

Housing Opportunity Fund (HOF)

Rental Compliance Manual



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PREFACE

This manual is a training and reference guide for the administration of the Housing Opportunity Fund (HOF) Rental Program. It is intended to answer questions regarding the procedures, rules, and regulations that govern HOF properties.

This manual can be accessed at SDHDA website at: www.sdhda.org



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INTRODUCTION

Properties that have been developed using the Housing Opportunity Fund (HOF) are subject to specific rules designed to ensure that they are made available to households at or below one hundred fifteen percent (115%) of the county's Area Median Income (AMI). This manual is designed to assist owners and agents to plan and maintain compliance with the HOF program and regulatory requirements associated with the utilization of HOF funds.

It is the responsibility of the South Dakota Housing Development Authority (SDHDA) to monitor the continuing compliance of all units that have received HOF funds. It is also SDHDA's responsibility to ensure that project owners retain the housing units as affordable to income-qualified households throughout the period of affordability. The following procedures apply to all rental properties which have received funds under the HOF program. Any violation of the requirements of the HOF program could result in full repayment of HOF funds received under the HOF program.

COMPLIANCE REQUIREMENTS

In consideration of providing HOF for affordable housing, the housing must be kept in compliance and restricted by HOF guidelines for the minimum affordability period specified below, or for the term of the HOF financing, whichever is longer.

Period of Affordability

Activity	Years of Availability
New Construction of Rental Housing with HOF funds invested per HOF Unit as follows:	
Under \$50,000	10
\$50,000 - \$100,000	15
Over \$100,000	20
Rental Housing (Rehabilitation or Acquisition of existing housing) with HOF funds invested per HOF unit as follows:	
Under \$50,000	5
\$50,000 - \$100,000	10
Over \$100,000	15

Owners should refer to the Declaration of Land Use Restrictive Covenants Agreement with SDHDA to determine specific terms and conditions which may govern their project.

*****Important*****

If HOF is utilized in conjunction with another funding source or program offered by a city, the state, a federal, or SDHDA program, the project will be required to follow the most restrictive program's policy and procedure requirements (With the possible exception of the program's income limits – See example below). These types of programs include, but are not limited to, Section 8, HOME, Tax Credit and Neighborhood Stabilization Program (NSP). Because these programs are more restrictive and already subject to periodic review of tenant eligibility/physical inspection of the property, a separate/additional compliance review for the HOF program ***will not*** be required. However, SDHDA reserves the right to conduct additional reviews/inspections.

Note: In situations where a specified number of units within a multi-family complex are designated solely as HOF units, those units will follow the HOF income limits as stated in this manual.

Example: A 20-unit project is financed with a combination of HOF and HOME funding. 15 units are specifically designated as HOME and 5 units are specifically designated as HOF. All of the units will follow the HOME policy and procedure requirements. However, the 5 HOF units will follow the HOF income limits unless otherwise stated in the mortgage documents.

For funding sources/programs other than Section 8, HOME, Tax Credit and NSP, SDHDA will review the requirements of programs to determine if they are subject to more restrictive requirements than HOF. If SDHDA has determined that they are not more restrictive, then some or all HOF compliance requirements may apply.

Income Targeting Requirements

HOF funds shall be targeted to serve households with incomes at or below one hundred fifteen percent (115%) of the county's area median income (AMI) based on the U.S. Department of Housing and Urban Development (HUD) criteria. HUD updates this information annually and can be found at <http://www.huduser.org/portal/datasets/il.html>. It is important that SDHDA be made aware of any staffing or contact changes to help ensure that notifications can be sent to and are received by the appropriate contact person(s).

Floating Units - For purposes of meeting affordable housing requirements for a project, dwelling units designated as HOF units may be changed over the affordability period, so long as the total number of HOF units remains the same, and the substituted units are, at a minimum, comparable in terms of size, features, and the number of bedrooms to the originally designated HOF units.

