



## 2018 HOME PROGRAM DISTRIBUTION STATEMENT

The Department of Housing and Urban Development (HUD) has designated the State of North Dakota as a Participating Jurisdiction (PJ) and as such it may apply for and distribute HOME funds. The agency responsible for administration of the North Dakota HOME Program is the Department of Commerce, Division of Community Services (DCS).

This is a description of how the state plans to distribute FY 2018 HOME funds and administer its program. The plan demonstrates consistency with the goals identified in the state's Consolidated Plan (CP). Accordingly, the state can use its HOME funds for the following activities to help meet the identified housing needs:

- Rehabilitation of Owner-occupied and Rental Property
- Tenant-Based Rental Assistance (including security and utility deposits)
- Acquisition, New Construction, Site Improvements, or Demolition Linked to a Project
- Administrative Costs
- Homebuyer Assistance

### TIMELY PRODUCTION AND OCCUPANCY OF ASSISTED HOUSING

The 2013 Rule revised a number of commitment and completion deadlines and imposed new occupancy deadlines:

- **HOME projects must be completed within three years of commitment.** Any project that is not completed in a timely manner will be terminated and PJs will be required to repay HOME funds drawn. [*§92.205(e)(2)*]
- **HOME-assisted rental units must be occupied by income-eligible households within 18 months of project completion.** If not, PJs must repay HOME funds for the vacant units. (Note: for units that remain vacant for six months following completion, the PJ must identify and develop an enhanced marketing plan and report this information to HUD). [*§92.252*]
- **A homebuyer unit must have a ratified sales contract within nine months of construction completion.** The PJ, State recipients and subrecipients must either convert the unit to a HOME rental property or repay the full HOME investment. [*§92.254(a)(3)*]



ALTERNATIVE FORMATS FOR DISABLED  
PERSONS ARE AVAILABLE UPON REQUEST

- **Funds must be committed to specific projects within 24 months of the PJ receiving its HOME allocation.** The PJ can no longer “reserve” CHDO funds for future projects identified at a later date. [*§92.2 Commitment, §92.300(a)(1)*]
- **Community Housing Development Organization (CHDO) set-aside funds must be expended within 5 (five) years.** This five year begins when the PJ receives its formula allocation. [*§92.500(d)(1)(A) and (C), and §92.500(d)(2)*]

## **DISTRIBUTION PLAN**

The state will administer its program through State recipients, subrecipients, non-profits, and CHDOs. The HOME Program will be allocated to State recipients and subrecipients through a non-competitive set-aside. The non-profit and CHDO category will be competitive and receives awards based on scoring criteria. If CHDO funds remain, a second round of applications will be accepted from CHDOs only.

Applicants new to the HOME Program are required to partner with an experienced developer, sponsor, or consultant (i.e., someone with completed projects and operating successfully).

The state may reallocate funds based on high demand, a natural disaster, or other determinations where performance-based measures have not been met.

State program income received by DCS may be allocated, at our discretion, for any project or activity.

Under the state’s multi-year environmental review, relocation is the only activity allowed in a designated floodplain. Grand Forks and Bismarck may complete their own environmental reviews and make their own floodplain determinations on a case-by-case basis.

## **HOME Goals and Eligible Activities**

The HOME Program focuses on 5 (five) major housing needs:

1. Single-family Rehabilitation – CAAs and HA;
2. Rental Production and Rehabilitation – CHDOs and Non-profits;
3. Homeowner Assistance – CAAs and HA;
4. Tenant-based Rental Assistance (TBRA) CAAs and HA; and
5. Homebuyer down payment assistance.

Each of these housing needs is considered a high or medium priority need for the use of HOME funds. These needs are addressed and prioritized locally by set-asides, determined by the DCS, to their recipients and subrecipients. Each State recipient and subrecipient delivers the HOME Program in their region, city, or multiple regions. Each year, the state will review the needs and completed goals to determine if goals will be updated based on new on the new developments that create changing housing needs around the state.

## HOME Performance Measures

The state collects performance data on the state’s in-house HOME Program data collection system. Recipients and subrecipients are required to report performance data for all activities. Performance data reporting consists of entering one of three objectives for the program:

1) Create a Suitable Living Environment; 2) Provide Decent Affordable Housing; and 3) Create Economic Opportunities. In addition, the following appropriate outcomes are also required: Availability/Accessibility, and Affordability, or Sustainability. Based on the objectives and outcomes selected, the system will populate the specific output indicators for each activity. DCS will then enter this information on HUD’s Integrated Disbursement and Information System (IDIS).

<b>2018 Summary of Funding ESTIMATE</b>			
2018 HUD Award	\$3,008,138.00		
State Program Income	\$ 9.64		
Recaptured Funds	\$ 25,911.93		
Total 2018 Allocation	\$3,034,059.57		
Total Available for Project Set-Aside	\$2,733,245.77		
Total Available for Administration Set-Aside	\$ 300,813.80		
<b>Recipients</b>	<b>Project</b>	<b>Administration</b>	<b>Operating</b>
City of Bismarck	\$ 245,000.00	\$ 11,000.00	
City of Grand Forks	\$ 335,000.00	\$ 15,000.00	
Community Action Agency Partnership - Minot (Reg. II)	\$ 140,000.00	\$ 10,000.00	
Dakota Prairie Community Action Agency (Reg. III)	\$ 140,000.00	\$ 10,000.00	
Red River Valley Community Action (Reg. IV)	\$ 140,000.00	\$ 10,000.00	
Southeastern ND Community Action Agency (Reg. V)	\$ 140,000.00	\$ 10,000.00	
Community Action Region VI	\$ 0	\$ 0	
Community Action Program Region VII	\$ 140,000.00	\$ 10,000.00	
City of Bismarck TBRA	\$ 90,000.00	\$ 4,000.00	
Community Action and Development Partnership (Reg. I & VIII)	\$ 140,000.00	\$ 10,000.00	
Stutsman County Housing Authority	\$ 30,000.00	\$ 3,000.00	
Cass County Housing Authority	\$ 30,000.00	\$ 3,000.00	
Open Funds	\$ 712,025.07	\$ 5,000.00	
Nonprofit and CHDO(s) (minimum of 15% of 2018 award to CHDO(s))	\$ 451,220.70		\$ 0.00
State Administration		\$199,813.80	
<b>TOTAL</b>	<b>\$2,733,245.77</b>	<b>\$300,813.80</b>	<b>\$ 0.00</b>

## SECTION I

### State Recipients and Subrecipients

All recipients are expected to locally meet the HOME Program match requirement of 25 percent unless specifically waived by the DCS. Existing general waivers include a state policy that homeowner rehabilitation and TBRA activities are excluded from the match requirement. All estimated match must be reported at project application or finalized before final draw.

