

# 2022 HOME Program Distribution Statement

**DRAFT Pending HUD Approval**



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## 2022 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 North Dakota Housing Finance Agency (Agency).

This is a description of how the state plans to distribute FY 2022 HOME funds and administer its program. The plan demonstrates consistency with the goals identified in the state's Consolidated Plan (CP). Accordingly, the state will use its HOME funds for the following activities to help meet the identified housing needs:

- Rehabilitation of Owner-occupied and Rental Property
- Acquisition, New Construction, Site Improvements, or Demolition Linked to a Project
- Homebuyer Assistance
- Administrative Costs

## TIMELY PRODUCTION AND OCCUPANCY OF ASSISTED HOUSING

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

- **HOME projects must be completed within 4 (four) 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 and Subrecipients must either convert the unit to a HOME rental property or repay the full HOME investment. [*§92.254(a)(3)*]
- **The Consolidated Appropriations Act of 2019 (PL 116-6) temporarily suspended the Community Development Housing Organization (CHDO) 24-month commitment requirement for set-aside funds to specific projects (Section 231(b)). The suspension applies to 2018-2021 CHDO funds.**
  - **This appropriation act also continues the temporary suspension of the regular HOME funds 24-month commitment requirement to specific projects for 2016-2021 funds. The Consolidated Appropriations Act of 2020 (PL 116-94) added 2022 to the years covered by the suspension.**
  - **Both commitment requirements are suspended through December 31, 2022.**
- **CHDO Fund Set-Aside**
  - **PJs shall reserve not less than fifteen percent (15 percent) of the grant for projects to be developed, sponsored, or owned by community housing development organizations.**
  - **If after 24 months those funds are not committed, PJs may elect to use the funds for any HOME project and are no longer restricted to CHDO projects.**
  - **Uncommitted CHDO set-aside funds at the end of the 24 month period may be reprogrammed to other eligible HOME activities, subject to procedures established by HUD.**

- The PJ can no longer “reserve” CHDO funds for future projects identified at a later date. [*§92.2 Commitment, §92.300(a)(1)*]
- **Since FY 2015 appropriations, HOME funds have a period of 9 (nine) fiscal years until expiration. This period is based on 4 (four) fiscal years during which HUD may obligate funds to the PJ (i.e. period of availability in the appropriation act) plus the 5 (five) year expenditure deadline beginning after the last day of the month in which HUD notifies the PJ of HUD’s execution of the HOME Investment Partnership Agreement for a specific fiscal year allocation. Any funds that are not expended before this deadline will be deobligated by HUD.** This nine-year period is determined annually by Congress, which generally begins when Congress appropriates the Federal funds to HUD. [*§92.500(d)(1)(A) and (C), and §92.500(d)(2)*]

## DISTRIBUTION PLAN

The state will administer its program through Subrecipients, non-and-for-profits, and CHDOs. The HOME Program funds will be allocated to Subrecipients through a non-competitive set-aside. The non-and-for-profit and CHDO category will be competitive and receives awards based on scoring criteria. If CHDO funds remain, the Agency may open the second round of CHDO applications, at its discretion, 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). A CHDO must have 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 and have demonstrated capacity for carrying out housing projects assisted with HOME funds. [*§92.2*]

**The state may reallocate funds based on high demand, a natural disaster, or other determinations where performance-based measures have not been met. If during the preparation of the next program year Annual Action Plan, there are project funds set-aside for single family rehabilitation or homebuyer down payment assistance that have not been applied for or committed, the State may reallocate those funds to the Rental Production and Rehabilitation General Pool. Uncommitted CHDO set-aside funds at the end of the 24-month period may be reprogrammed to other eligible HOME activities, subject to procedures established by HUD.**

State Program Income, Repayments, and Recaptured Funds receipted by the Agency will be allocated, at the Agency’s sole discretion, to any Project completing an Eligible Activity, in the proceeding program year and shall be committed to Project(s) prior to any newly allocated HOME funds are drawn from the Treasury account, except for funds in the Treasury account which are required to be reserved, in accordance with the HUD Interim Final Rule for the HOME program published 12/2/2016 and 24 CFR Part 92.503.

## HOME Projects and Eligible Activities

The HOME Program focuses on 3 (three) major housing needs:

1. Single-family Homeowner Rehabilitation
2. Rental Production and Rehabilitation
3. 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 Agency, to their recipients and Subrecipients. Each Subrecipient delivers the HOME Program in their respective geographic jurisdiction. Each year, the state will review the needs and completed goals to determine if goals will be updated based on the new developments which create changing housing needs around the state.

