMI Designation
- Total Number of Bedrooms
- Utility Allowance (as applicable)
- Non-Optional Charges/Fees (as applicable)

### D. Rent Limits for Special Unit Types

The following rent limits apply to the following special unit types:

- **Single Room Occupancy (SRO):** Rents may not exceed 75% of the Fair Market Rent (FMR) for a zero-bedroom (efficiency) unit.
- **Micro-Units:** Rents for small units of 475 SF or less (regardless of bedroom size) are subject to the small unit category on the BRARHP's Income and Rent Limits chart.

### E. Rent Limits in RARHP/HOME/LIHTC Properties

The Regional Affordable Housing permanently affordable rental housing, HOME and LIHTC programs have different rent limit requirements. When a publicly assisted unit or HOME-assisted unit is also designated as a LIHTC unit, "the lesser of" rule applies. Rents for Permanently Affordable units, Low/High HOME Rent units cannot exceed the *lesser of* the city-published maximum rent limit, HUD-published Low/High HOME rent limit or the LIHTC rent limit for that unit. This means that the Owner/Manager must determine the maximum allowable rent for each of the programs, and then *use the lower rent*.


**NOTE:** Owner/Manager must implement new income limits published annually by the City within 45 days of the date they are released by the City of Boulder.

### F. Rent Increases

Rent may be increased no more than once each year at initial occupancy or at lease renewal, up to the applicable BRARHP maximum rents as outlined above. The Owner/Manager must provide tenants with a minimum of sixty (60) days' written notice before rent increases may be implemented.

### G. Tenants Receiving Rental Assistance Payments

When a household receives rental assistance such as Section 8, Housing Assistance Payment or any other type of rental assistance payment, the total paid rent (*tenant paid rent + utility allowance + rent subsidy = total paid rent*) may exceed the applicable maximum rent published annually by the BRARHP, provided that the *total tenant paid rent* does not exceed the applicable



maximum rent allowed and the household does not pay more than thirty percent of their income on rent.

#### **4.22 APPROVAL FOR PROPOSED RENTS & RENT INCREASES**

The Owner/Manager must submit proposed rent and rent adjustments/increases by completing the Rent Approval Form ([Appendix IV-E](#)) to the Housing Senior Compliance Manager prior to initial lease-up and annually prior to rent increases. The Housing Senior Compliance Manager must approve the rent increases for all permanently affordable rental housing units prior to implementation. Rent increases may only occur when the new maximum rent limits are published annually.

#### **4.23 UTILITY ALLOWANCE**

Utilities represent the average monthly cost of services for electricity and heating. Utilities do not include water, sewer, and trash services. Generally, tenants of permanently affordable rental units should not pay more than 30% of their income for rent and utilities. Whenever a tenant is required to pay for heating and electricity, the Owner/Manager is required to calculate the appropriate “Utility Allowance” using the Utility Allowance Schedule ([Appendix IV-F](#)) published annually by the local Public Housing Authority of the City of Boulder. The utility allowance must then be deducted from the maximum rent in order to calculate the tenant paid rent.





## CHAPTER 5: TENANT RIGHTS & PROTECTIONS

The Owner/Manager must develop policies and criteria to ensure that all applicants and tenants are treated fairly and equitably. The BRARHP protects tenant rights in a number of ways:

- Written notification must be given to all rejected/denied applicants which includes an explanation of the grounds for rejection/denial.
- Every tenant must have a written lease or rental agreement.
- The lease term must be for at least twelve (12) months, unless otherwise approved by the City of Boulder or BRARHP.
- The lease term may never be for less than 30 days.
- The Low-Income Rental Housing Covenant specifies certain prohibited lease clauses which must be adhered to when entering into a lease with a tenant. and
- The city must review and approve all lease and addendum templates and updates prior to execution.

### 5.1 NO EVICTION WITHOUT REPRESENTATION [Ordinance No. 8412]

[Eviction Prevention & Rental Assistance Program](#) provides services for those facing potential eviction. This program helps people resolve eviction-related housing issues through legal services, rental assistance and mediation. Owners/Managers must provide tenants with the Permanently Affordable Unit Lease Addendum which includes information regarding this program.

**NOTE:** The Eviction Prevention & Rental Assistance Program is only applicable to households living within the City of Boulder


### 5.2 MINIMUM LEASE REQUIREMENTS

The Owner/Manager must enter into a one-year (12 months) lease with all tenants of the household 18 years of age and older. A month-to-month lease may be executed upon mutual agreement of the Owner/Manager and the tenant(s). Owners/Managers are encouraged to enter into month-to-month leases with seniors and people with disabilities. The lease must describe the terms and conditions of occupying a permanently affordable rental housing unit. The requirements outlined in the Rental Compliance Manual must be incorporated within the terms and conditions of the lease. At minimum, the lease should include, but not limited to:

The Owner/Manager must provide a copy of their template lease and any subsequent updates and Addendums to the City of Boulder and Regional Compliance & Monitoring Administrators for review and approval prior to execution.

The Owner/Manager must ensure that leases contain more than one convenient method to communicate directly with the Owner/Manager, including in person, by telephone, email, or through a web portal.


- The legal name of all parties to the lease agreement;
- A description of the unit to be rented; must include address and unit number;

- 
- The date the lease becomes effective;
  - The term of the lease
  - Language addressing security deposits;
  - Lead Based Paint Addendum;
  - HOME Tenancy Addendum (HOME-assisted units only)
  - City of Boulder Affordable Unit Addendum (as applicable);
  - VAWA Lease Addendum;
  - The utility allowance requirements, including a clear breakdown of which utilities are owner-paid and which are tenant-paid;
  - The use of the premises including language addressing that only members listed on the lease/TIC may occupy the unit, that the unit must be the household's primary residence, and that the unit may not be sublet;
  - Language or Lease Addendum outlining the rights and obligations of the parties, including the obligation of the tenant to certify eligibility annually;
  - Language addressing the right of the Owner/Manager or the City of Boulder and Regional Compliance & Monitoring Administrators or their designee to enter the permanently affordable unit for physical inspection;
  - Language addressing the termination process (must provide a minimum of 60-days' notice);
  - Signature of all tenant(s) 18 years of age and older;
  - Signature of Owner/Manager; and
  - Date of execution.