HOF Rents

Every HOF-assisted rental unit is subject to rent limitations (HOF Rents) designed to ensure that rents are affordable to the respective tenants being served. Initial HOF Rents cannot exceed the calculated rent of 30 percent of the adjusted income for the AMI being served by the proposed project, based on bedroom size. **(This is only applicable to the initial funding approval of the project. Subsequent changes to the AMI will have no effect on rents after the funding approval date of the project).**

Rents must include allowances for utilities and services (excluding telephone, cable and internet). Owners/Managers are encouraged to utilize the allowances established by the local Public Housing Authority or calculate their own allowances based on documentation from service providers.

SDHDA has the right to review all rent schedules and utility allowances. Owners are allowed to annually increase rents on HOF-assisted units by two percent (2%). Rent increases above two percent must have SDHDA approval prior to implementation. Any requests over 2% must be supported by a budget along with financial documentation/narrative in support of the budget.

Projects *may not* increase rents until the one-year anniversary of the placed-in-service date of the project. ***Note: A tenant's rent cannot be increased until the end of the tenant's initial lease term.

Owner Responsibilities

Project records must be maintained by the owner for a minimum of five years beyond the project's required period of affordability. Tenant records, including income verifications, development rents, and unit inspections must be retained for the most recent five year period, until five years after the affordability period terminates.

Tenant leases must be on file, specifying a term of at least one year, unless by mutual consent, the owner and tenant agree to a lesser term. The lease must include the legal name(s) of the parties to the agreement and all other occupants, a description of the unit to be rented, the term of the lease, the rental amount, the use of the premises, and the rights and obligations of the parties.

The owner/agent must follow eviction procedures as established in state and local law.

Under HOF, tenancy may be terminated only for:

- Serious or repeated violation of the terms & conditions of the lease or house rules;
- Violation of applicable federal, state, or local law; or
- Other good cause as determined by the owner/management agent.

The owner must verify tenant eligibility at move-in. Tenants must certify what the household's anticipated income and composition is expected to be at the time of initial occupancy. Income verifications or other forms of documentation must be obtained by the owner and kept on file.

The owner must keep all units in compliance with State and Local Housing Quality Standards and Uniform Physical Condition Standard (UPCS) inspection codes to assure the units are decent, safe, and sanitary at all times.

The owner must adopt a written tenant selection plan for each HOF development.

Families receiving rental assistance, including Section 8 subsidy, must not be refused tenancy for a HOF-assisted unit based on the rental assistance.

A separate security deposit account must be set-up for each HOF development.

The owner must maintain listings of all tenants residing in each unit at the time of application through the end of the compliance period. These records must be provided to SDHDA upon request.

For properties built prior to 1978, the owner must assure that all tenants sign a Lead-Based Paint Notification.

Reserve Accounts and Other Financial Requirements

Please refer to the loan agreement for requirements.

Equal Opportunity and Fair Housing

The owner must adhere to Equal Opportunity and Fair Housing practices in all marketing efforts, eligibility determinations, and other transactions. The Equal Housing Opportunity logo or statement *"We do business in accordance with the Federal Fair Housing Law. It is illegal to discriminate against any person because of race, color, religion, sex, handicap, familial status, or national origin"* must be used in all advertising of vacant units. The logo can be downloaded at <https://www.hud.gov/library/bookshelf11/hudgraphics>.

GENERAL OCCUPANCY GUIDELINES

Qualifications of Applicants

Applicants for HOF units shall be informed that there are maximum income limits which apply to these units. They shall also be informed that the anticipated income of all persons expecting to reside in the unit at the time of initial occupancy, must be verified and included on the application for occupancy.

The Application

A fully-completed application is critical for an accurate determination of eligibility. The information provided on the application should be used as a tool to determine all sources of anticipated income and household composition.

After the household completes the application, owners/agents must verify household income as explained on pages 9 and 10 of this manual. The application, income determination, and lease must be completed prior to move-in. All occupants in an HOF unit must be verified and there must be a valid, executed lease on file. All tenants age 18 and over must sign the lease agreement.