Only HOME assistance forms listed in Part 92.205(b) will be allowed. Applicants should use private funds, tax credits, Rural Development, Federal Home Loan Bank, CDBG, North Dakota Housing Incentive Fund, Department of Energy, or Housing Trust Fund other grant/loan programs to help leverage HOME activities.

Additional match sources not identified by close-out in IDIS must be reported throughout the period of affordability. Match source data is required upon request from DCS or no later than July 15<sup>th</sup> of each year.

#### **State Recipient Set-Aside**

HOME funds will be reserved for two communities, Bismarck and Grand Forks, which are defined as entitlement cities, but not PJs. This program component is non-competitive. Each city will be eligible to apply for a predetermined amount of funding based upon population, number or percentage of low-income households, and housing needs. Although these cities will be able to design their projects to meet local needs, all activities must be within the parameters of the state HOME Program. **Each city must submit their annual HOME plan by August 1, 2018.** This plan will reserve their set-aside funds and establish their performance goals for 2018. The cities must submit their final HOME Project Application(s) and certification of Consolidated Plan compliance before HOME funds will be committed. The HOME Project Application(s) must be completed and received by **December 3, 2018.** Please note that no construction activities may begin until this process is fully completed and DCS has issued the notification of release of funds.

#### **Subrecipient Set-Aside**

HOME funds will be set aside for the two housing authorities and seven community action agencies. These funds will be utilized to complete activities in their jurisdiction that are consistent with the State's Consolidated Plan and identified as priorities for their areas. **The completed HOME Application Plan must be submitted to DCS no later than August 1, 2018.**

#### **Subrecipient Definition**

A subrecipient is defined as a public agency or non-profit organization selected by the PJ to administer all or some of the PJ's HOME programs to produce affordable housing, provide homeowner rehabilitation, or provide TBRA. A public agency or non-profit organization that receives HOME funds solely as a developer or owner of a housing project is not a subrecipient. The PJ's selection of a subrecipient is not subject to the procurement procedures and requirements.

## **Housing Authorities**

The Stutsman County Housing Authority and Cass County Housing Authority will receive a set-aside to complete a security or utility deposit program or an approved TBRA program. These HOME dollars will be used for emergency situations to prevent homelessness or to assist persons in transitional housing to secure permanent rental housing. Funds may also be used to assist low-income families in securing a more affordable rental unit. Funds will be used only for security or utility deposits, or an approved TBRA program.

Recipients must develop written guidelines that meet program requirements and comply with 24 CFR Part 92.209, and includes the following:

- a. The security or utility deposit may not exceed the equivalent of one month's rent for the housing unit;
- b. Tenant selections must comply with 92.209 (c);
- c. Only the prospective tenant may apply for HOME security deposit assistance. The funds must be paid directly to the landlord;
- d. Rental units must be inspected for Housing Quality Standards (or other standards set by HUD) compliance;
- e. The lease must comply with the requirements of section 92.253 (a), (b), (c);
- f. The assistance may be in the form of a grant or a loan. If the assistance is to be provided as a loan, the agency's loan program must be pre-approved by DCS; and
- g. Utility assistance must be combined with a security deposit.

## **Community Action Agency (CAA) Set-Aside**

CAA can no longer transfer funds from one activity to another (e.g., rehab funds to multi-family project). These funds must be returned to DCS.

Eligible activities can include all necessary **rehabilitation** required to bring an existing owner-occupied home up to Section 8 Housing Quality Standards (HQS) (or other standards set by HUD), the North Dakota HOME Program's Rehabilitation Standards, and **TBRA** (including security and utility deposits and/or monthly rental assistance, if approved by DCS). All rehab work must meet all applicable state and local code requirements. When rehabilitation is selected as a regional priority, neither the estimated value of the house prior to rehabilitation or the after-rehab value of the housing shall exceed 95 percent of the median purchase price for a single-family residence (single-family residence, condominium unit, cooperative unit, or combination manufactured home and lot). Each homeowner will be required to sign a Housing Rehabilitation Program Homeowner Agreement that is determined on the amount of funds provided to the homeowner. In addition, all homeowners must sign the Community Action Agency's policy stating the Community Action Agency's right to walk away from a project. Homeowners must also sign a restrictive land use covenant prior to work beginning or a final LURA at project completion. The period of affordability is as follows:

<b>HOME Assistance Per Unit</b>	<b>Minimum Period of Affordability</b>
Less than \$15,000	5 yrs.
\$15,000 - \$40,000	10 yrs.
More than \$40,000	15 yrs.
New Construction Rental	20 yrs.

The terms of the agreement for repayment may allow for a pro-rata reduction of the recapture amount in monthly increments. Below is an example of a five-year plan:

Month	Recapture	Month	Recapture	Month	Recapture	Month	Recapture	Month	Recapture	Month	Recapture
1	100%	11	83.3%	21	66.6%	31	50.0%	41	33.3%	51	16.6%
2	98.3%	12	81.6%	22	65.0%	32	48.3%	42	31.6%	52	15.0%
3	96.6%	13	80.0%	23	63.3%	33	46.6%	43	30.0%	53	13.3%
4	95.0%	14	78.3%	24	61.6%	34	45.0%	44	28.3%	54	11.6%
5	93.3%	15	76.6%	25	60.0%	35	43.3%	45	26.6%	55	10.0%
6	91.6%	16	75.0%	26	58.3%	36	41.6%	46	25.0%	56	8.3%
7	90.0%	17	73.3%	27	56.6%	37	40.0%	47	23.3%	57	6.6%
8	88.3%	18	71.6%	28	55.0%	38	38.3%	48	21.6%	58	5.0%
9	86.6%	19	70.0%	29	53.3%	39	36.6%	49	20.0%	59	3.3%
10	85.0%	20	68.3%	30	51.6%	40	35.0%	50	18.3%	60	1.6%

When housing rehabilitation is selected, each CAA must develop Homeowner Rehabilitation Guidelines (HRG). The HRG must be submitted with their application and contain the following:

- a. The criteria used to determine applicant eligibility is based on income, assets, ownership, occupancy, and location. Any priorities which are used to select households for assistance (e.g., households with income less than 50 percent of median annual income) along with how the income information will be verified.
- b. The types of property or properties eligible for assistance (e.g., single-family unit, condominium unit, mobile home/manufactured home [permanent foundation on private lot], and cooperative unit).
- c. Provide a description of any type of homeowner contribution required (cash, labor, or materials).
- d. A description of how you will inspect for HQS Requirements (24 CFR 882.109) (or other standards set by HUD), North Dakota HOME Program Rehabilitation Standards. Assurance that all work complies with the North Dakota State Building Code (or a locally amended North Dakota State Building Code). Also include how your agency will assure that newly constructed housing meets the current edition of the Model Energy Code, Uniform Building Code, and Uniform Mechanical Code.
- e. Define how you will meet lead-based paint regulations.
- f. Describe the minimum and maximum amount of assistance allowed along with the terms of the assistance. Indicate what will happen if a house cannot be brought up to HQS (or other standards set by HUD) and ND HOME Program Rehabilitation Standards with the maximum investment.