### 5.3 PROHIBITED LEASE TERMS

No residential lease for the Property or any part thereof may contain any of the following provisions:

- **Agreement to be Sued.** Agreement by the tenant to be sued, admit guilt, or to a judgment in favor of the Owner/Manager in a lawsuit brought in connection with the lease;
- **Treatment of Property.** Agreement by the tenant that the Owner/Manager may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The Owner/Manager may dispose of this personal property in accordance with state law;
- **Excusing Owner from Responsibility.** Agreement by the tenant not to hold the Owner/Manager or the Owner/Manager's agents legally responsible for any action or failure to act, whether intentional or negligent;
- **Waiver of Notice.** Agreement of the tenant that the Owner/Manager may institute a lawsuit without notice to the tenant;
- **Waiver of Legal Proceedings.** Agreement by the tenant that the Owner/Manager may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
- **Waiver of a Jury Trial.** Agreement by the tenant to waive any right to a trial by jury;

- 
- **Waiver of Right to Appeal Court Decision.** Agreement by the tenant to waive the tenant’s right to appeal or to otherwise challenge in court a court decision in connection with the lease; and
  - **Tenant Chargeable with Cost of Legal Action Regardless of Outcome.** Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Owner/Manager against the tenant. The tenant may be obligated to pay costs if the tenant loses.
  - **Mandatory Support Services.** Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

## 5.4 REQUIRED LEASE ADDENDUMS

### A. Regional Affordable Rental Housing Unit Addendum

The BRARHP Permanently Affordable Unit Addendum ([Appendix V-A](#)) outlines specific eligibility criteria per city policies. Owners/Manager must use this Addendum as a method of informing applicants and residents or adopt a similar Addendum that demonstrates compliance with city policies. This Addendum has been updated to include but not limited to:

- **City of Boulder’s Eviction Legal Representation & Rental Assistance:** Every person who rents or leases a dwelling unit within the city limits of Boulder, Colorado must be provided with information in accordance with the provisions of Boulder Revised Code, Section [12-2-9](#) (Ordinance [8462](#)). Landlords are encouraged to make required disclosures at the time that lease agreements are executed in order to promote discussion of these city regulations. Landlords can, however, make required written disclosure at any time.
- **City Codes:** Every person who rents or leases a dwelling unit within the city limits of Boulder, Colorado must be provided with written disclosures in accordance with the provisions of the Boulder Revised Code, Section [12-2-4](#) (Ordinance [8412](#)).

### B. HOME Tenancy Addendum

All HOME-assisted units must have a HOME Tenancy Lease Addendum ([Appendix V-B](#)).


### C. Lead Based Paint Lease Addendum

Owners/Managers of permanently affordable rental housing units must ensure that a Lead Based Paint Addendum ([Appendix V-C](#)) is executed with residents at the time of initial occupancy.

## 5.5 VIOLENCE AGAINST WOMEN ACT

The Violence Against Women Act of 2005 (VAWA) provides legal protections to victims of domestic violence, dating violence or stalking. These protections prohibit Owners/Managers from evicting or terminating assistance from individuals being assisted under a HOME or Section 8 program if the asserted grounds for such action is an instance of domestic violence, dating violence or stalking.

The Owner/Manager may not consider incidents of domestic violence, dating violence or stalking as a serious or repeated violation of the lease or other “good cause” for termination of assistance, tenancy or occupancy rights of the victim of abuse. The Owner/Manager may not consider criminal activity directly relating to abuse, engaged in by a member of a tenant’s household or



any guest or other person under the tenant's control, cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of abuse. The Owner/Manager must meet all the VAWA requirements in accordance with 24 CFR 92.359.

**A. Notification Requirements**

The Owner/Manager must provide a notice ([HUD-5380](#)) ([Appendix V-D](#)) and certification form ([HUD-5382](#)) ([Appendix V-D.1](#)) that meets the requirements of 24 CFR 5.2005(a) to the applicant for a HOME-assisted unit at the time the applicant is admitted to a HOME-assisted unit, or denied admission to a HOME-assisted unit based on the Owner/Manager's tenant selection policies and criteria. The Owner/Manager of HOME-assisted rental housing must also provide the notice and certification form described in 24 CFR 5.2005 with any notification of eviction from a HOME-assisted unit.

**B. Bifurcation of Lease Requirements**

For the purposes of this part, the following requirements shall apply in place of the requirements at 24 CFR 5.2009(b): If a household living in a HOME-assisted rental unit separates under 24 CFR 5.2009(a), the remaining tenant(s) may remain in the HOME-assisted unit.

**C. VAWA Lease Term/Addendum ([HUD-91067](#))**

The Owner/Manager must develop a VAWA lease term/addendum ([Appendix V-D.2](#)) to incorporate all requirements that apply to the Owner/Manager or lease under 24 CFR part 5, Subpart L, and this section, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). This VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if the Owner/Manager determines that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e). When HOME tenant-based rental assistance is provided, the lease term/addendum must require the Owner/Manager to notify the City before the Owner/Manager bifurcates the lease or provides notification of eviction to the tenant. If HOME tenant-based rental assistance is the only assistance provided (*i.e.*, the unit is not receiving project-based assistance under a covered housing program, as defined in 24 CFR 5.2003), the VAWA lease term/addendum may be written to expire at the end of the rental assistance period.

**D. Emergency Transition Plan ([HUD-5381](#))**

The Owner/Manager is required to develop an Emergency Transfer Plan ([Appendix V-D.3](#)) as outlined in the City's Rental Compliance Manual.

**E. Emergency Transfer Request**

If a victim of domestic violence is seeking an emergency transfer, the Owner/Manager must provide [HUD-5383](#) ([Appendix V-D.4](#)) to request an emergency transfer and certify they meet the requirements for eligibility for an emergency transfer under the Violence Against Women Act.