Note: A unit does not lose its status as a HOF unit because of an increase in the household's income or a change in household size/composition after initial occupancy. Once a unit qualifies as an HOF unit, it continues to qualify as such until the household vacates the unit.

House Rules

Developing a set of house rules is a good practice. The decision about whether to develop house rules for a property rests solely with the owner. House rules are considered an attachment to the lease. By identifying allowable and prohibited activities in housing units and common areas, owners provide a structure for treating tenants equitably and for making sure that tenants treat each other with consideration. House rules are also beneficial in keeping the properties safe and clean and making them more appealing and livable for the tenants. They are also extremely beneficial if it becomes necessary to evict a tenant for inappropriate behavior. For examples of House Rules, refer to Chapter 6-9 of the HUD Handbook 4350.3 REV 1, Change 4.

Tenant Selection Plan

Owners must develop a formal written policy that clearly states the procedures and criteria the owner will consistently apply in drawing applicants from the waiting list, screening for suitability for tenancy, and implementing income targeting requirements. Owners may refer to the HUD Handbook 4350.3 REV 1, Change 4, Chapter 4, for guidance on developing a tenant selection plan. The owner must provide a copy of the plan to SDHDA upon request.

Number of Persons Per Unit

There are no HOF regulations governing the number of persons allowed to occupy a unit based on size. It is important, though, to be consistent when accepting or rejecting applications. It is recommended that the owner determine the minimum and maximum number of people that will be allowed to occupy each size unit and put that formula in writing as part of the Tenant Selection Plan. HOF will defer to state or local occupancy standards, where applicable. A generally acceptable occupancy standard is no more than two individuals per bedroom.

To determine the appropriate unit size for a household, owners may consider:

- all full-time members of the household;
- children who are away at school, but live with the family while school is not in session;
- children who are subject to a joint custody agreement but live in the unit at least 50% of the time;
- an unborn child or children in process of being adopted;
- foster children; and
- live-in aids.

Income Verification Requirements

At initial occupancy, owners/agents must determine whether applicants for HOF-assisted units are income-eligible. When collecting income verification documentation, owners/agents must consider any likely changes in income. Owners/agents must follow appropriate steps in determining whether tenants are eligible prior to admittance.

The steps are provided below:

1. Determine household size;
2. Calculate the household's annual income;
3. Determine that annual income does not exceed income limits for the household size; and
4. Certify the household's qualification.

Applicants Approved for the Section 8 Housing Choice Voucher Program

Applicant households in possession of a Section 8 Housing Choice Voucher shall be considered categorically-eligible under the HOF program as the income limits for the voucher program are lower than HOF. Household income has already been verified by the administering agency for that program and no further verification of income is required.

Note: The tenant file must still contain an application, documentation of the applicant's eligibility for the Section 8 Housing Choice Voucher Program, executed lease and documentation that the household has met the established criminal/credit screening criteria.

Annual Income

(A) Annual Income means all amounts, monetary or not which:

- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- (2) Are anticipated to be received from a source outside the family during the 12-month period following admission date; and
- (3) Which are not specifically excluded in paragraph (c) of this section.
- (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(B) Annual income includes, but is not limited to:

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
- (3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD (for 2018 the rate is .06%);
- (4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);
- (5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);
- (6) *Welfare assistance payments.*
 - (i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:
 - (A) Qualify as assistance under the TANF program definition at 45 CFR 260.31; and
 - (B) Are not otherwise excluded under paragraph (c) of this section.

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section).

(C) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in § 5.403;

(6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8)

(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include,

but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of \$480 per adopted child;

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply.

Effective Term of Verification

Verifications of income are valid for 120 days prior to move-in. After 120 days, new verifications must be obtained.