## **HOME Performance Measures**

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. The Agency will then enter this information on HUD's Integrated Disbursement and Information System (IDIS).

**2022 Summary of Funding ESTIMATE\***

**\*Funding levels are subject to receipt of a HUD Allocation Notice and any Program Income Received prior to the HUD's Obligation Date to the State of North Dakota of the 2022 HOME funds.**

**Any additional funds received will be allocated to the Rental Production and Rehabilitation Project Funding**

Annual HUD Allocation	\$3,000,039.00		
Program Income	*\$138,365.10		
Recaptured Funds	\$0.00		
Prior Years Project Funds Unobligated	\$250,200.00		
Total Allocation	\$3,388,604.10		
Total Available for Project Set-Aside	\$3,088,600.20		
Total Available for Administration Set-Aside (maximum of 10% of HUD allocation)	\$300,003.90		
<b>Project/ Eligible Activity &amp; Anticipated Applicants</b>	<b>Projects</b>	<b>Administration</b>	<b>Operating</b>
<b>Single-Family Homeowner Rehabilitation</b>			
Community Action Opportunities, Inc. (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 Program Region VII, Inc. (Reg. VII)	\$140,000.00	\$10,000.00	
Community Action Partnership (Reg. I & Reg. VIII)	\$140,000.00	\$10,000.00	
<b>Rental Production and Rehabilitation</b>			
CHDO Reserve	\$450,005.85	\$0.00	\$0.00
General Pool Funds	\$1,298,594.35		
<b>Homebuyer Down Payment Assistance</b>			
Grand Forks Community Land Trust	\$500,000.00	\$0.00	
<b>State PJ Administration</b>		\$240,003.90	
<b>TOTAL</b>	<b>\$3,088,600.20</b>	<b>\$300,003.90</b>	<b>0</b>

## **Project Descriptions and Application Process**

All recipients are expected to locally meet the HOME Program match requirement of 25 percent unless specifically waived by the Agency. All estimated match must be reported at project application and 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, Community Development Block Grant, North Dakota Housing Incentive Fund, Department of Energy, Housing Trust Fund, or 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 must be submitted to the Agency no later than July 15<sup>th</sup> of each year.**

### **Administration**

The Agency is allowed to receive HOME funds for administrative expenses. These costs may not exceed ten percent (10%) of the that year's newly awarded annual HOME allocation for North Dakota.

### **Subrecipient Definition**

A Subrecipient is defined as a public agency or non-profit organization selected by the Agency to administer all or some of the Agency's HOME programs. A public agency or non-profit organization which receives HOME funds solely as a developer or owner of a housing project is not a Subrecipient. The Agency's selection of a Subrecipient is not subject to the procurement procedures and requirements. Single Family Homeowner Rehabilitation and Homebuyer Down payment Assistance programs will be delivered through subrecipients.

## Single Family Homeowner Rehabilitation

HOME funds will be set aside for Community Action Agencies (CAAs) which have fully expended and closed out all HOME funding from previous 2016-2019 funding years. **A complete HOME Annual Application Plan must be submitted to the Agency. Applications may be submitted beginning August 1, 2022 and will be accepted until fully awarded.**

Financial Awards will be provided for each approved CAA application. Funds from one award may not be used for any other activity than what was approved.

Eligible activities can include all necessary rehabilitation required to bring an existing owner-occupied home up to the HOME property standards as defined in 92.251(b) and the North Dakota State Building Code (or locally amended North Dakota State Building Code). Rehabilitation 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 nor the after-rehab value of the housing shall exceed the annually published HOME Homeownership Value Limits for the county in which property is located. (Each homeowner will be required to sign a Housing Rehabilitation Program Homeowner Agreement and must also sign a restrictive land use covenant prior to work beginning or a final LURA at project completion.

**Please note that no choice-limiting action may be taken and no construction activity may begin until the environmental review has been completed, an authorization to proceed has been issued, and the Agency has issued a Release of Funds for any Project.**

The period of affordability is as follows:

HOME Assistance Per Unit	Minimum Period of Affordability
Single-Family Homeowner Rehabilitation	5 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 Policies and Procedures. The Policies and Procedures must be submitted with the CAA's Annual Application and contain the following:

- a. The criteria used to determine applicant eligibility based on income as defined by either Part5/Section 8 annual income or adjusted gross income as defined for reporting on IRS Form 1040, 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. Provide the CAA Affirmative Marketing requirements and procedures. (24 CFR 92.351)
- c. 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).