## F. Early Termination of Lease

If a tenant who is living in an affordable unit is a victim of family violence, the Owner/Manager must allow the tenant to terminate their lease without penalty.

**NOTE:** The VAWA Lease Addendum requirement is only applicable to HOME-designated units.

## 5.6 TERMINATION OF TENANCY

A termination of tenancy is a termination of the lease or refused to renew the lease or rental agreement prior to the expiration of the lease term. Owners/Managers can only terminate the tenancy of a tenant of a permanently affordable rental housing unit for “Good Cause”, as defined in §92.253(c) which includes:

- A serious or repeated violation of the terms and conditions of the lease;
- Violation of applicable Federal, state, or local law;
- Completion of the tenancy period for transitional housing; or
- Other good cause, as defined by the city and outlined in the lease.

When good cause exists, an Owner/Manager may terminate tenancy by:

- Serving written notice upon the tenant at least sixty (60) days before the termination of tenancy. This notice must specify the grounds for the termination.
- Documenting the property files with justification for terminating the lease and a copy of the 60-day written notice to the tenant.

Items not to be construed as Good Cause for Eviction:

- Eviction is not permitted if such eviction is discriminatory based on the tenant/household’s protected class under the Fair Housing Act (see Chapter 3).
- The Owner/Manager shall not use a record of arrest, parole or probation, or current indictment to establish a violation.
- Per the Violence Against Women Reauthorization Act of 2013 (see [Section 5.3 C](#)) the Owner/Manager shall ensure that an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as either:
  - A serious or repeated violation of a lease by the victim or threatened victim of such incident; or
  - Good cause for terminating the assistance, tenancy or occupancy rights to housing of the victim of such incident.

**NOTE:** 60-day notice period is not required if the termination of tenancy or refusal to renew is due to a direct threat to the safety of the tenants or employees of the housing or an imminent and serious threat to the property.



## 5.7 OTHER GOOD CAUSE

Other good cause include:

- When a tenant creates a documented nuisance under applicable state or local law or when a tenant unreasonably refuses to provide the owner access to the unit to allow the owner to repair the unit.
- Where an owner must terminate a tenancy to comply with an order by a governmental entity or court that requires the tenant vacate the project or unit or a local ordinance that necessitates vacating the project or unit.
- Good cause for a criminal violation of applicable Federal, state, or local law, there must be a record of conviction for a crime during the tenancy period that has a direct bearing on the tenant's continued tenancy in the permanently affordable rental housing project.
- Based on a violation of applicable Federal, state, or local law cannot be based on a violation that occurred before tenancy, a violation that does not have a direct bearing on a tenant's continued tenancy, or a basis other than a record of conviction. An owner may consider any mitigating circumstances relevant to whether the tenant will commit further violations of the lease or applicable Federal, State, or local law.

## 5.8 TERMINATION NOTICE TO THE CITY

Owners/Managers must provide the City with a copy of the notice to vacate to assist the City with monitoring the permanently affordable rental units to help the City answer any questions it receives from the household being evicted.


## 5.9 NON-RENEWAL OF LEASE

A lease to rent a permanently affordable rental housing unit is a contract. A lease contract expires at the end of the time period specified in the lease. At that time, the tenant surrenders the unit back to the owner. The Owner/Manager may renew the lease, thereby allowing the tenant to continue occupying the unit, but the Owner/Manager is not obligated to renew a lease or enter into a new one. Failure to renew the lease does not constitute an eviction without good cause. However, under no circumstances can a notice of non-renewal be issued in an effort to avoid eviction when good cause exists. The Owner/Manager must contact the Housing Senior Compliance Manager for consultation prior to issuing notices of non-renewal.

Any household that is determined ineligible per city policies and/or program requirements upon annual recertification, is not eligible to renew their lease. The Owner/Manager must inform tenants of the city's policies and requirements at the time of initial occupancy or at lease renewal, as applicable and must be outlined in their lease.

When a household no longer meets eligibility requirements, the Owner/Manager must notify the tenant that they are no longer eligible to occupy a permanently affordable rental housing unit and their lease will not be renewed. The Owner/Manager may execute a month-to-month lease with the household for up to one year, to allow the household to find suitable replacement housing. At the end of the one-year term, the household must either demonstrate that they are eligible for





continued occupancy or vacate the permanently affordable housing unit.

**NOTE:** The Owner/Manager cannot refuse to renew the lease of a tenant occupying a HOME-assisted unit without good cause as defined in §92.253(c). If a household is determined to no longer meet eligibility requirements, the Owner/Manager must issue a notice of nonrenewal, and the HOME unit designation must float to a new HOME-eligible unit.

## 5.10 CHARGES & FEES

All charges and fees must be submitted to the Housing Senior Compliance Manager along with the template lease for review/approval prior to implementation. Customary charges and fees are considered reasonable costs that are normally charged to all tenants, such as damage (security deposits), pet deposits, application fees and/or credit deposits. The basic principle is that charges and fees must be reasonable, necessary and comparable to other affordable housing properties.

Refundable fees associated with renting units are permitted as long as such fees are reasonable, necessary and clearly defined within the lease. Examples of such fees include: security deposits, one-time penalty fees such as late payment fees and fees for prematurely breaking a lease. These charges should not be included in the gross rent calculation.

### A. Application Processing Fees

Application fees may be charged to cover the actual cost of processing the application and checking criminal history, credit history, landlord references, etc. However, the fee cannot exceed the amount of actual out-of-pocket costs incurred by the Owner/Manager. No amount may be charged in excess of the average expected out-of-pocket cost of processing the application.

### B. Renter's Insurance

Owners/Managers may encourage tenants to secure Rental Insurance. However, if renter's insurance is required as a condition of occupancy (mandatory), then the amount of renter's insurance must be included in the gross rent calculation. The BRARHP strongly recommends that Owners/Managers do not mandate renter's insurance. Instead, they should include clear language in the lease explaining that the Owner/Manager is not responsible for damage to the household's belongings and recommending that tenants seek out renter's insurance as they see fit.