Acceptable Forms of Verification

Employment Income

Copies of the three (3) most recent pay stubs are acceptable as income verification if the pay amounts are consistent. If there are variances in pay, then use the six (6) most recent pay stubs. The pay stubs must reflect gross income. Other acceptable forms of verification include; a signed statement from the employer confirming the hours worked per week and hourly pay or payroll statements. ***Note: if the pay stubs reflect social security numbers or other personal identifiers, they should be blacked-out with a permanent marker when copies are placed in the tenant file.***

For contract employees, use the annual amount of income as stated in the applicant's contract.

Self-Employment Income

Federal tax return (Schedule C or F) or accountant's statement of net income. Current financial statements of the business and a certification from the applicant giving the anticipated income for the 12 months following certification (this method to be used only for the first year of self-employment).

Social Security

Social Security Administration Verification completed by the agency providing the benefits. Most recent award or benefit notification letter from the authorizing agency.

Unemployment Compensation

Unemployment Benefits Verification completed by the unemployment compensation agency. Records from the unemployment office stating payment dates and amounts.

Workers Compensation or other Pension

Pension or Workers Comp Verification completed by the agency providing the benefits. Most recent award or benefit notification letter prepared and signed by the authorizing agency.

Veterans Benefits

Veteran's Verification completed by the agency providing the benefits. Most recent award or benefit notification letter prepared and signed by the authorizing agency.

Military Pay

Military Pay Verification completed by the employer, or statement from employer on business letterhead. Pay stubs or earnings statements showing the employee's gross pay per pay period and frequency of pay.

Child Support and/or Alimony

Child Support and/or Alimony Verification completed by the Clerk of Court for court ordered support.
Child Support and/or Alimony Verification completed by spouse. Copy of separation or divorce decree stating the amount and type of support payment schedule and a copy of the latest support check.

Welfare (TANF or Other Cash Assistance)

Verification completed by the agency providing the benefits. Benefit awards letter. Benefit statements.

Calculating Annual Income

Owners must annualize income. To annualize full-time employment, multiply:

1. Hourly wage by 2080 hours;
2. Weekly wages by 52;
3. Bi-weekly amounts by 26;
4. Semi-monthly amounts by 24;
5. Monthly amounts by 12.

To annualize income from other than full-time employment, multiply:

1. Hourly wages by the number of hours the family expects to work annually;
2. Average weekly amounts by the number of weeks the family expects to work;
3. Other periodic amounts (monthly, bi-weekly, etc.) by the number of periods the family expects to work.

Use an annual wage without additional calculations. For example, if a teacher's aide is under contract to be paid \$27,000 a year, use \$27,000 whether the payment is made in 12 monthly installments, 9 installments or some other payment schedule.

Unit Inspections

Unit inspections must be conducted at move-in and annually, thereafter. Documentation of the unit inspections should be kept in the tenant file. Inspections may be conducted more frequently if the owner/agent chooses to do so. Excessive damages caused by tenant neglect/abuse should be remedied immediately and charged to the tenant. It will be up to the owner/agent to determine which damages are excessive and which are due to normal wear-and-tear.

Compliance Reviews

Based on the total number of HOF units in the property, management reviews will be conducted every 3 years for projects of 1-15 HOF units, every 2 years for projects with greater than 15 HOF units. Reviews may be conducted more frequently if determined necessary based on concerns raised during a previous review.

Reviews may be conducted on-site or remotely (documents scanned and e-mailed to SDHDA). *****For remote reviews, the owner/agent should black-out personal identifying information such as bank account numbers, employee ID numbers, etc., prior to submitting the documents to SDHDA.**

SDHDA staff will contact the owner/agent in advance to schedule both the building inspection and management compliance review.

The purpose of the physical inspection is to ensure that the building is being well-maintained, and that the units are in decent, safe, and sanitary condition.

The purpose of the management review is to ensure that the owner/agent is in compliance with the HOF program requirements.