- d. Provide a description of any type of homeowner contribution required (cash, labor, or materials).
- e. A description of how you will inspect for HOME property standards as defined in 92.251(b). Assurance that all work complies with the North Dakota State Building Code (or a locally amended North Dakota State Building Code) and Agency Minimum Housing Rehabilitation and Property Standards. 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.
- f. Define how you will meet lead-based paint regulations of section §92.355 and 24 CFR Part 35.
- g. 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 HOME property standards with the maximum investment.
- h. Describe how you will assure that no more than the necessary amounts of HOME Program funds are invested in any one project (Layering).
- i. Specify the form of financial assistance in which HOME funds are provided (e.g. grant or deferred-payment loan).
- j. Address special requirements for reconstruction or rehabilitation of manufactured housing units as set forth in section §92.251(e).
- k. Describe the process for written construction documents and cost estimates as required by 92.251(b)(2), contractor selection to ensure cost reasonableness, and inspections and approvals of work as required by 92.251(b)(3).
- l. Define the staff, owner, and contractor roles and responsibilities. Include a grievance procedure for applicants and disputes between an owner and a contractor.
- m. Provide a statement that outlines your conflict-of-interest policy in Section II, HOME Statement of Assurances; and
- n. Describe the homeowner counseling services that are available to each client.

### **Uncommitted Funds**

If by January 1, 2023 there remains uncommitted set-aside funds under the single-family rehabilitation project, CAAs who have expended and drawn down 75 percent of any outstanding grant award(s) may apply for remaining funds. **Eligible awardees may request an amendment to their existing award at any date after January 2, of the calendar year proceeding the current award's issuance. Any uncommitted HOME Funds as of August 1, 2023 will be reallocated to Rental Production and Rehabilitation's General Pool Funds.**

### **Recaptured Funds**

The recaptured funds must be returned to the Agency to be used to carry out HOME-Eligible Activities.



## Homebuyer Down Payment Assistance

When funds are made available, a non-profit Community Land Trust (CLT) registered with North Dakota Secretary of State which operates with in the state of North Dakota, may apply for funding under this program. The CLT must demonstrate community support and capacity to undertake activities including but not limited to experience and financial stability.

- a. Assistance may only be provided to homebuyers whose income (Section 8 definition) does not exceed 80 percent (80%) of the median for the area.
- b. Assisted housing may be either a single-family dwelling, condominium, cooperative unit, or manufactured housing.
- c. The Subrecipient must demonstrate compliance with the Agency homebuyer guidelines and performs sound underwriting of the homebuyer's ability to afford and sustain homeownership.
- d. All homebuyers assisted under the HOME program must receive housing counseling that is performed by a certified housing counselor who has passed the HUD certification examination and is employed by a HUD-approved housing counseling agency prior to receiving homebuyer assistance as required at 24 CFR 254(a)(3).
- e. The Agency will determine which level of environmental review (CEST or CENST) and procedures that will be required for the homebuyer project according to 24 CFR Part 58 definitions and the procedures and in 24 CFR 92.352.
  - Homebuyer acquisition providing only down payment assistance are Categorically Excluded but Not Subject to Other Federal Laws and Authorities (CENST) as long as the project meets one of the following criteria:
    - Activities to assist homebuyers to purchase an existing dwelling unit or dwelling units under construction, including closing costs and down payment assistance.  
\*These units must be constructed or under construction at the time of application.
  - The ONLY activities that can be initiated prior to the Agency releasing funds are costs associated with program administration, project delivery cost necessary to determine eligibility and underwrite the household, contracting for preliminary architectural/engineering fees, and costs associated with the environmental review process.
    - For all other activities, Subrecipients cannot obligate or incur costs or draw down funds until the environmental review requirements are satisfied, and the Agency has released funds to the project.
- f. If only acquisition assistance (down payment assistance) is provided, the property must meet the Uniform Physical Condition Standards (UPCS) and all applicable State and local housing quality standards, habitability standards, and code requirements at the time of initial occupancy as required at 92.251(c)(3).
- g. If the project includes acquisition assistance and rehabilitation, the property must be free from health or safety hazards before occupancy and within six months of the transfer of ownership and meet all applicable State and local housing quality standards and code requirements. The housing must not contain the specific deficiencies proscribed by HUD based on the applicable inspectable items and inspected areas in HUD-prescribed physical inspection procedures (UPCS) issued pursuant to 24 CFR 5.705.
- h. The housing must comply with HUD's Lead Safe Housing Regulations. All lead-based paint hazards must be identified and subsequently addressed (reduced) per the regulations of section §92.355 and 24 CFR Part 35.