- g. Describe how you will assure that no more than the necessary amounts of HOME Program funds are invested in any one project. (Layering)
- h. Define the staff, owner, and contractor roles and responsibilities. Include a grievance procedure for applicants and disputes between an owner and a contractor.
- i. Provide a statement that outlines your conflict of interest policy.
- j. Describe the homeowner counseling services that are available to each client.

When **TBRA** is determined as a priority in a region, the HOME funds must be earmarked for security or utility deposits, or for an approved TBRA program. These HOME dollars can be used for emergency situations to prevent homelessness, to provide assistance to persons in transitional housing to secure permanent rental housing, and to assist low-income families (**specifically 60% adjusted gross income – HOME Income Limits – up to 80% upon approval by DCS on a case-by-case basis**) to secure a more affordable rental property. The TBRA program funds must be used in accordance with 92.209 and be tied to an existing self-sufficiency program.

Recipients of security and utility deposit funds must create written guidelines that meet program requirements, and include, the following:

- a. The security or utility deposit may not exceed the equivalent of one month's rent for the housing unit;
- b. Tenant selections must comply with 92.209 (c);
- c. Only the prospective tenant may apply for HOME security deposit assistance. The funds must be paid directly to the landlord;
- d. Rental units must be inspected for HQS (or other standards set by HUD) compliance;
- e. The lease must comply with the requirements of section 92.253 (a), (b), (c);
- f. Assistance may be in the form of a grant or a loan. If the assistance is to be provided as a loan, the agency's loan program must be pre-approved by the state; and
- g. Utility assistance must be combined with a security deposit.

This program will be administered on a regional basis through agreements with CAA and Housing Authorities (HA). To facilitate effective planning and cooperative efforts, each CAA and HA is encouraged to contact their respective Regional Council to inform those agencies of the services they provide through the programs they administer.

### **Recapture Requirements for Homebuyer Downpayment Assistance**

DCS expects that all homebuyer assistance will include direct assistance to the homebuyer. Therefore, a recapture provision will be used. In the event circumstances arise where there is no direct subsidy to the homebuyer and HOME funds are used for a development subsidy only, DCS will amend its Annual Action Plan to include a resale provision.

In order to ensure the period of affordability, any of the entities who have elected to provide homebuyer assistance are required to specify their recapture provisions. The recapture provisions will be included in their written agreement with the DCS.

### **Required Recapture Provisions**

Recapture provisions must ensure that the PJ recoups all or a portion of the HOME assistance to the homebuyers if the housing is no longer the principal residence of the family during the period of affordability (see Period of Affordability Table). The HOME investment subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the dwelling unit. This includes any HOME assistance that reduced the purchase price from fair market value to an affordable price (direct subsidy), but excludes the amount between the cost of producing the unit and the market value of the property (i.e., the development subsidy). The direct subsidy may include down payment assistance, closing costs, or any other HOME assistance provided directly or indirectly to the homebuyer. The recaptured funds must be used to carry out HOME-eligible activities. The period of affordability is based upon the total amount of initial HOME funds subject to recapture.

The recapture provisions must be assured so that the unit remains affordable through deed restrictions, covenants attached to the land, mortgages, or other similar mechanisms. The State recipient or subrecipient will specify which enforcement mechanism it will use. In addition, DCS, and the State recipient or subrecipient will execute an agreement with each homebuyer to specify the affordability requirements to enable DCS to retain the authority to enforce them.

- The entity will follow the recapture option in 24 CFR 92.254 (a) (5) (ii) (A) (2) which allows for recapturing a reduced amount during the affordability period. The entity will require a minimum ten-year affordability period with zero percent reduction of the recapturable amount during the first five years. Beginning in year six, the recapturable amount of the HOME investment will be reduced on a pro-rata basis, as long as the homeowner continues to own and occupy the home. (For instance, in a ten-year affordability period, if the home is sold in year three, the full amount of the subsidy to the buyer will be recaptured. If sold in year seven, two-fifths (40%) will be forgiven, and 60% will be recaptured.
- If the net proceeds (sale price minus loan repayment, other than HOME funds, and closing costs) are not sufficient to recapture the HOME investment and enable the homeowner to recover his homeowner investment (the amount of their down payment), the HOME recapture amount will be set as follows:

$$\frac{\text{HOME Investment}}{\text{HOME Investment} + \text{Homeowner Investment}} \times \text{Net Proceeds} = \text{HOME Recapture Amount}$$

### **Principal Residency**

The initial buyer must reside in the home as his/her principal residence for the duration of the period of affordability.



## Triggering Recapture

If, during the period of affordability, an owner voluntarily or involuntarily transfers his/her property (e.g., through sale or foreclosure), the RECAPTURE provisions will go into effect.

## Direct HOME Subsidy/Amount Subject to Recapture

The amount subject to recapture is the direct HOME subsidy. The direct HOME subsidy is the total amount of HOME assistance that enables the buyer to purchase the unit. This amount includes assistance for: downpayment, closing costs, and the amount reducing the purchase price from fair market value to an affordable price. The State recipient or subrecipient can adopt any of the methods for recapture that are outlined in the HOME regulations:

- Recapture of the entire direct HOME subsidy;
- Reduction during the affordability period;
- The owner investment is returned first; and
- Shared net proceeds.

The State recipient or subrecipient may also adopt recapture provisions that differ from the model provisions in the HOME regulations. The particular recapture provision adopted (whether one of the models or an alternate approach) requires specific approval by DCS and HUD.

DCS can never recapture more than the amount of available net proceeds upon sale. Net proceeds is defined as the sale price of the home minus the superior loan repayment (not including HOME loans) and any closing costs.

## Period of Affordability

The recapture provisions are in effect for a period of affordability. This period is based on the amount of direct HOME subsidy to the buyer, as follows:

<b>HOME Assistance to the Buyer</b>	<b>Minimum Period of Affordability</b>
Less than \$15,000	5 yrs.
\$15,000 - \$40,000	10 yrs.
More than \$40,000	15 yrs.
New Construction Rental	20 yrs.

