

# Oklahoma Housing Finance Agency

## National Housing Trust Fund

### Chapter 19 / Rental Program

#### RENTAL

HTF are to be used by Awardees for acquisition and rehabilitation, rehabilitation, and new construction of affordable rental housing.

The HTF Program distinguishes between units in a rental property that have been assisted with funds (HTF-assisted units) and those that have not (non-assisted units). This information is usually found in a written agreement between OHFA and the Awardee. HTF prohibits discrimination against rental assistance subsidy holders.

#### **DEED RESTRICTION**

A deed restriction or covenant must be recorded for all rental projects and is enforceable by OHFA. This deed restriction or covenant is a legally binding document that is attached to a HTF-assisted rental property. The deed restriction or covenant “runs with the land” for the entire affordability period. It ensures that the HTF affordability requirements stay in place regardless of whether the mortgage or HTF assistance has been repaid, or property ownership transfers. Current and future owners are legally bound by the terms outlined in the HTF deed restriction or covenant. All HTF assisted units are subject to a 30 year affordability period, which begins at project completion.

#### **FIXED/FLOATING UNITS**

The designation of a specific rental unit as a HTF-assisted unit may remain the same, staying “fixed” throughout the affordability period, or the designation may change, “floating” among comparable rental units.

**Fixed HTF-Assisted Units** - Fixed units remain designated as HTF-assisted units for the entire affordability period—regardless if the unit becomes vacant or when an existing tenant becomes over-income.

**Floating HTF-Assisted Units** - Floating units are initially designated as HTF-assisted, but the designation changes, or “floats,” among all comparable units within the same HTF-assisted rental property as properties are vacated and/or tenants’ incomes go over-income.

The owner must maintain the total number of HTF units required,

During the affordability period, owners/managers must ensure the rents they charge for their HTF-assisted rental units do not exceed the applicable HTF rent limits. HUD updates and publishes HTF rent limits each year. OHFA provides the updated rent limits to owners/managers.

## **RENT**

HTF rent limits include utilities. This means the maximum rent that can be charged for a unit cannot exceed than the HTF rent limit after *subtracting* the tenant-paid utilities. Awardees may use the PHA allowance, Utility Provider Estimate, HUD Utility Schedule Model, or Energy Consumption Model. Please contact the compliance department at OHFA if you have any questions Regarding a utility method for HTF.

If the unit receives Federal or State project-based rental subsidy, and the tenant pays as a contribution toward rent not more than 30% of the tenant's adjusted income, the maximum rent is the rent allowable under the Federal or State project-based rental subsidy program.

## **RENT INCREASES**

A rent increase must be approved by OHFA prior to implementing. This is required for **ALL** HTF units, including increasing rent for a vacant unit. This request form can be found as a link in Chapter 19 of this manual.

## **SPECIAL NEEDS**

### **Homeless:**

Proof of one or more of the following will satisfy the Homeless definition:

- i. The tenant stayed in a shelter and a written statement on letterhead from the shelter manager stating this must be obtained; or
- ii. If the town does not have a shelter, a written statement from a social service agency attesting to the fact that the prospective tenant is homeless, and no shelter exists to adequately shelter their family must be obtained; or
- iii. If the town has a shelter, but it is filled to capacity, a written statement from a social agency attesting to the fact that the prospective tenant is homeless and that the shelters in the immediate area are filled to capacity must be obtained.

A homeless household lacks a fixed, regular, and adequate nighttime residence; AND has a primary nighttime residence that is a supervised public or private shelter providing temporary accommodations or a public or private place not ordinarily used as a sleeping accommodation for human beings; OR

An individual or family who has been displaced due to a major disaster declared by the President of the United States AND receives temporary federal housing assistance within the state of Oklahoma AND has a valid personal federal disaster identification number issued by the Federal Emergency Management Agency (FEMA).

Homeless households are considered homeless for a period of twenty-four (24) months from the date of move-in, according to Section 103 of the Stewart B. McKinney Homeless Assistance Act and 42(i) (3) (B) (iii) (I) of the Code.

**Youth Aging Out of Foster Care:**

This is for youth ages 18-24. Applicant must provide proof stating they are no longer age eligible to be a participant in the foster care system.

**Military Veteran:**

A person who has served in the active military, naval, or air service and who was discharged or released from such service under conditions other than dishonorable.

**Persons with Mental or Physical Disabilities:**

This means a household composed of one or more persons, at least one of whom is an adult, who has a disability.

(1) A person is considered to have a disability if the person has a physical, mental, or emotional impairment that:

- (i) Is expected to be of long continued and indefinite duration;
- (ii) Substantially impedes his or her ability to live independently; and
- (iii) Is of such a nature that such ability could be improved by more suitable housing conditions.

(2) A person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability that:

- (i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - (ii) Is manifested before the person attains age 22;
  - (iii) Is likely to continue indefinitely;
  - (iv) Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and
  - (v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.
- Notwithstanding the preceding provisions of this definition, the term “person with disabilities” includes two or more persons with disabilities living together, one or more such persons living with another person who is determined to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this definition who were living, in a unit assisted with HOME funds, with the deceased member of the household at the time of his or her death.