- i. The Subrecipient must inspect the housing and document this compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the housing does not meet these standards, the housing must be rehabilitated to meet these standards, or it cannot be acquired with HOME funds. New construction must conform to all local building code requirements.
- j. A certified appraisal is required prior to acquisition to determine the initial purchase price. Neither the purchase price nor the appraised value of a HOME assisted property may exceed the annually published HOME and Housing Trust Fund Homeownership Value Limits for the county in which property is located.
- k. The minimum HOME assistance is \$1,000 per unit.

l. Period of Affordability (POA)

This period is based on the amount of direct HOME subsidy to the buyer, as follows:

<b>HOME Down Payment Assistance to Homebuyer</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.

- m. Property must be occupied as a principal residence by the homebuyer and subsequent low-income buyers throughout the POA. No subleasing is allowed. The Subrecipient must monitor and verify primary residency of the homebuyer on an annual basis for the affordability period. The most current utility statement, proof of paid taxes, and homeowner’s insurance are acceptable documentation.
- n. During grant monitoring of the Subrecipient, the Agency will review 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.

**Resale & Recapture Provisions**

Resale will be required for CLT properties that are subject to ground lease controls. (Note: The HOME Final Rule also requires Resale restrictions to be used when there is no buyer assistance, which would only occur in development projects and not in a DPA-only program.) Recapture will be used for all other non-CLT properties.

**Resale Provisions**

The HOME resale requirements are established in the HOME rule at §92.254(a)(5)(i). Under HOME resale provisions, the PJ (and Program Administrator) is required to ensure that, when a HOME-assisted homebuyer sells his or her property voluntarily or involuntarily during the affordability period:

- The property is sold to another low-income homebuyer who will use the property as his or her principal residence;
- The original homeowner(s) receives a “fair return” on their investment, (i.e., the homeowner’s share of the value of the property, including the value capital improvements made to the house); and
- The property is sold at a price that is “affordable to a reasonable range of low-income buyers.”

Under resale, §92.254(a)(5)(i) of the HOME rule states that the period of affordability is based on the total

amount of HOME funds invested in the housing. In a DPA-only program, this would include the assistance directly provided to the buyer plus any project delivery costs that are charged as project costs rather than as Administrative Costs.

HOME Project Funds	Minimum Period of Affordability
Less than \$15,000	5 yrs.
\$15,000 - \$40,000	10 yrs.
More than \$40,000	15 yrs.

Calculation of Resale Price and Fair Return. When the homeowner sells, the following procedures and calculations will be used to determine the Fair Return to the seller as required by the HOME Final Rule:

1. Homeowner's Initial Ownership Interest – The homeowner's ownership interest at time of original purchase is the percentage of the Initial Appraised Value that the homeowner provided, as defined and calculated below.
  - a. Homeowner's Base Price: The price paid by the homeowner upon the execution of the Program Administrator Ground Lease. (Homeowner's Base Price equals the Homeowner's Ownership Interest at time of purchase.)
  - b. Initial Appraised Value of Home and Leased Land: The fee simple value of the home and the leased land based on an independent appraisal at time of original purchase.
  - c. Homeowner's Initial Ownership Interest (%): The Homeowner's Initial Ownership interest is the ratio of Homeowner's Base Price to Initial Appraised Value, expressed as a percentage.
  
2. Homeowner's Ownership Interest at Resale – The ownership interest at time of resale is determined through appraisal to include the value of homeowner capital improvements and the homeowner's share of the appraised value of the property at resale.
  - a. Appraised Value at Resale: An independent appraisal determines the appraised value of Home and Leased Land at resale.
  - b. Value of Homeowner's Capital Improvements (if applicable): If the homeowner has submitted Capital Improvements, the appraised value of the improvements will be identified in the appraisal, and the homeowner will be credited with 100% of the appraised value of the Improvements.
  - c. Appraised Value of Homeowner's Ownership Interest at Resale: The Appraised Value of the Homeowner's Ownership Interest is calculated by adding:
    - i. The Appraised Value of Homeowner's Capital Improvements plus
    - ii. The "net" Appraised Value at Resale (with Value of Capital Improvements subtracted) multiplied by the Homeowner's Initial Ownership Interest percentage.
  