During a management compliance review, SDHDA staff will review tenant income certifications, verifications or other forms of income documentation, leases, and documentation of the marketing efforts of the owner. Other areas may be reviewed for compliance, according to specific written agreements between the owners and SDHDA at the time of commitment.

The owner/agent shall make the following items available at the time of review:

- Current tenant selection plan, including application
- Current lease, house rules, eviction procedures
- Copies of all forms being used for applications
- Copies of all verification forms used
- Advertising
 - Equal Housing Opportunity Posters
 - Correspondence, logos
- Sample of applicant rejection letter
- Current copy of Rent Roll

- Copies of operating and security deposit account balances (*if audited financial statements are not required to be submitted to SDHDA for the project*)
- Copy of Replacement Reserve account balance and withdrawal records (*if audited financial statements are not required to be submitted to SDHDA for the project*)
- Copy of paid real estate taxes and property insurance (*if audited financial statements are not required to be submitted to SDHDA for the project*)
- Aged resident receivable (*if audited financial statements are not required to be submitted to SDHDA for the project*)
- Waiting list of prospective residents
- Resident, Rejection and Eviction files and records
- Current copy of Rent Schedule
- Lead-Based Paint Disclosure (if applicable)

Tenant Files

A separate file must be kept for each HOF-qualified household. All required documents must be kept together and in an organized manner so they are accessible at each compliance review (e.g. lease agreement, unit inspection reports, etc.).

The tenant files must contain the following:

- Tenant Application/Questionnaire (must be time and date stamped for receipt).
- Tenant signed release forms (all adults age 18 & over).
- Government issued photo I.D. or birth certificate (all adults age 18 & over): Federally-compliant driver's licenses/identification cards issued by the State of South Dakota are considered acceptable. Federally-compliant driver's licenses/identification cards for South Dakota will contain a gold star in the upper right-hand corner of the card. Driver's licenses/identification cards from other states are also acceptable as long as they are federally-compliant. If they do not contain markings or language indicating they are federally-compliant, then birth certificates must be requested.

Note: some states allow driver's licenses and identification cards to be issued to individuals who are in the country illegally. These are not considered valid forms of identification as they are not federally-compliant.

- Move-in inspection, annual inspection reports, and if applicable, move-out inspection.
- Executed Lease Agreement.
- Owner/agent certification that a Credit/Criminal background check was conducted and that the household members have met the established screening criteria. A copy of the actual screening results ***should not*** be kept in the tenant file.
- Lead-based paint acknowledgements, if applicable (rental only; built pre-1978)

All move-out files must contain the following:

- Written notice to vacate apartment (if not provided by tenant, the file should document this).
- Move-out inspection report (both parties signed & dated).
- Security deposit refund (check # & date) or letter of intent to withhold security deposit within 14 days of move-out.
- Itemized list of damages charged to the tenant.

Annual Owner Certification

The owner/agent is required to complete and submit the HOF Annual Owner Certification form to SDHDA by July 1st of each year that the Period of Affordability requirements remain in effect. The reporting period for the certification is January 1 through December 31 of the calendar year preceding the certification due date. Example: If the certification due date is 7/1/2018. The reporting period would be from 1/1/2017 to 12/31/2017.

Non-compliance

If SDHDA does not receive the required certifications when due or if SDHDA discovers on audit, inspection, review, or in some other manner that the project is not in compliance with HOF regulations, SDHDA will notify the owner/agent as soon as possible.

The owner will have an opportunity to supply missing certifications or to correct noncompliance items within 30 days from the date of the notice to the owner. At the sole discretion of SDHDA, the correction period may be extended for a period of up to 6 months if there is good cause for granting an extension.

Failure to correct regulatory noncompliance issues could result in accelerating the payment schedule or recall of the development loan.

Liability

Compliance under the requirements of the HOF Program is the responsibility of the owner of the property. SDHDA's obligation to monitor for compliance with the requirements of the Program does not make SDHDA liable for an owner's noncompliance.