## 5.11 OPTIONAL FEES

Any fee selected by the tenant for additional services or amenities such as pet fees, extra parking space(s) and/or extra storage space, etc., are considered optional fees. Parking is generally considered part of the property's common area. Adequate storage, parking or access to alternative transportation options must be available to each unit. Optional fees must not be included in the gross rent calculation. A service or amenity is considered optional only if:

- A tenant may opt out of the service or amenity without penalty and continue to live at the property; and
- Reasonable alternatives exist.



Any services the tenant pays for that are provided by the property whether optional or non-optional must be listed in the tenant’s lease with the cost of each individual service clearly listed.

**5.12 NON-OPTIONAL/MANDATORY FEES**

Any fee that is charged as a condition of occupancy (i.e. a fee for a service) is considered a non-optional or mandatory fee. All non-optional or mandatory fees must be included in the gross rent calculation.

**5.13 GUIDELINES FOR ALLOWABLE CHARGES & FEES**


The following fee schedule was developed based on the affordable housing industry standards that requires fees to be reasonable, necessary and comparable to other affordable housing properties located within each of the Participating Jurisdictions. The fee schedule is not all inclusive and is intended to be a guide for determining reasonable charges and fees. All charges and fees must be reviewed and approved by the City.

Type of Charges & Fees	City Approved Charges & Fees
Application Fee	Tenants may be charged for the actual cost of processing applications, not to exceed \$30. No fee may be charged for recertification.
Late, Dishonored Payments, Eviction and Other Fees & Charges	\$50.00 late fee followed by a maximum of \$15.00 per day until all amounts are paid in full.
Lease Break/Re-Letting Fees	Break-lease fees are permitted if they are in lieu of paying rent for the remaining term of the lease. The fee may not exceed two months’ rent.
Re-Inspection Fee	Permissible only in the case of a documented lease violation, not to exceed \$25.
Misc. Fees	Tenants may be charged for the actual cost of providing service or replacement.
Replace damaged smoke/CO detector	Tenants may be charged for the actual cost of replacement when they are at fault for damage.
Fill Nail/Molly Holes	Fees for preparing or providing maintenance to a unit due to normal wear and tear are not allowed. Actual cost for repairing damage beyond normal wear and tear is allowed.
Replace standard light bulbs	Tenants may be responsible for replacing standard light bulbs during occupancy.
Replace batteries in smoke/CO detectors	Tenants may be responsible for replacing batteries during occupancy.

**5.14 PROHIBITED FEES**

The following fees may not be charged, regardless of whether or not they are included in the gross rent calculation:

- Fees for work involved in completing the Tenant Income Certification and other program specific documentation. Owners/Managers cannot charge the applicant or tenant for costs incurred to receive or complete income verification forms. If there is a fee associated with



obtaining verification, the Owner/Manager may choose to pay the fee or may instead use a different source of verification.

- Fees for inspecting or correcting deficiencies in the unit or common areas that were not caused by the tenant.
- Fees for preparing a unit for occupancy or providing general maintenance. The Owner/Manager is responsible for maintaining all units in a manner suitable for occupancy at all times. Tenants may only be charged for repair or damages that are beyond normal wear and tear. The Owner/Manager must document damages in the file with photos to prove that the unit is in condition beyond normal expected wear and tear. Charges to the tenant must not exceed the actual cost to repair. The city will expect to see documentation in the tenant file as to the nature of the damage, including photos and receipts for the repair work.
- Lease processing fees, acceleration charges and interest on unpaid balances are prohibited.

At the end of occupancy, the tenant shall deliver the rental premises to the Owner/Manager in a clean and proper condition. Ordinary wear and tear is expected and is considered the normal course of habitation of a dwelling unit.

**NOTE:** Owners/Managers of affordable units outside of the City of Boulder must defer to their local Participating Jurisdiction to determine allowable and prohibited charges and fees, as applicable.


### **5.15 SECURITY DEPOSIT PROTECTIONS**

Security deposits must be refundable and may be no greater than two months' rent. Owners/Managers are prohibited from using surety bonds or security deposit insurance in lieu of (or in addition to) security deposits. If an Owner/Manager charges any amount against a tenant's security deposit, the tenant must be provided a list of all items charged against the security deposit and be promptly refunded the remainder of the deposit balance.

### **5.16 ADDITIONAL HOME RULE PROTECTIONS**

The new HOME rule requires the following protections for tenants occupying a HOME-assisted unit.

- **Access to Common Areas:** The Owner/Manager must provide reasonable access and use of the property's common areas. Owners/Managers are prohibited from having separate amenities such as gyms, pools, spas, elevators, rooftop gardens, storage areas, and playrooms that only non-assisted tenants can access or use.
- **Tenant Associations:** The Owner/Manager must ensure the tenants' right to organize, create tenant associations, convene meetings, distribute literature, and post information at a HOME-assisted property.
- **Supportive Services:** Tenants may not be required to accept supportive services offered at the housing unless the tenant is living in transitional housing and such services are



required in connection with that housing.

- Required Notices from the Owner:

### **5.17 LANDLORD/TENANT HANDBOOK**

The Landlord-Tenant Handbook ([Appendix V-E](#)) was prepared by the City of Boulder Mediation Services with legal advice from the Boulder City Attorney's Office. It summarizes existing State of Colorado and City of Boulder resident landlord-tenant law. The Landlord-Tenant website provides valuable resources and may be found on the following link:

<https://bouldercolorado.gov/services/landlord-tenant-and-roommate-resources>.

**NOTE:** Owners/Managers of affordable units outside of the City of Boulder must defer to their local Participating Jurisdiction for their Landlord/Tenant Handbook, as applicable.

### **5.18 CONFLICT OF INTEREST**

With the exception of on-site property managers and maintenance workers that reside in a unit, Owners, and their officers, employees, agents, or consultants, may not occupy a permanently affordable rental housing unit. The Housing Senior Compliance Manager may grant exceptions to this rule on a case-by-case basis.