3. Formula Resale Price – The resale price at time of resale is defined and calculated below.
  - a. Appraised Value of Increased Homeowner's Ownership Interest at Resale: This equals:
    - i. The Value of Homeowner's Capital Improvements (if any) plus
    - ii. The Homeowner's Share of the Increase in Appraised Value, which is the "net" increase in Appraised Value multiplied by 40%.
  - b. Maximum (Formula) Resale Price – The maximum price at which the home can be resold is determined by Formula Resale Price, which is calculated as:
    - i. The Homeowner's Base Price plus
    - ii. The Appraised Value of Increased Homeowner's Ownership Interest at resale (which includes 100% of the Value of Homeowner's Capital Improvements plus the Homeowner's Share of the Increase in Appraised Value.)
  
4. Purchase Option Price – The Purchase Option Price will be used if the Program Administrator elects to exercise the Purchase Option. If elected, the Purchase Option Price is the lesser of:
  - a. The Appraised Value of Homeowner's Ownership Interest at Resale (calculated in 2c above); or
  - b. The Formula Resale Price as defined in 3b above.

Capital Improvements. When a homeowner completes an eligible capital improvement to their community land trust home post-purchase, they are eligible for 100 percent of the improvement value and appreciation deemed attributable to improvement. Eligible Improvements include:

- Increase in legal bedroom size;
- Increase in legal bathroom size;
- Addition of or substantial rehabilitation to garage;
- Other substantial modifications approved by the Program Administrator, which are anticipated to increase value by a minimum \$2,500 and increase functionality of the home. Improvements made solely for cosmetic purposes or considered routine maintenance will not be considered.

Improvements must comply with the ground lease, and documentation of completion must be submitted. Upon refinancing or resale, the homeowner must submit a request for capital improvements calculation. The Appraisal will indicate a monetary value of improvements, and the Formula Resale Price calculation will be modified to incorporate the capital improvements calculation.

Purchase Option Price and Formula Price Example. The following are examples of the calculations specified above, one for an appreciating value and one for declining value:

Calculation Step	Appreciating Value - Sample Calculation
1.a. Homeowner's Base Price	\$150,000
1.b. Initial Appraised Value	\$200,000
1.c. Homeowner's Initial Ownership Interest	$\$150,000/\$200,000 = 75\%$
2.a. Appraised Value at Resale	\$240,000
2.b. Appraised Value of Capital Improvements	\$10,000
2.c. Value of Homeowner's Interest at Resale	$\$10,000 + (\$240,000 - \$10,000) * 75\% = \$182,500$
3.a. Value of Homeowner's Increased Interest at Resale	$\$10,000 + (\$172,500 - \$150,000) * 40\% = \$19,000$
3.c. Maximum (Formula) Resale Price	$\$150,000 + \$19,000 = \$169,000$
4. Purchase Option Price	Lesser of \$182,500 & \$169,000 = \$169,000

Calculation Step	Declining Value - Sample Calculation
1.a. Homeowner's Base Price	\$150,000
1.b. Initial Appraised Value	\$200,000
1.c. Homeowner's Initial Ownership Interest	$\$150,000/\$200,000 = 75\%$
2.a. Appraised Value at Resale	\$180,000
2.b. Appraised Value of Capital Improvements	\$8,000
2.c. Value of Homeowner's Interest at Resale	$\$8,000 + (\$180,000 - \$10,000) * 75\% = \$135,500$
3.a. Value of Homeowner's Increased Interest at Resale	$\$8,000 + (\$135,500 - \$150,000) * 40\% = \$2,000$
3.c. Maximum (Formula) Resale Price	$\$150,000 + \$2,000 = \$152,000$
4. Purchase Option Price	Lesser of \$135,500 & \$152,000 = \$135,500

Resale Requirements. During the period of affordability, the home must be resold to another Low-Income buyer approved by the Program Administrator. The Program Administrator may repurchase the home and convey it to an eligible LI buyer using the Purchase Option or permit the homeowner to find an eligible buyer, as described below.

Upon notice by the homeowner of intent to sell, the Program Administrator shall have the option to purchase the home at the Purchase Option Price as defined above in step 4

If the Program Administrator elects to purchase the home, it may exercise the purchase option by either proceeding to purchase the home directly or assigning the Purchase Option to a HOME-eligible low-income person.

If the purchase (by Program Administrator or its assignee) is not completed within 120 days as stated in the executed Program Administrator Ground Lease, the homeowner may sell the home and homeowner's rights to the leased land for a price no greater than the then applicable Purchase Option Price, to any party if that party is a HOME-eligible low-income person.