**Disabled Verification:**

Compliance will verify proof of a disabled household according to the owner’s policy, per the above definition. The required proof must not violate Fair Housing.

**Formerly incarcerated individuals transitioning into society:**

Proof of documentation from Department of Corrections

## **INCOME**

HTF assisted units must be made available to extremely low-income (ELI) 30% households. ELI households may not be charged more than the greatest of 30% of the federal poverty line or 30% of the income limit for the family size set by HUD.

Tenants that occupy HTF-assisted housing must meet the specified income limits with source documents proving such in the file. You will need to obtain and examine at least two months of source documentation evidencing annual income. Verification may include documented clarification, if necessary.

Owners/Managers can use a prospective tenant household's income-eligibility determination for up to six months after the determination is made.

Owners/Managers must determine that a prospective tenant is income-eligible before renting a HTF-assisted unit to that household. Owner's must verify the household's anticipated annual gross income and determine income does not exceed the applicable income limit. There needs to be at least one income document in the file for each adult; either document actual income or zero income. The owner must also include verification of all assets.

OHFA will allow unborn children to be counted when determining household size with a self-affidavit. OHFA will not require additional verification if the applicant / resident states they have not been awarded court-awarded child support or alimony. The only document required for the file will be the child support / alimony verification form that can be found linked to this chapter. However, if the applicant / resident has been awarded court-ordered and states not receiving, this must be verified through a third party source. All attempts to collect on a court order must be made. The actual amount being received (or not received) must be included (or not included) as income.

## **RECERTIFICATION REQUIRED**

Annually, during the affordability period, the owner/manager must recertify the tenant's income eligibility. At the time of recertification, follow the same process as though this is an initial move-in. The application used at the time of initial move-in may be modified (void the rental history portion) for a recertification.

**Note:** the owner/manager cannot terminate or fail to renew the tenant household's lease because the household is over-income. Over-income tenants are protected by the terms of their leases. Any rent changes must occur accordingly.

## **OVER INCOME IN FIXED UNITS**

At recertification, if the household, occupying a fixed HTF designated unit, is over the applicable limit, the unit will continue to qualify until the household vacates, at which time the unit must be rented to a qualified household.

**Note:** Assisted units continue to qualify as affordable HTF units despite temporary non-compliance caused by increases in the incomes of existing tenants if units are fixed.

## **OVER INCOME IN FLOATING UNITS**

If a property has floating HTF assisted units, these units do not have specific designations for the duration of the affordability period. The units with the HTF designation may change or float among comparable assisted and non-assisted units. For example, if the recertified income of a HTF designated household is over the applicable income limit, the unit will continue to qualify until the next comparable vacant or occupied unit is rented to a HTF qualified household. As soon as the unit has been replaced, the over income unit is no longer treated as a HTF designated unit.

## **PROHIBITED AND REQUIRED LEASE TERMS AND TENANT PROTECTIONS**

Tenants of HTF-assisted units must be protected by a written lease. Owners must ensure that leases do not exceed the HTF rent limits and do not contain any clauses that are prohibited by the program. Lease terms must be for a minimum of one year, unless the owner and tenant mutually agree to a lesser term. In no event can the lease be for less than thirty days. Owners/Managers may not terminate a tenant's lease nor refuse to renew his or her lease without good cause. Even with good cause, the owner must provide the tenant with a thirty-day advance written notice before terminating the lease. Owners must also comply with applicable state and/or local tenant-landlord laws.

### **Required Lease Provisions**

Owners must be sure that the following provisions *are* included in a lease for a HTF-assisted unit:

<b><u>Required Provision</u></b>	<b><u>Description</u></b>
Income Eligibility/Annual Income Recertification	<ul style="list-style-type: none"><li>• Owner retains right to recertify the tenant's HTF income-eligibility on an annual basis. The tenant's failure to cooperate in the income recertification process constitutes a violation of the lease.</li><li>• Deliberately providing false information can result in termination of the lease.</li></ul>
HTF Rent Restrictions/Rent Increases	<ul style="list-style-type: none"><li>• Rents are subject to the rent restrictions of the HTF Program. Owner retains right to adjust rents, in accordance with the HTF Rent limits.</li></ul>

Lease Term	<ul style="list-style-type: none"> <li>• Terms for rent increases (i.e., how frequently rent can be increased; when increases can be made; how much written notice must tenant receive).</li> <li>• The lease term for a HTF-assisted unit must be for at least one year, unless the tenant and the owner mutually agree upon a shorter term.</li> </ul>
Annual Unit Inspection	<ul style="list-style-type: none"> <li>• Owner retains the right to inspect, and to permit OHFA / HUD to inspect, HTF-assisted units during the affordability period. State or local law may establish how much notice the tenant must be given for inspections.</li> </ul>
Accessible Units	<ul style="list-style-type: none"> <li>• Owners may choose to include a provision in the lease of a tenant that occupies, but does not have need for, an accessible unit. This provision would give the owner the right to ask the tenant to move into a comparable non-accessible unit, should the accessible unit be needed by a person with a disability.</li> </ul>
Lead Warning Statement, for properties built prior to 1978	<ul style="list-style-type: none"> <li>• Confirm that the owner has complied with lead-based paint notification requirements.</li> </ul>

The above required lease language must either be covered in your own words in the lease, lease addendum, or other legal document. As an option, OHFA has provided a HTF Required Lease Language Addendum that can be found as a link in Chapter 19 of this manual.