## Compliance

During grant monitoring of the HOME Program subrecipients, the State will review the deed restrictions, covenants attached to the land, mortgages, or other similar mechanisms placed on the HOME-assisted property to ensure the provisions being used are in accordance with those stated in the written agreement with the subrecipient.

During the affordability period, the State recipients/subrecipients must complete an annual compliance check to ensure that the initial homebuyer still resides in the property as his/her principal residence. The most current utility statement, proof of paid taxes, and homeowner's insurance are acceptable documentation.

### **Noncompliance**

During the affordability period, noncompliance occurs when an owner (1) vacates the unit or rents the unit to another household, (2) sells the home without DCS receiving recaptured funds due at time of sale.

In the event of noncompliance, the owner is subject to repay all HOME funds invested in the housing. This amount is based on HOME funds invested, and includes both development funds and direct subsidy to the buyer minus any principal HOME loan repayments. Please note the repayment amount is not subject to any reductions that might be otherwise applicable under a recapture provision (such as forgiveness for the term of occupancy or repayment to owner first).

### **Administration**

The State (as the PJ), State recipients, and subrecipients are allowed to receive HOME money for administrative expenses. These costs may not exceed ten percent of the entire HOME allocation for North Dakota.

### **Open Funds**

Unobligated performance funds may be reallocated to other state and subrecipient(s) that can demonstrate all years including 2018 allocation are fully committed, have an unmet need, ready to proceed and have capacity to spend the funds in a timely manner may request the unobligated performance funds.

### **CHDO/Non-profit**

All recipients are expected to locally meet the HOME Program match requirement of 25 percent, unless specifically waived by the DCS. Existing general waivers include a state policy that homeowner rehabilitation and TBRA activities are excluded from the match requirement.

Only the forms of HOME assistance listed in Part 92.205(b) are allowed. Applicants should use private funds, tax credits, Rural Development, Federal Home Loan Bank, CDBG, North Dakota Housing Incentive Fund, Department of Energy, Housing Trust Fund or other grant/loan programs to help leverage HOME activities.

### **Submission of the CHDO and Non-profit Application(s) are due by September 30, 2018.**

The application process for CHDOs/Non-profits will be a competitive process. If CHDO funds remain, a second round of applications will be accepted from CHDOs only. If Non-profit funds are available, Non-profit agencies that have expended and drawn down 75% of their 2018 grant award and can provide documented additional needs for their service region, may be eligible for additional Non-profit funds. Non-profit agencies may request additional funds via a Request for Amendment to their existing grant, after January 1, 2019.

If CHDO funds are available, a second round of applications will open January 7, 2019. This

second round of CHDO applications are due to DCS February 15, 2019. Application can be found at:

<http://www.communityservices.nd.gov/uploads/9/HOMERentalApplicationwithProformawithDCR.xls>

Underwriting can be found at:

<http://www.communityservices.nd.gov/uploads/9/HomeUnderwriting.pdf>

Please note that no construction activities may begin until a completed financial award has been signed, and the DCS has issued the Notification of Release of Funds.

### **Owner**

Rental housing is considered “owned” if the housing organization is the owner in fee simple absolute of multifamily, or single family housing (or has a long-term ground lease) for rental to low-income families in accordance with §92.252. If the housing is to be rehabilitated or constructed, the housing organization must prove internal capacity, or hire and oversee the developer that rehabilitates or constructs the housing. At minimum, the housing organization must hire or contract with an experienced project manager to oversee all aspects of the development, including: 1) obtaining zoning, 2) securing non-HOME financing, 3) selecting a developer or general contractor, 4) overseeing the progress of the work, and 5) determining reasonable costs. The housing organization must own the rental housing during development and for a period at least equal to the period of affordability in §92.252. If the housing organization acquires housing that meets the property standards in §92.251, the organization must own the rental housing for a period at least equal to the period of affordability in §92.252.

### **Developer**

Rental housing is “developed” by a housing organization if: 1) the housing development organization is the owner of multifamily or single family housing in fee simple absolute (or has a long term ground lease) and 2) the housing developer of new housing that will be constructed, or existing substandard housing that will be rehabilitated for rent to low-income families in accordance with §92.252. To be the “housing developer,” the housing organization must be in sole charge of all aspects of the development process, including obtaining zoning, securing non-HOME financing, selecting architects, engineers, and general contractors, overseeing progress of the work, and determining reasonable costs. At a minimum, the housing development organization must own the housing during development, and for a period at least equal to the period of affordability in §92.252.

### **Sponsor (CHDO only)**

Rental housing is “sponsored” by a CHDO if the CHDO “developed” the rental housing project and agrees to convey details of the project to an identified, private nonprofit organization at a predetermined time after completion of the development of the project. Sponsored rental housing is subject to the following requirements:

- The private non-profit organization may not be created by a governmental entity;

- The HOME funds must be provided to the entity that owns the project;
- The HOME funds must be invested in the project that is owned by the CHDO;
- Before commitment of HOME funds, the CHDO sponsor must select the private non-profit organization that will obtain ownership of the property;
- The private non-profit organization assumes the CHDO's HOME obligations (including any repayment of loans) for the rental project at a specified time after completion of development; and
- If the housing is not transferred to the private non-profit organization, the CHDO organization sponsor remains responsible for the HOME assistance and the HOME project.

### **Community Housing Development Organization (CHDO)**

Eligible applicants include community-based non-profit 501(c)(3), 501(c)(4), or 905 (subordinate organization of a 501 (c) organization) organizations with the mission statement that identifies decent, affordable housing to low and moderate-income persons.

The DCS will certify non-profit organizations that meet defined criteria as CHDOs. A CHDO is defined in the HOME Investment Partnerships Program Final Rule Subpart A, §92.2.

*Note:* Non-profits are not required to be a designated CHDO to apply for DCS HOME Program funding.

HUD requires that DCS set aside at least 15 percent of HOME annual allocation for CHDOs. In addition, these organizations must meet and satisfactorily demonstrate the prescribed requirements. DCS will be using the HUD guidance on CHDO qualifications. CHDO's are also eligible to participate in non-CHDO housing activities.

Up to ten percent of the CHDO set-aside may be used for pre-development loans to assist specific projects. Per 92.301 these loans can be used for technical assistance and site control, and seed money loans. The CHDO must repay the loan to the PJ from construction loan proceeds or other project income. The PJ may waive repayment of the loan, in part or in whole, if there are impediments to project development that the PJ determines are reasonably beyond the control of the borrower. Pre-development loan repayments must be sent to the DCS. The repaid funds will be added to the next FY allocation.