### **5.19 DISPUTE RESOLUTION**

Owners/manager should have written procedures in place that address the following situations:

- Disputes between individual tenants or households; and
- Tenant grievances against property management.

### **5.16 MEDIATION SERVICES**

The City of Boulder Community Mediation Service assists in resolving disputes for City of Boulder residents regarding landlord-tenant issues. Mediation is based on open communication and a sincere desire to resolve the dispute. Participation in mediation is voluntary. A large percentage of the work done by the Community Mediation Services involves landlord and tenant issues. A variety of resources have been developed dealing specifically with these types of relationships. These resources may be accessed in the following link:

<https://bouldercolorado.gov/community-mediation-and-resolution-center>.



## CHAPTER 6: PROPERTY STANDARDS

### 6.1 OVERVIEW

The Owner/Manager shall maintain the Property in good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, rules, and regulations. The Owner/Manager is responsible for conducting annual unit inspections and maintaining documentation of such inspection in the tenant file. The City of Boulder, Department of Housing & Human Services has contracted with a Housing Inspection Contractor to conduct inspections of rental units to ensure compliance with HUD property standards. The Contractor will conduct regular unit and property inspections to assure compliance with property standards.

All permanently affordable rental units must meet the property standards established by the BRARHP, including rules related to the control and abatement of lead-based paint and the Uniform Federal Accessibility Standards for accessible units. The property standards are applicable in perpetuity regardless of who manages the property and/or whether the property's Ownership is transferred.

### 6.2 MINIMUM PROPERTY STANDARDS

The following minimum property standards apply by specific activity type:

#### A. Acquisition

- Applicable state or local code requirements; and
- Uniform Federal Accessibility Standards for accessible units, as applicable.

#### B. Rehabilitation

- Local written rehabilitation standards;
- State/local code and standards or model codes; and
- Uniform Federal Accessibility Standards for accessible units, as applicable.

#### C. New Construction

- State/local code and standards or model codes;
- International Energy Conservation Code; and
- Uniform Federal Accessibility Standards for accessible units, as applicable.
- Site and Neighborhood Standards

### 6.3 PHYSICAL CONDITION OF AFFORDABLE PROPERTY/UNITS

The Owner/Manager must maintain the physical condition of the permanently affordable property and units according to the RARHP physical condition standards. The Owner/Manager must make repairs and perform maintenance on units and common areas in a professional manner, as soon as practicable. When a life-threatening deficiency in the physical condition of the tenant's unit or project impacts the tenant, the tenant shall be promptly relocated into either a housing unit that is decent, safe, sanitary, and in good repair, or placed into physically suitable lodging until repairs on the tenant's housing unit or project are completed.



## 6.4 ENTERING A PERMANENTLY AFFORDABLE UNIT

The Owner/Manager must enter a unit during reasonable hours when the Owner/Manager is performing routine inspections and maintenance, making repairs to the unit, or showing the unit to prospective tenants. The Owner/Manager must *give the tenant at least 2 days' notice*, which must include the purpose for entering the unit.

The Owner/Manager may enter a unit at any time, without advance notice, if the Owner/Manager reasonably believes that an emergency requires entering the unit. If an Owner/Manager enters a unit when the tenant and all adult members of the household are absent from the unit, the Owner/Manager must provide a written statement to the tenant explaining the date, time, and purpose of their entry into the unit.

## 6.5 LEAD BASED PAINT REQUIREMENTS

When a publicly supported project involves acquisition or rehabilitation of a property that was constructed prior to 1978, the property is subject to the lead-based paint regulations at 24 CFR Part 35.

### A. Exempt Housing

- Properties built after January 1, 1978;
- Properties that have previously tested negative for lead-based paint;
- Properties where all lead-based paint has been identified and removed using approved methods;
- Properties where rehab will not disturb paint and no paint hazards are identified; and
- Properties where occupancy by a child is unlikely.


### B. LBP Disclosure Requirements

The Owner/Manager must understand lead-based paint disclosure and ongoing maintenance obligations. Prior to leasing a unit, Owner/Manager of pre-1978 rental properties must:

- Provide prospective tenants the lead hazard information pamphlet, *Protect Your Family in Your Home* ([Appendix VI-A](#)).
- Provide tenants with a Lead Based Paint Disclosure form ([Appendix VI-A.1](#)) and maintain in the tenant file.
- Disclose any known lead or lead hazards in the property, including the location of lead-based paint and/or lead hazards, and the condition of the painted surfaces.
- Provide the prospective tenants any records and reports on lead-based paint and/or lead-based paint hazards which are available to the Owner/Manager, including records and reports concerning common areas and other units, when such information is obtained as a result of a building-wide evaluation; and
- Attach to the lease, or insert language in the lease, a *Lead Warning Statement*, that confirms the Owner/Manager has compliance with all notification requirements. If an attachment is used, Owners/Managers and tenants must sign and date the attachment.

### C. Lead Hazard Evaluation & Reduction

Properties built prior to 1978 must be evaluated to determine the presence of deteriorated paint. Regular maintenance and evaluation of lead hazard reduction must be performed. The



Owner/Manager is responsible for:

- A visual inspection of lead-based paint at unit turnover or at least annually on occupied units;
- Repair of all unstable paint;
- Repair of encapsulated or enclosed areas that are damaged; and
- Continue to comply with the notification requirements when additional lead hazard evaluation and hazard reduction activities are performed.

## **6.6 INSPECTION REQUIREMENTS**

The National Standard for the Physical Inspection of Real Estate (NSPIRE) is the standard for conducting inspections. The NSPIRE inspection model prioritizes health, safety and functional defects over appearance. It implements inspections that better reflect the true physical condition of the property. The NSPIRE model supports the adoption of sound, year-round maintenance practices.

Owners/Managers must ensure that they have an adequate number of trained staff to perform NSPIRE inspections or contract with a certified inspector to perform inspections on behalf of the Owner/Manager.

## **6.7 ANNUAL INSPECTIONS**

The Owner/Manager is responsible for ensuring that all permanently affordable rental housing units are inspected annually. Documentation of the inspection must be maintained in the tenant file or other property management files available for review by the city upon request. Owners/Managers must ensure that all permanently affordable rental housing properties/units are inspected annually by using the NSPIRE model.