If the Program Administrator does not exercise its option and complete the purchase of the homeowner's property as described above, and if the homeowner (a) is not then residing in the home and (b) continues to hold the homeowner's property out for sale but is unable to locate a buyer and execute a binding purchase and sale agreement within one year of the date of the Notice of Intent to Sell, then the Program Administrator may appoint its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purpose of the Program Administrator Ground Lease, sell the property, and pay to the homeowner the proceeds of the sale, minus the Program Administrator's costs of sale and any other sums owed to the Program Administrator by the homeowner.

#### Recapture Provisions

In all projects that are not CLT properties, the Recapture method will be used. The HOME recapture provisions are established at §92.254(a)(5)(ii). Unlike the resale approach, recapture permits the original homebuyer to sell the property to any willing buyer during the period of affordability and the PJ recaptures all or a portion of the HOME-assistance provided to the original homebuyer.

The HOME Final Rule permitted four models or options for recapture. NDHFA has elected the "full recapture" option. Under this option, the PJ (or Program Administrator) recaptures the entire amount of the direct HOME subsidy, subject to the net proceeds available from the sale, as defined below.

- The original direct HOME subsidy is the amount of HOME assistance that enabled the homebuyer to buy the unit. The direct subsidy includes downpayment, closing costs, interest subsidies, or other HOME assistance provided directly to the homebuyer. In addition, direct subsidy includes any assistance that reduced the purchase price from fair market value to an affordable price.
- Net proceeds are defined as the sales price minus superior loan repayment (other than HOME funds) and any closing costs incurred by the seller. Under no circumstances can the PJ (or Program Administrator) recapture more than is available from the net proceeds of the sale. Seller Costs must be supported by the Settlement Statement.

Subsequent Sale of Home to an Income Eligible Homebuyer. The HOME Final Rule at 92.254(a)(5)(ii) permits PJs to allow the subsequent homebuyer to assume the HOME assistance if:

- the homebuyer is Low-Income;
- no additional HOME assistance is provided; and
- the new buyer agrees to be subject to the HOME requirements for the remainder of the original period of affordability.

This option is authorized for this DPA program. If the Program Administrator determines through underwriting that the subsequent Low-Income homebuyer needs additional HOME assistance beyond the amount of the original HOME assistance, additional HOME homebuyer assistance may be provided and will be combined with their assumption amount of the existing note to determine the new POA and execute a new (replacement) written agreement and declaration of lien interest for the total assistance.

## Rental Production and Rehabilitation

### Definitions

**Affordability Period:** See Period of Affordability.

**Agency:** North Dakota Housing Finance Agency.

**Area Median Income (AMI):** The midpoint of a county's income distribution. Half of families in a county earn more than the median and half earn less than the median. The Agency publishes Income Limits, based on household size, annually and from time-to-time as necessary.

**Broadband Infrastructure:** Cables, fiber optics, wiring, or other permanent infrastructure, including wireless infrastructure, resulting in broadband capability meeting the Federal Communication Commission (FCC) definition in effect at the time the pre-construction estimates are generated.

**Commitment Date:** The Effective Date of the HOME Loan Agreement. Often referred to as the closing date.

**Developing Community:** An incorporated city with a population less than 35,000 per the most recently available Annual Estimate of Residential Population for Incorporated Places provided by U.S. Census Bureau.

**Developing Rural Community:** An incorporated city with a population less than 3,500 per the most recently available Annual Estimate of Residential Population for Incorporated Places provided by U.S. Census Bureau.

**Eligible Applicants:** Units of local, state, and tribal government; local and tribal housing authorities; community action agencies; regional planning councils; and nonprofit organizations and for-profit developers. Individuals are not eligible to receive direct assistance from HOME.

**HOME-Assisted Units Calculation:** Calculated as a percentage of a project's Gross HOME Award in relation to the project's HOME-eligible project development costs. This percentage multiplied by the total number of units within the project (rounded-up to the nearest whole number) is the minimum number of HOME-Assisted Units within the project.

**Multifamily Project/Property:** Any building or group of buildings totaling four (4) or more permanent residential rental units operated as a single rental housing project.

**Period of Affordability:** A specific starting and ending date range, communicated to the awardees after a project's completion, at which the project is to comply with program rent and income restrictions.

**Total Development Cost:** The all-in cost of developing a rental housing project including pre-development, acquisition, hard and soft construction, hard and soft rehabilitation, and financing costs, as well as developer fees, and reserve accounts capitalization. Costs associated with commercial construction shall not be included.