**CHDO Definition** - A non-profit organization that:

- (1) Is organized under state or local laws;
- (2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
- (3) Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A CHDO may be sponsored or created by a for-profit entity, but:

- (i) The for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm;
  - (ii) The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two-thirds of the board members;
  - (iii) The CHDO must be free to contract for goods and services from vendors of its own choosing; and
  - (iv) The officers and employees of the for-profit entity may not be officers or employees of the CHDO.
- (4) Has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 (26 CFR 1.501(c)(3)-1 or 1.501(c)(4)-1), is classified as a subordinate of a central organization non-profit under section 905 of the Internal Revenue Code of 1986, or if the private non-profit organization is a wholly owned entity that is disregarded as an entity separate from its owner for tax purposes (e.g., a single member limited liability company that is wholly owned by an organization that qualifies as tax-exempt), the owner organization has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 and meets the definition of "CHDO;"
- (5) Is not a governmental entity (including the PJ, other jurisdiction, Indian tribe, public housing authority, Indian housing authority, housing finance agency, or redevelopment authority) and is not controlled by a governmental entity. An organization that is created by a governmental entity may qualify as a CHDO; however, the governmental entity may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members may be public officials or employees of governmental entity. Board members appointed by a governmental entity may not appoint the remaining two-thirds of the board members. The officers or employees of a governmental entity may not be officers or employees of a CHDO;
- (6) Has standards of financial accountability that conform to 24 CFR 84.21, "Standards for Financial Management Systems;"
- (7) Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;
- (8) Maintains accountability to low-income community residents by:
- (i) Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations. For urban areas, "community" may be a neighborhood or neighborhoods, city, county or metropolitan area; for rural areas, it may be a neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire state); and

- (ii) Providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing;
- (9) Has a demonstrated capacity for carrying out housing projects assisted with HOME funds. A designated organization undertaking development activities as a developer or sponsor must satisfy this requirement by having paid employees with housing development experience, who will work on projects assisted with HOME funds. For its first year of funding as a CHDO, an organization may satisfy this requirement through a contract with a consultant who has housing development experience to train appropriate key staff of the organization. An organization that will own housing must demonstrate capacity to act as owner of a project and meet the requirements of §92.300(a)(2). A non-profit organization does not meet the test of demonstrated capacity based on any person who is a volunteer or whose services are donated by another organization; and
- (10) Has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show one year of serving the community before HOME funds are reserved for the organization. However, a newly created organization formed by local churches, service organizations or neighborhood organizations may meet this requirement by demonstrating that its parent organization has at least one year of serving the community.

The private non-profit organization may not be created by a governmental entity.

The HOME funds must be invested in the project that is owned by the CHDO.

### **Non-profits**

Non-profits can participate in the HOME Program as owners or developers of multi-family housing. The non-profit must not be disqualified from any program administered by DCS or under debarment, proposed debarment or suspension by a federal agency.

The non-profit must be able to demonstrate technical expertise of staff and other project partners in housing production and management and meet the following criteria:

- The non-profit has successfully administered (this means following all the cross-cutting requirements, such as: Davis Bacon, Section 3, and Contract Compliance) at least one (1) HOME, CDBG, or NSP funded development of similar nature and scope;

**or**

- Has a proven track record in affordable housing development and project management for a minimum period of five (5) years prior to the application submission date; and
- Documented capacity to carry out the long-term rental compliance responsibilities associated with the development through the period of affordability.

## Section II

### HOME Statement of Assurances

#### Other Federal requirements and nondiscrimination

- (a) The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to participants in the HOME program. The requirements of this subpart include: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended or ineligible contractors; and drug-free workplace.
- (b) The nondiscrimination requirements at section 282 of the Act are applicable. These requirements are waived in connection with the use of HOME funds on lands set aside under the Hawaiian Homes Commission Act, 1920 (42 Stat. 108).
- (c) The Violence Against Women Act (VAWA) requirements set forth in 24 CFR part 5, subpart L, apply to all HOME tenant-based rental assistance and rental housing assisted with HOME funds as applied by 24 CFR 92.359. The core statutory protections of VAWA that prohibit denial or termination of assistance or eviction solely because an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking became applicable upon enactment of VAWA. Compliance with VAWA regulatory requirements applied by 24 CFR 92.359 and 24 CFR part 5, subpart L, are required for any tenant-based rental assistance or rental housing project. The PJ and subrecipient further acknowledges that, despite its name, VAWA provisions apply without regard to an individual's sex, gender identity, or sexual orientation.
- (d) Consultant Activities. No person providing consultant services in an employer-employee type relationship shall receive more than a reasonable rate of compensation for personal services paid with HOME funds. In no event, however, shall such compensation exceed the limits in effect under the provisions of any applicable statute (e.g., annual HUD appropriations acts which have set the limit at the equivalent of the daily rate paid for Level IV of the Executive Schedule, see the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, Pub. L. 104-204 (September 26, 1996)). Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation. Consultant services provided under an independent contractor relationship are not subject to the compensation limitation of Level IV of the Executive Schedule.

#### Affirmative Marketing; Minority Outreach Program

- (a) *Affirmative marketing.*
  - 1. Each PJ must adopt and follow affirmative marketing procedures and requirements for rental and homebuyer projects containing five or more HOME-assisted housing units. Affirmative marketing requirements and procedures also apply to all HOME-funded programs, including, but not limited to, TBRA and downpayment assistance programs. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. If PJ's written agreement with the project owner permits the rental housing project to limit

tenant eligibility or to have a tenant preference in accordance with §92.253(d)(3), the PJ must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.

2. The affirmative marketing requirements and procedures adopted must include:
  - a) Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the PJ's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);
  - b) Requirements and practices each subrecipient and owner must adhere to in order to carry out the PJ's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);
  - c) Procedures to be used by subrecipients and owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing program or the housing without special outreach (e.g., through the use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);
  - d) Records that will be kept describing actions taken by the PJ and by subrecipients and owners to affirmatively market the program and units and records to assess the results of these actions; and
  - e) A description of how the PJ will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.
3. A State that distributes HOME funds to units of general local government must require each unit of general local government to adopt affirmative marketing procedures and requirements that meet the requirement in paragraphs (a) and (b) of this section.

(b) *Minority outreach.* A PJ must prescribe procedures acceptable to HUD to establish and oversee a minority outreach program within its jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, under-writers, accountants, and providers of legal services, in all contracts entered into by the participating jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the PJ to provide affordable housing authorized under this Act or any other Federal housing law applicable to such jurisdiction. Section 85.36(e) of this title describes actions to be taken by a PJ to assure that minority business enterprises and women business enterprises are used when possible in the procurement of property and services.