## Chapter 7: Record Keeping & Retention

As for all program activities, the city requires documentation for rental projects to show that all program and project regulations have been met. Because of the long-term monitoring required for rental projects, record-keeping responsibilities are slightly more substantial.


The Owner/Manager is responsible for keeping adequate records that demonstrate compliance with all applicable requirements. The Owner/Manager must maintain both property and tenant records. Property records should include documentation to back-up rent and utility allowance calculations.

### 7.1 MAINTAINING TENANT RECORDS

To have the necessary information for reporting, Owner/Manager of permanently affordable rental housing units are required to maintain a tenant file for each household occupying an affordable housing unit. Tenant files should include the documentation necessary to demonstrate that each unit is properly occupied by an eligible tenant. The file must contain the following information:

- Unit number
- Number of bedrooms in the unit
- Name of household members occupying the unit
- Tenant application
- Rental Assistance Verification
- Certification Questionnaire
- Tenant signed release forms
- Third-party income verification documentation
- Self-Certification, as applicable
- Tenant Income Certification
- Student Exception Request, as applicable
- Move-in inspection and annual inspection reports
- Total rent paid by tenant
- Utility allowance
- Tenant subsidy type and amount
- A copy of the current lease or Amendment to the original lease
- Household AMI
- Percentage of tenant income paid on rent
- Household size
- Names and birthdates of all members of the household
- Demographic Form - self-identified race/ethnicity for all members of the household
- Beginning and ending dates of tenants' occupancy
- Reasons unit occupancy has changed
- Household disability status
- Declaration of Section 214 Status (HOME units only)
- Race/Ethnic Data Reporting Form



- 
- VAWA Lease Addendum (HOME-assisted units only)
  - HOME Tenancy Lease Addendum (HOME-assisted units only)
  - Lead based paint acknowledgements (built pre-1978)
  - Signed Permanently Affordable Unit Addendum

The documentation retained shall be sufficient to support the information provided by the Owner/Manager to the city. The Owner/Manager must allow access to these records at any time during normal business hours upon request by the city. Records must be kept in the Owner/Manager's local office.

## **7.2 SAMPLE TENANT FILE FORMS**

The city has developed the following forms to assist Owners/Managers in ensuring compliance with tenant file requirements:

- Tenant File Checklist ([Appendix VII-A](#))
- Sample Application ([Appendix VII-B](#))
- Certification Questionnaire
- Sample Income Verification Forms
- Tenant Income Certification Form ([Appendix VII-C](#))
- Clarification Form
- Move-In/Move-Out Inspection Checklist ([Appendix VII-D](#))
- Self-Certification Questionnaire
- Race & Ethnicity
- Lease Addendums

## **7.3 RECORD RETENTION**

The Owner/Manager must retain complete records for the most recent three-year period showing the extent to which applicants have applied for the program. The Owner/Manager must also retain complete tenant file records for the most recent five-year period which document tenant eligibility.

## **7.4 ACCESS TO RECORDS**


The Owner/Manager must allow the city access to all records at any time during normal business hours. All records should be kept in the Owner/Manager's local office.

## **7.5 REPORTING REQUIREMENTS**

The city requires Owners/Manager of rental properties to demonstrate that all program compliance requirements have been met. The annual submission of reports is a keyway for Owner/Manager to demonstrate compliance requirements including applicable property standards, affordability, tenant eligibility and occupancy requirements. As part of the city's long-term monitoring, all rental properties are subject to an annual risk assessment and desk review of the following required reports:

### **A. Annual Tenant Report**

Upon completion of initial lease-up and annually thereafter, the Owner/Manager must provide tenant information by submitting an Annual Tenant Report ([Appendix VII-E](#)) by January 31<sup>st</sup>



each year.

- Unit Number
- Identify Designated HOME-assisted units
- Number of Bedrooms
- Total Square Feet
- Unit AMI
- Head of Household Last Name
- Head of Household Type (*such as*):
  - Female Head of Household
  - Disabled Head of Household
  - Elderly Head of Household
- Ethnic Characteristics
- Racial Characteristics
- Student Status
- Head of Household Occupation
- Household Size
- Total Household Annual Income
- Total Household Annual Assets
- Source of Assets
- Total Tenant Paid Rent
- Rental Subsidy (as applicable)
- Utility Allowance (as applicable)
- Total Non-Optional Charges & Fees (as applicable)
- Total Gross Rent
- Date of Initial Occupancy

### **B. Annual Beneficiary Report**

The Annual Beneficiary Report ([Appendix VII-F](#)) is required for some rental housing properties. This report summarizes the number of individuals or households (beneficiaries) that benefited from services provided by the project/program. This report must be completed on an annual basis and received by the Housing Senior Program Manager no later than January 31st of each year.

Only rental housing properties that provide overnight shelter or short-term transitional housing are required to submit an Annual Beneficiary Report. All other rental properties must submit an Annual Tenant Report.

### **C. Annual Certification of Compliance**

As part of our Annual Risk Analysis for the Regional Affordable Rental Compliance Program, the Annual Certification of Compliance ([Appendix VII-G](#)) must be submitted on an annual basis and received by the Housing Senior Program Manager no later than January 31st of each year. This report certifies the activities of the past calendar year. The report is required for all permanently affordable rental housing units under Covenant.



**D. Affirmative Marketing Compliance Report**

The Owner/Manager must submit an Affirmative Marketing Compliance Report ([Appendix VII-H](#)) to demonstrate compliance with the city's Affirmative Fair Housing Marketing Plan or provide a written narrative of the affirmative marketing outreach efforts taken to market permanently affordable rental housing units in the past year. Supporting documentation detailing marketing efforts must be attached. The Compliance & Monitoring Administrator will monitor Program compliance by all the required annual reports. Failure to submit reports as required may be considered an issue of noncompliance.