### General Pool Funds

General Pool Funds are available to apply for under the Rental Production and Rehabilitation application round held annually in September. Any uncommitted funds will be carried over to the next program year's unobligated funds. Application requirements for rental production and rehabilitation are found in Section 3 of this document.

### Match

All CHDO and non-and-for-profit beneficiaries are expected to locally meet the HOME Program match requirement of 25 percent (25%), unless specifically waived by the Agency.

Only the forms of HOME assistance listed in Part 92.205(b) are allowed. Applicants should also 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.

## Eligible Applicants

### 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; and
- The HOME funds must be provided to the entity that owns the project; and
- The HOME funds must be invested in the project that is owned by the CHDO; and
- Before commitment of HOME funds, the CHDO sponsor must select the private non-profit organization that will obtain ownership of the property; and
- 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 Agency will certify non-profit organizations that meet defined criteria as CHDOs in the HOME Investment Partnerships Program Final Rule Subpart A, §92.2. CHDOs must be certified annually by completing and submitting a CHDO Certification applications. Applications for certification are due by April 1<sup>st</sup> of each year. To apply for funding, a CHDO must have an updated certification.**

In addition, these organizations must meet and satisfactorily demonstrate the prescribed requirements. The Agency will be using the HUD guidance on CHDO qualifications. CHDO's are also eligible to participate in non-CHDO housing activities. **CHDOs must demonstrate to the Agency that their certification status is maintained during each year of the period of affordability (POA) of a rental development project.**

**Up to ten percent (10%) of the CHDO set-aside may be used for pre-development loans to assist specific projects at the discretion of the Agency.** 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, or the loan may be combined with the subsequent CHDO project funding. 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 Agency. 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; and
- (2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and
- (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; and
  - (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; and
  - (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"; and
- (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; and

- (6) Has standards of financial accountability that conform to 24 CFR 84.21, "Standards for Financial Management Systems"; and
- (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; and
- (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; and
- (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.

## **Non-and-For-Profit Developers**

**Note:** Non-and-for-profits are not required to be designated CHDOs to apply for HOME Program funding, but funding for such projects will not utilize funds reserved for a CHDO.

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

The non-and-for-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-and-for-profit has successfully administered (this means following all the cross-cutting requirements, such as: Davis Bacon, Section 3, and Contact 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.

## Rental Production and Rehabilitation Application Process

**Applications for HOME Rental and Development are due by the last business day in September, each year.** The approval of applications for CHDOs and non-and-for-profit developers will be a competitive process in which applications that meet threshold requirements will be ranked and scored. Applications will be awarded a conditional commitment in order of highest score. **The Agency's Multifamily Housing Programs Application can be found at: <https://www.ndhfa.org/>**

## Underwriting Standards

The following HOME Program Underwriting standards are incorporated within the Application Exhibit A.

**Affordability Period:** Project type of New Construction and Acquisition of New Construction projects shall have a 20-year Affordability Period. Project types of Acquisition, Rehabilitation, or Acquisition & Rehabilitation shall have an Affordability Period determined by the amount of HOME Funds per HOME-Assisted Unit using the following chart:

<b><i>HOME Funds per HOME-Assisted Unit</i></b>	<b><i>Affordability Period</i></b>
Less than \$15,000.00	5 years
\$15,000.00 to \$40,000.00	10 years
Greater than \$40,000.00	15 years

**Fixed or Floating Units:** Applicant shall make an election of the HOME-Assisted Units being fixed to specific units or floating throughout the entirety of the Project's total units.

**Rent Floor Election:** The currently published rent limits in-effect as of the project's Commitment Date shall be used to determine the lowest monthly gross rents required to meet throughout the Period of Affordability.

**Utility Allowance(s):** HUD Utility Schedule Model ("HUSM") or other Project-specific methodology which meets the HOME regulatory requirements shall be used. See [HOMEfires – Vol. 13 No. 2](#) for further information on HUSM or other acceptable methodologies.

**Vacancy Factor:** Agency utilizes a minimum vacancy factor of 7.00% for projecting Effective Gross Income. For Project's in which one vacant unit would exceed 7.00% of the Project's total units, the percentage derived from one vacant unit shall be the minimum vacancy factor when projecting Effective Gross Income.