### **Affirmative Marketing Guidance**

The DCS will take the following actions to provide information to attract eligible persons from all racial, ethnic, and gender groups in the housing market area that is assisted by HOME funding.



All correspondence, notices and advertisements related to the HOME Program, must contain the Equal Housing Opportunity logo or slogan.

Participants in the HOME Program will be required to use affirmative fair housing marketing practices in soliciting renters or buyers, determining their eligibility, and concluding all transactions. Any HOME-assisted housing must comply with the following procedures for the required compliance period, depending on the program used:

- (a) Owners advertising vacant units must include the equal housing opportunity logo and/or slogan. Wherever a phone number is provided, there must also be a TDD/TTY phone number, or equivalent, provided. The Relay North Dakota TDD number is 800-366-6888, Voice Users 1-800-366-6889, and Spanish Users 1-800-435-8590. This service is free of charge. Recently the number “711” has been approved by the FCC for use in contacting the relay service. This number works for both TTY and voice telephones and while it is applicable in most states, you are still required to list the “800” numbers presented above. Advertising media may include newspapers, radio, televisions, brochures, leaflets, or a sign in a window. In addition, owners will be required to have written communication to Fair Housing organizations.
- (b) The owner will be required to solicit applications for vacant units from persons in the housing market who are least likely to apply for the HOME-assisted housing without the benefit of special outreach efforts. In general, persons who are not of the race or ethnicity of the residents of the neighborhood in which the rehabilitated building is located shall be considered those least likely to apply. Special outreach efforts will include contacts with CAAs, human service centers and county social service offices.
- (c) The owner must maintain a file containing all marketing efforts (e.g., copies of newspaper ads, memos of phone calls, copies of letters, etc.) and the records to assess the results of these actions are to be available for inspection by the DCS.
- (d) The owner shall maintain a listing of all tenants residing in each unit from the time of application through the end of the compliance period.

The DCS will assess the affirmative marketing efforts of the owner by comparing predetermined occupancy goals (based upon the area from which potential tenants will come) to actual occupancy data that the owner is required to maintain. The owner's outreach efforts will also be evaluated by reviewing marketing efforts. The DCS will assess these efforts by use of a compliance certification or a personal monitoring visit to the project at least annually.

Where an owner fails to follow the affirmative marketing requirements, corrective actions shall include extensive outreach efforts to appropriate contacts to achieve the occupancy goals or other sanctions that the DCS may deem necessary. In addition, owners will be counseled as to affirmative marketing requests. In the event they continue to be in non-compliance, they may not be allowed to receive future HOME funds.

All units of local government that receive HOME funds must submit affirmative marketing procedures they have adopted to the DCS.

## **Environmental Review**

- (a) *General.* The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58. The applicability of the provisions of 24 CFR part 50 or part 58 is based on the HOME project (new construction, rehabilitation, acquisition) or activity (TBRA) as a whole, not on the type of the cost paid with HOME funds.
- (b) *Responsibility for review.*
1. The jurisdiction (e.g., the PJ or State recipient) or insular area must assume responsibility for environmental review, decision making, and action for each activity that it carries out with HOME funds, in accordance with the requirements imposed on a recipient under 24 CFR part 58. No funds may be committed to a HOME activity or project before the completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR part 58.
  2. A State PJ must also assume responsibility for approval of requests for release of HOME funds submitted by State recipients.
  3. HUD will perform the environmental review, in accordance with 24 CFR part 50, for a competitively awarded application for HOME funds submitted to HUD by an entity that is not a jurisdiction.

## **Displacement, Relocation, and Acquisition**

- (a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the PJ must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.
- (b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:
1. Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.
  2. Appropriate advisory services, including reasonable advance written notice of:
    - a) The date and approximate duration of the temporary relocation;
    - b) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

- c) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and
- d) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons—*

1. *General.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and 49 CFR part 24. A “displaced person” must be advised of his or her rights under the Fair Housing Act and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.
2. *Displaced Person.*

For purposes of paragraph (c) of this section, the term *displaced person* means a person (family individual, business, nonprofit organization, or farm, including any corporation, partnership or association) that moves from real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

- a) After notice by the owner to move permanently from the property, if the move occurs on or after:
  - 1) The date of the submission of an application to the PJ or HUD, if the applicant has site control and the application is later approved; or
  - 2) The date the jurisdiction approves the applicable site, if the applicant does not have site control at the time of the application; or
- b) Before the date described in paragraph (c)(2)(a) of this section, if the jurisdiction or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or
- c) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:
  - 1) The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at least one year at a

monthly rent and estimated average monthly utility costs that do not exceed the greater of:

- (i) The tenant's monthly rent before such agreement and estimated average monthly utility costs; or
  - (ii) The total tenant payment, as determined under 24 CFR 5.628, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income;
- 2) The tenant is required to relocate temporarily, does not return to the building/complex, and either:
- (i) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or
  - (ii) Other conditions of the temporary relocation are not reasonable; or
- 3) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.
- (i) Notwithstanding paragraph (c)(2) of this section, a person does not qualify as a *displaced person* if:
    - The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, State or local law, or other good cause, and the PJ determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date of any termination or refusal to renew must be preceded by at least 30 days advance written notice to the tenant specifying the grounds for the action.
    - The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, incur a rent increase), and the fact that the person would not qualify as a “displaced person” (or for any assistance under this section) as a result of the project;
    - The person is ineligible under 49 CFR 24.2(g)(2); or
    - HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(ii) The jurisdiction may, at any time, ask HUD to determine whether a displacement is or would be covered by this rule.

- (d) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing assistance to be provided under paragraph (c) of this section to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term *initiation of negotiations* means the execution of the agreement covering the acquisition, rehabilitation, or demolition.
- (e) *Optional relocation assistance.* The PJ may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with HOME funds where the displacement is not subject to paragraph (c) of this section. The jurisdiction may also provide relocation assistance to persons covered under paragraph (c) of this section beyond that required. For any such assistance that is not required by State or local law, the jurisdiction must adopt a written policy available to the public that describes the optional relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.
- (f) *Residential antidisplacement and relocation assistance plan.* The PJ shall comply with the requirements of 24 CFR part 42, subpart C.
- (g) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.
- (h) *Appeals.* A person who disagrees with the PJ's determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the jurisdiction. A low-income person who is dissatisfied with the jurisdiction's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

## **Labor**

- (a) General.
1. Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701).
  2. The contract for construction must contain these wage provisions if HOME funds are used for any project costs in §92.206, including construction or nonconstruction costs, of housing with 12 or more HOME-assisted units. When HOME funds are only used to assist homebuyers to acquire single-family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME funds will be used to

assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units. Arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions is not permitted.