**E. Annual Vacancy Report** All multifamily permanently affordable rental housing properties are required to submit an Annual Vacancy Report ([Appendix VII-I](#)) by January 31st of every year. This report serves as a tool to inform Compliance Staff and the Housing Advisory Board of the reasons why residents vacate permanently affordable rental units throughout the year.

**F. Operating Income & Expense Report**

To ensure the financial viability of permanently affordable rental housing properties, the BRARHP reserves the right to request and review operating income and expense reports. Owners/Managers must make these reports available upon request.



## CHAPTER 8: COMPLIANCE MONITORING

This chapter of the manual outlines the procedures for monitoring all permanently affordable rental housing partners and properties. Monitoring is designed to assist Owners/Managers with federal and local regulations regarding the BRARHP compliance monitoring requirements and procedures in accordance with 24 CFR Part 92, 24 CFR Part 570. However, compliance is the sole responsibility of the Owner of permanently affordable rental housing units under Covenant with the city and/or Regional Participating Jurisdictions.

### 8.1 MONITORING OVERVIEW

When the BRARHP invests in affordable housing, it incurs an obligation to monitor the permanently affordable rental housing properties to ensure it is in compliance with all applicable rules and regulations throughout the period of affordability per the HOME Agreement, and in perpetuity per the Covenant to ensure that the property is maintained in accordance with applicable requirements and property standards. Three primary goals of monitoring are to:

- Ensure production and accountability;
- Ensure compliance with all federal and local requirements; and
- Evaluate organizational and project performance as well as project viability (financial health, management capacity, etc.)

Minimum monitoring activities include:

#### A. Reporting

Owner/Manager must submit an annual tenant report on rents and occupancy. This report provides data on the affordability requirements that limit occupancy to low-and-very low-income households and restrict rents to affordable levels.

#### B. Unit & Property Inspections

Owner/Manager must conduct annual inspections that ensures the property and units are maintained in compliance with the NSPIRE model, including lead-based paint notification and on-going maintenance requirements, as applicable.

#### C. Record-Keeping


Owner/Manager must maintain sufficient records to determine whether the Owner/Manager has met all requirements.

#### D. Review of Records

The City and BRARHP compliance staff review records maintained by the Owner/Manager to verify the accuracy of reports and ascertain compliance.

### 8.2 MONITORING PLAN

The City of Boulder has an obligation to monitor all city-supported and BRARHP's permanently affordable rental housing units and properties to ensure that they comply with applicable requirements. The monitoring plan outlines the procedures the City and Regional Compliance & Monitoring Administrators will follow when conducting various types of monitoring. These



procedures have been developed to be complete, fair and consistent with the city's monitoring activities. Monitoring compliance falls into three general areas:

**A. Administrative & Financial Monitoring**

Ensures that Owner/Manager administering the program properly with necessary fiscal controls. It involves the review of and enforcement of Agreements and Covenants, timely completion of projects, adherence to policies and procedures adopted by the R BRARHP compliance with administrative requirements, timely and accurate reporting and documentation of accomplishments.

**B. Program Monitoring**

Determines whether the Owner/Manager has the proper procedures, forms and files in place to carry out a program in compliance with local and federal requirements. It involves the examination of funding applications, policies, procedures, program files, financial files, project files structure and maintenance.

**C. Project Monitoring**

Ensures that each funded project meets all project requirements, eligible beneficiaries and property standards. A review of tenant files and unit inspections are completed as part of this process.

**8.3 TYPES OF MONITORING**

Comprehensive monitoring reviews are conducted regularly, even for an Owner/Manager of properties with a strong history of good performance and compliance. The Housing Senior Program Manager ensures that every permanently affordable rental project in the BRARHP portfolio is monitored annually by utilizing the following types of review:

**A. Pre-Lease-Up Monitoring**

Any Owner/Manager of new rental housing developments that does not have previous affordable housing experience is subject to additional monitoring and oversight during initial lease-up. City Compliance staff reserve the right to review/approve all tenant files through the first year of lease-up.


**B. Risk Assessment**

The Housing Senior Compliance Manager performs an annual Risk Assessment to identify which permanently affordable rental housing projects require comprehensive monitoring throughout the year. High-risk projects include but not limited to:

- New partner in providing permanently affordable rental housing;
- Change in ownership or management of permanently affordable rental housing;
- Experiencing turnover in keys staff positions;
- Undertaking multiple funded activities for the first time; and
- Not submitting timely or accurate reports

**C. Desk Review**

Desk reviews are a key component of basic monitoring activities. This review involves



examining information and materials provided by Owners/Managers, as a means to track performance and identify potential problem areas. This review is conducted by the Housing Senior Compliance Manager on a quarterly and annual basis. Reports may include but not limited to: property compliance, overall project performance, financial health, and rent & occupancy reports. As most reports only offer a snapshot of a situation, the city may contact the Owner/Manager for clarification of information or seek additional information when conducting a desk review.

#### **D. Pre-Monitoring Desk Reviews**

The City and Regional Compliance & Monitoring Administrators will conduct a Pre-Monitoring Desk Review prior to conducting each Site Review or remote monitoring. This review consists of the following:

1. Fair Housing & Equal Opportunity – Ensure Fair Housing & Equal opportunity posters are displayed at:
  - The property location if a single site project; and/or
  - At the site where residents apply for housing.
2. Affirmative Marketing Procedures
  - Review the Affirmative Fair Housing Marketing Plan (AFHMP) to ensure it is being utilized in determining market for persons least likely to apply for housing.
  - Ensure that the AFHMP is evaluated and updated at least once every five (5) years in accordance to the policies of the Fair Housing & Equal Opportunity Office of the Department of Housing & Urban Development (HUD). All AFHMPs and updates must be submitted to the Housing Senior Compliance Manager for review and approval.
3. Tenant Selection Policies – review to ensure that applicants are selected, and the criteria used for approving or denying applicants.

#### **E. On-Site Review (Site Reviews)**


The City and Regional Compliance & Monitoring Administrator conducts Site Reviews and unit/property inspections. During the Site Review an analysis of randomly selected tenant files and review of supplemental information is completed along with an inspection of the general physical condition of the units and property.