**PROHIBITED LEASE PROVISIONS**

Owners must be sure that the following provisions *are not* included in a lease for a HTF-assisted unit. These provisions are prohibited:

<b><u>Prohibited Provisions</u></b>	<b><u>Description</u></b>
Agreement to be sued	<ul style="list-style-type: none"> <li>• Agreement by the tenant to be sued, to admit guilt or to a judgment in favor</li> </ul>

of the owner in a lawsuit brought in connection with the lease.

Agreement regarding seizure of property

- Agreement by the tenant that the owner may seize or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This provision does not apply to disposition of personal property left by a tenant who has vacated a property.

Excusing owner from responsibility

- Agreement by the tenant not to hold the owner or the owner'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 may institute a lawsuit without notice to the tenant.

Waiver of legal proceedings

- Agreement of the tenant that the owner 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.

Agreement to pay legal costs, 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 against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

## **VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT (VAWA)**

An applicant or tenant assisted under a covered housing program may not be denied admission to or terminated from participation in, or evicted from housing on the basis of being a victim of domestic violence, dating violence, sexual assault, or stalking.

OHFA requires the Form HUD-91067 signed by all adult tenants and obtained in the file.

OHFA advises the following forms should be distributed to applicants and tenants:

HUD Form 5380 – Notice of Occupancy Rights

HUD Form 5382 – Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking.

The above forms are to be provided with an applicant's approval or denial, with notice of eviction and with termination of tenancy for good cause.

HUD Form 5381 – Emergency Transfer Plan is included as a link to this chapter, if needed.

## **FEES CHARGED BY PROJECT OWNERS**

OHFA prohibits project owners from charging fees to tenants that are not reasonable or customary, such as a monthly fee for access to pay laundry facilities. Allowable fees are reasonable application fees to prospective tenants, parking fees to tenants only are such fees that are customary for the rental project, fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged only for services provided.

## **INSPECTIONS**

### **Including Carbon Monoxide Detectors**

The physical condition of each NHTF unit must be \*documented no less than annually by the Awardee. The documentation of an inspection must occur even if the unit is vacant. This annual inspection requirement has nothing to do with occupant move-in, recertification, or move-out dates.

\*The Housing Quality Standards (HQS) form may continue to be used to document compliance until HUD issues further guidance regarding Uniform Physical Condition Standards (UPCS) and inspectable items.

- A Carbon Monoxide Detector is **REQUIRED** if a unit contains a fuel burning appliance and/or has an attached garage **NO LATER THAN DECEMBER. 27, 2022.**
- A Carbon Monoxide Detector is **REQUIRED ASAP** if a unit contains a fuel burning appliance and/or has an attached garage and the NHTF Award was made post-2018.

If a CO detector is not present but needed (for pre-2019 awards) due to identified source, this will be noted on the inspection. **This will be an observation instead of a finding prior to Dec. 27, 2022. After this time, any missing CO detectors will be considered a Health and Safety finding.**

## **MONITORING**

OHFA is required to conduct on-site inspections of HTF-assisted properties throughout the property's affordability period to accomplish two things:

1. Review records and files retained on-site that document the owner's compliance with requirements and to verify the accuracy of information submitted on the owner's rent and occupancy reports.
2. Conduct a physical inspection of a sample of units at the property to assure the property is maintained in standard condition.

## **TRANSFER OF PROPERTY**

OHFA does not require formal approval prior to a transfer or change of ownership or management, but does require notification. The following is guidance regarding OHFA's requirement:

- OHFA must be notified of the transfer at the time it takes place and no more than 30 days after the transfer.
- OHFA must receive contact information for the new owner / management.
- OHFA must receive something in writing indicating that the new owner or management is/are aware of the HTF Program restrictions.

The above information should be sent to the OHFA Housing Development Compliance Supervisor and HTF Program Compliance Specialists.

### **Additional Resources:**

- HTF Rent Limits
- Utility Allowances
- Debarred or Suspended Contractor
- Guidance for HTF Rental Compliance Checklist
- Sample Application
- HTF Unit Rental Status Sheet
- Instructions for HTF Unit Rental Status Sheet
- HTF Rent Increase Request
- Deed Restriction Template
- Amended Deed Restriction Template
- HTF Required Lease Language Addendum

- HUD VAWA Lease Addendum
- Uniform Physical Conditions Standards Checklist (UPCS)