3. PJs, contractors, subcontractors, and other participants must comply with regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards, as applicable. PJs shall be responsible for ensuring compliance by contractors and subcontractors with labor standards described in this section. In accordance with procedures specified by HUD, PJ shall:

- 1) Ensure that bid and contract documents contain required labor standards provisions and the appropriate Department of Labor wage determinations;
- 2) Conduct on-site inspections and employee interviews;
- 3) Collect and review certified weekly payroll reports;
- 4) Correct all labor standards violations promptly;
- 5) Maintain documentation of administrative and enforcement activities; and
- 6) Require certification as to compliance with the provisions of this section before making any payment under such contracts.

(b) *Volunteers*. The prevailing wage provisions of paragraph (a) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work. See 24 CFR part 70.

(c) *Sweat equity*. The prevailing wage provisions of paragraph (a) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

### **Lead-Based Paint**

Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, M and R of this title.

### **Conflict of Interest**

(a) *Applicability*. In the procurement of property and services by PJ, State recipients, and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42,

respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.

- (b) *Conflicts prohibited.* No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities may obtain a financial interest or financial benefit from a HOME-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the HOME-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.
- (c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the PA, State recipient, or subrecipient which are receiving HOME funds.
- (d) *Exceptions: Threshold requirements.* Upon the written request of the PJ, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the PJ's program or project. An exception may be considered only after the PJ has provided the following:
  - 1. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
  - 2. An opinion of the PJ's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.
- (e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the PJ has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:
  - 1. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
  - 2. Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
  - 3. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;

4. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;
5. Whether undue hardship will result either to the PJ or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
6. Any other relevant considerations.

(f) *Owners and developers.*

1. No owner, developer, or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor) whether private, for-profit or nonprofit (including a CHDO when acting as an owner, developer, or sponsor) may occupy a HOME-assisted affordable housing unit in a project during the required period of affordability specified in §92.252(e) or §92.254(a)(4). This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.
2. *Exceptions.* Upon written request of a housing owner or developer, the PJ (or State recipient, if authorized by the state PJ) may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner's or developer's HOME-assisted project. In determining whether to grant a requested exception, the PJ shall consider the following factors:
  - (1) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
  - (2) Whether the person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted housing in question;
  - (3) Whether the tenant protection requirements of §92.253 are being observed;
  - (4) Whether the affirmative marketing requirements of §92.351 are being observed and followed; and
  - (5) Any other factor relevant to the PJ's determination, including the timing of the requested exception.

**Executive Order 12372**

- (a) *General.* Executive Order 12372, as amended by Executive Order 12416 (3 CFR, 1982 Comp., p. 197 and 3 CFR, 1983 Comp., p. 186) (Intergovernmental Review of Federal



Programs) and HUD's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.

- (b) *Applicability.* Executive Order 12372 applies to applications submitted with respect to HOME funds being competitively reallocated under subpart J of this part to units of general local government.

### **Civil Rights**

It will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 200d et seq.), and the regulations issued pursuant thereto (24 CFR Part 1), which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied in the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits.

### **Equal Opportunity**

It will comply with:

- (a) Section 109 of the Housing and Community Development Act of 1974 (ACT), as amended, and the regulations issued pursuant thereto (24 CFR 570.601), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under the act;
- (b) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.) The act provides that no person shall be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance;
- (c) Section 504 of the Rehabilitation Act of 1973, amended (29 U.S. C. 794). The act provides that no otherwise qualified individual shall, solely, by reason of his or her handicap be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance.

The grant recipient must complete or update a Self-Evaluation, in accordance with 24 CFR Part B of the Federal Register. An example of a Self-Evaluation guidebook will be provided upon request;

- (d) Section 3 of the Housing and Community Development Act of 1968 (12 U.S.C. 170/u) (24 CFR Part 135). Section 3 of the Housing and Urban Development Act of 1968 requires, in

connection with the planning and carrying out of any project assisted under the Act, to the greatest extent feasible, that opportunities for training and employment be given to lower-income persons residing within the unit of local government or the non-metropolitan county in which the project is located, and contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part, by persons residing in the project area. The grantee must assure good faith efforts toward compliance with the statutory directive of Section 3; and

- (e) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto (24 CFR Part 130 and 41 CFR Chapter 60) prohibit a HOME recipient and subcontractors, if any, from discriminating against any employee or applicant for employment because of race, color, religion, sex or national origin. The grantee and subcontractors, if any, must take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action must include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. The grantee and subcontractors must post in conspicuous places, available to employees and applicants for employment, notices to be provided setting for the provisions of this nondiscrimination clause. For contracts over \$10,000, the grantee or subcontractors will send to each applicable labor union a notice of the above requirements, the grantee and subcontractors will comply with relevant rules, regulations and orders of the U.S. Secretary of Labor. The grantee or subcontractors must make their books and records available to State and federal officials for purposes of investigation to ascertain compliance.
- (f) Executive Order 13166 eliminates, to the extent possible, limited English proficiency as a barrier to full and meaningful participation by beneficiaries in all federally assisted and federally conducted programs and activities.

### **Fair Housing**

It will affirmatively further fair housing and will comply with:

- (a) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended. The law states that it is the policy of the United States to provide for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, familial status or disability. HOME grantees must also administer programs and activities relating to housing and community development in a manner that affirmatively promotes fair housing and furthers the purposes of Title VIII; and
- (b) Executive Order 11063, as amended by Executive Order 12259, requires HOME recipients to take all actions necessary and appropriate to prevent discrimination because of race, color, religion, creed, sex or national origin; in the sale, leasing, rental and other disposition of residential property and related facilities (including land to be developed for residential use); or in the use of occupancy thereof if such property and related facilities are, among other things, provided in whole or in part with the aid of loans, advances, grants or contributions from the federal government.

## Section III

### Scoring Criteria

Each application meeting the threshold requirements will be reviewed and assigned points according to the following selection criteria. **Applications must achieve a minimum score of 80 points to be considered for funding.** Scoring will be on entire project/units (not just HOME units). Only one application per project will be considered. Applicants may request no more than 70 percent of the hard construction costs. Income targeting for HOME requires at initial occupancy that not less than 90 percent of the units assisted with HOME funds be occupied by families at 60 percent and below area median income. If a project has five or more HOME units, 20 percent of those units must have low HOME rents for the period of affordability.