#### **F. Remote Monitoring**

Off-site Remote Monitoring is conducted in lieu of on-site Site Reviews when it's appropriate to do so. Unit inspections may be completed on the same day as remote monitoring or within a reasonable timeframe of the remote monitoring.

The Site Review and Remote Monitoring consists of two components:

1. Review records and files retained on-site that document the Owner/Manager's



compliance with requirements outlined in the Covenant and to verify the accuracy of information provided in the Owner/Manager's rent and occupancy reports.

2. Conduct a physical inspection of a sample of units at the property to be sure the property is maintained in standard condition

A review of records may include but not limited to the following:

**General administrative files:** generated in the administration of the property as a whole, including marketing activities, tenant selection plan, wait list, policies and procedures.

**Tenant Files:** Related to the tenant and the unit he/she occupies.

**HOME-Unit Designation:** Reflect which units are HOME-assisted units at any given point in time.

**Maintenance Files:** Documentation of annual unit inspections to ensure applicable property standards are met and identify all physical improvements made to the property.

**NOTE:** The city may conduct monitoring or inspections more frequently as needed.

#### 8.4 SITE REVIEW & REMOTE MONITORING PROCESS

The basic framework for conducting Site Reviews consists of four steps which include:

##### A. Monitoring Preparation

Compliance staff will perform a Pre-Monitoring Desk Review of project related data. A Pre-Monitoring Questionnaire will be provided to the Owner/Manager to be completed and returned to Compliance staff prior to the Site Review.

##### B. Conducting the Monitoring

The Compliance Conduct the Site Review which consists of the following steps:


**Step 1: Notification:** Compliance staff will contact the Owner/Manager to explain the purpose of the visit and agree upon a date to conduct the Site Review. Any information needed for the review will be requested at the time of notification. Generally, a minimum of 30-days' notice will be provided to the Owner/Manager prior to the Site Review, unless otherwise agreed upon between all parties.

**Step 2: Entrance Conference:** Compliance staff will meet with the Owner/Manager and/or designated staff at the beginning of the monitoring visit to make sure the Owner/Manager has a clear understanding of the purpose and scope for the monitoring.

**Step 3: Tenant File Review:** Compliance staff will perform a review of tenant files and supplemental documentation to determine compliance with applicable requirements.

**Step 4: Exit Conference:** At the end of the Site Review, Compliance staff will meet again with





the Owner/Manager and/or designated staff to present the preliminary results of the monitoring, secure additional information needed, and to provide the Owner/Manager with an opportunity to respond to questions and concerns.

**Step 5: Unit Inspections:** The Housing Inspection Contractor is responsible for conducting an inspection of units on behalf of the City of Boulder to ensure applicable property standards are met.

**Step 6: Follow-Up:** At the end of the Site Review, Compliance staff will follow-up with the Owner/Manager to ensure that all outstanding questions and/or concerns have been resolved. The Owner/Manager will be given an opportunity to address any area of concern identified in the monitoring, prior to the formal submission of the monitoring letter.

**Step 7: Monitoring Letter:** A written summary of the Site Review will be provided to the Owner/Manager within thirty (30) days of the Site Review. The Owner/Manager will be given thirty (30) days from the receipt of the monitoring letter to address any corrective action required as outlined in the monitoring letter.

## **8.5 TECHNICAL ASSISTANCE**

The city incorporates technical assistance into the overall monitoring plan in an effort to help Owner/Manager understand and comply with all compliance requirements. Technical assistance is not intended to replace formal monitoring but rather serves as a supplemental tool for monitoring to ensure long-term compliance. Technical assistance is offered prior to initial lease-up, based on need as identified in the monitoring process, staff turnover and is available upon request.

## **8.6 MONITORING LONG-TERM VIABILITY**


Many difficulties in the rental project first appear in the form of financial problems. For this reason, the city performs enhanced monitoring to ensure the long-term financial viability of a property. This review is conducted annually through a review of operating income and expense reports, vacancy reports and annual financial statements.

## **8.7 NONCOMPLIANCE**

Noncompliance is defined as any period of time in which the project fails to satisfy applicable requirements. Any determination of noncompliance will be communicated to the Owner/Manager in writing. The letter will be written to notify the Owner/Manager of all areas of concern, any determination of noncompliance, required corrective actions and the period of resolution. The severity and extent of noncompliance may vary. In general, issues of noncompliance fall into three levels of severity.

**Level 1:** One-time instance of noncompliance, generally identified as an “area of concern”.

**Level 2:** Moderate to severe instances of noncompliance that have multiple occurrences, and or suggest that there are problems with management or operational issues in carrying out requirements;



**Level 3:** Instances of gross negligence, fraud, discrimination, or physical conditions that pose an imminent threat to the health or safety of tenants.

If issues of noncompliance are not resolved within the period of time allotted, the Housing Senior Compliance Manager will investigate and may visit the site to determine the extent of noncompliance.

## **8.8 TERMS OF ENFORCEMENT**

When issues of noncompliance are identified, a range of corrective actions or remedies may be imposed. The type of corrective action depends on the severity of noncompliance. Some examples of remedies may include:

**Level 1:** Document the issue of noncompliance, follow-up and verify that the issue of noncompliance has been corrected; and or monitor more frequently to ensure that issues of noncompliance are not repeated.

**Level 2:** Meet with the Owner/Manager to correct the issue of noncompliance; document the meeting and directives in a follow-up letter, verify that all issues of noncompliance have been corrected; and monitor more frequently and provide technical assistance as needed.

**Level 3:** Meet with the Owner/Manager to identify issues of noncompliance and establish a timeframe for corrective action, execute a formal agreement which specifies the terms and conditions to address the issue of noncompliance. Notify the City Attorney's Office if full compliance within the allotted resolution period is not satisfied. The City Attorney's Office may pursue whatever legal action necessary to correct the situation.

<p><b>NOTE:</b> The city reserves the right to take the corrective actions as referenced above and as outlined in the Agreement and/or Covenant.</p>
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