#### A. Income Targeting

Scoring for additional targeted units must have another program Land Use Restrictive Agreement (LURA) or DCS will restrict these units at the state level.

##### 1) Serves Extremely Low-Income Households *0-15 points*

Up to 15 points will be awarded to properties with units both income and rent restricted for households at or below 30 percent of area median income. Elections made in this category must be incorporated into a LURA and will be binding, at a minimum, for the term of the HOME loan.

- 20% of total units income and rent restricted at or below 30% of AMI *15 points*
- 15% of total units income and rent restricted at or below 30% of AMI *10 points*
- 10% of total units income and rent restricted at or below 30% of AMI *5 points*

For purposes of applying the 30 percent rent restriction under this category, and exception for exceeding the 30 percent rent may be granted for Section 8 project-based rental assistance where it can be shown that additional rents are necessary to make the project feasible and that the rent will not exceed 30 percent of the tenant's income. This exception will not apply for Section 8 TBRA.

*and/or*

##### 2) Serves Very-Low and Low-Income Households *0-15 points*

15 points will be awarded to properties with additional assisted units which are income restricted at or below the 80 percent area median income and rent restricted at or below 50 percent area median income level. Elections made in this category will be incorporated into the LURA and will be binding.

- 20% of total units are income restricted at or below 80% AMI and rent restricted at or below 50% AMI *15 points*
- 15% of total units are income restricted at or below 80% AMI and rent restricted at or below 50% AMI *10 points*
- 10% of total units are income restricted at or below 80% AMI and rent restricted at or below 50% AMI *5 points*

B. Addresses Housing Shortage in Developing Communities of 20,000 or Less **15 points**

15 points will be awarded to projects located in communities under 20,000 in population and that can demonstrate an unmet housing need or shortage. An unmet housing need or shortage can be substantiated per underwriting requirements. The population data will come from census.gov (2010).

C. Leveraging **Up to 25 points**

DCS will award up to 25 points based on the amount of HOME funds requested per HOME unit:

<u>Points</u>	<u>HOME Funds per HOME Assisted Unit</u>
25	Less than \$70,000
15	\$70,000-\$99,999
5	\$100,000-\$120,000

D. Financial Support from Local Sources **0-25 points**

Of the 25 percent required match, one point will be awarded for every percentage point of the match that comes from a local contribution, defined as:

Local governmental and community private contributions, including but not limited to cash, measurable in-kind services, or tax abatements, to reduce project costs or enhance feasibility.

E. Readiness to Proceed **0-25 points**

Applicant must have provided a timeline for completion of the project. Points awarded in this category are based on earliest achievable completion of the activity. Such things as letters of commitment for both construction and permanent financing; ownership or option to purchase land; and availability of infrastructure will be considered in the award of points.

- Ownership or option to purchase land **5 points**
- Letters of commitment for other funding sources **5 points**
- Letters of commitment for permanent financing **5 points**
- Letters of commitment for construction **5 points**
- Availability of infrastructure **5 points**

F. Rehab of Existing Vacant Habitable Structures or Infill Opportunities **15 points**

In accordance with the Main Street Initiative (<https://www.mainstreetnd.com>) in building healthy, vibrant communities, citizens gain both the benefits of using existing infrastructure and the opportunity to enhance our communities. Proposals involving the rehabilitation of existing structures that are at risk of becoming uninhabitable or obsolete because of age and deterioration, or proposals involving the concept of infill, in which we build mixed-use

structures on empty lots between existing buildings, or build on under-utilized surface parking lots, and further increase the efficient use of existing infrastructure, may receive up to 15 points.

G. Preservation **5 points**

Federally assisted properties, such as Rural Development 515 financed or those with project-based rental assistance, which are “at-risk” of being lost from the state’s affordable housing inventory, will receive 5 points.

H. Special Needs **5-15 points**

Projects with units targeted to special needs households, including those with physical disabilities, chronic or persistent mental illness, drug/chemical dependency, or frail elderly and can demonstrate appropriate construction design and the availability of appropriate supportive services will receive up to 15 points depending on the number of set-aside units.

- Projects with a minimum of 10 percent of the units set-aside for special needs households **5 points**
- Projects with 11 percent to 15 percent of the units set-aside for special needs households **10 points**
- Projects with more than 15 percent set-aside for special needs household **15 points**

I. Walkability **Up to 15 points**

In accordance with the Main Street Initiative (<https://www.mainstreetnd.com>) in building healthy, vibrant communities, a walkable city is a healthy city.

Walkable cities allow residents of any age to become more physically active and spend more time outdoors, thereby improving wellness and reducing health care costs. And across the country, the greater the walkability, the higher the real estate values. Two large demographic groups, millennials and retiring baby boomers, are seeking walkable neighborhoods where they can live, work, shop, learn and play.

Up to 15 points will be awarded based on the walk score assigned by [www.walkscore.com](http://www.walkscore.com).

- 80-100 point walk score **15 points**
- 60-79 point walk score **10 points**
- 40-59 point walk score **6 points**
- 20-39 point walk score **4 points**
- 10-19 point walk score **2 points**
- 0-9 point walk score **0 points**

J. Public Housing Notification

*5 points*

A proposal which provides a written commitment to notify local public housing agencies of vacancies and give priority to households on waiting lists of those agencies will receive 5 points.

K. Cross-Cutting Requirements

*Up to 25 points will be deducted*

Besides the rules and requirements specific to the HOME program, there are several additional broad Federal rules that must be adhered to in the course of administering the program. While the PJ is responsible for implementing these rules, owners, developers, CHDOs, and other non-profits must also be aware of them and actively ensure that a project or activity is in compliance. These other Federal requirements cover the following areas:

- 24 CFR 92.350 – Federal requirements set forth in 24 CFR part 5, subpart A: nondiscrimination and equal opportunity; disclosure requirements, debarred, suspended or ineligible contractors; drug-free work; and housing counseling
- 24 CFR 92.351 – Affirmative marketing; minority outreach program
- 24 CFR 92.352 – Environmental review
- 24 CFR 92.253 – Displacement, relocation and acquisition
- 24 CFR 92.354 – Labor
- 24 CFR 92.355 – Lead-based Paint
- 24 CFR 92.356 – Conflict of interest
- 24 CFR 92.357 – Executive order 12372
- 24 CFR 92.358 – Consultant activities
- 24 CFR 92.359 – VAWA requirements

*and/or*

DCS may deduct up to 25 points if the applicant has had substantial findings or unresolved issues related to other Federal funds from DCS including the cross-cutting requirements within the last four years.