**HOME Cost Allocation:** Prior to a Conditional Commitment, issuance of a Financial Award, the Project's Closing, and Final Cost Certification the Agency shall review the HOME Cost Allocation within the Exhibit A for determination of the proposed or awarded HOME Funds Award not exceeding the Maximum Project Subsidy determined by the selected Cost Allocation Method. All necessary information, data, and elections must be entered into the Exhibit A to determine the Cost Allocation Method(s) which are acceptable to use. While more than one Cost Allocation Method may be acceptable to use, only one method should be completed per project.

## Maximum Award

Award Allocations from HOME for any single Multifamily Project will be limited to the lesser of:

- 1) The Maximum Project Subsidy determined from the selected HOME Cost Allocation Method.

- 2) An amount required to secure project financing and make the project financially feasible.
- 3) Seventy percent (70%) of the project's proposed hard construction costs.

Exceptions to these maximums may be made on a case-by-case basis, at the sole discretion of the Agency, to accomplish overall program goals.

HOME funds may only be expended on the actual costs, up to the maximum per-unit subsidy limit. The following are HOME Per-Unit Subsidy Limits, effective as of April 2022. Upon HUD's publication of updated per-unit subsidy limits, NDHFA shall immediately implement the updated limits. Applicants will be subject to HUD's currently in-effect limits.

<i>Unit Type</i>	<i>Unit Cost</i>
Efficiency/Studio	\$ 159,754
1 Bedroom	\$ 183,132
2 Bedroom	\$ 222,694
3 Bedroom	\$ 288,094
4 Bedroom	\$ 316,236

### Threshold Requirements

Each application shall be reviewed for eligibility to be scored. To be eligible for scoring, an application must be fully executed, fully completed, and include the Threshold Requirements described in paragraphs A - J of this section.

An applicant may request an exemption to the requirement of attaching a CNA and/or appraisal to the application if there are other funding sources for the project which would, due to the timing, require additional costs or multiple reports. Any such exemption must be received within the project's application. If granted such an exemption(s), the application will not be subject to a five (5) point scoring deduction for the exempted requirement(s); however, the report(s) are required prior to the issuance of a Financial Award to the applicant.

- A. **Demonstrated Site Control:** Evidence the Applicant currently has and is contractually able to maintain throughout the entirety of the application period, site control of the entirety of the project's anticipated scope. An as-developed site plan must accompany the application.
- B. **Zoning Availability:** Evidence of current appropriate zoning for the entire scope of the proposed project. If current zoning does not comply, verification from the jurisdiction-having municipal office verifying, at a minimum, a preliminary review of the project's plans, proposed land use complies with the zoning type being sought.
- C. **Infrastructure and Utility Availability:** Evidence must be provided that appropriate infrastructure (i.e. roads, curb, gutter, etc.) and utilities (i.e. water, sewer, electricity, natural gas, Broadband Infrastructure, etc.) are in-place, or are able to be put in-place, and have adequate capacity to absorb the proposed project. Examples of evidence include letters from the applicable utility companies and the city official.
- D. **Development and Management Team:** Application must demonstrate, to the satisfaction of the Agency, all members of the team have the experience, ability, and financial capacity, in their respective roles, to develop, construct, own, operate, manage the project, and are familiar, and prepared to fully comply, with HOME's requirements.

Applications including any of the development and management team with limited experience in the development, construction, ownership, and/or management of an affordable Multifamily Project are encouraged to partner with an experienced developer, party, and/or sponsor. Agency may require the Applicant to provide historical financial statements as deemed necessary.

- E. **Ownership:** The applicant must be either the owner or developer of the project. If the Applicant intends to sell or transfer the project within five (5) years from the application date, the Applicant must disclose the intent to sell or transfer the project and, if known, the names and backgrounds of those who will purchase or receive the project. Failure to provide this information may result in forfeiture of any outstanding Conditional Commitment or Financial Award.

- F. **Financial Projections:** A pro forma financial projection for the project, in the form of a fully completed Multifamily Application Exhibit A, must accompany the application.

The reasonableness of development costs and operating expenses, in relation to other similar developments, will be assessed when the Agency evaluates a project's financial feasibility.

The Agency reserves the right to decline any application if, during underwriting, the project is determined to have a hard-debt-service coverage ratio less than 1.10.

- G. **Subsidies:** The application package must include a signed certification as to the full extent of any federal, state and/or local subsidy that are expected to apply to the project.

- H. **Housing Need:** Completion of a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project, at the developer's expense, by a disinterested party who is acceptable to the Agency, is required. The market study must demonstrate there is sufficient sustained demand in the market area to support the proposed development, and that the development of any additional affordable units will not have an adverse impact on the existing affordable units in the market area. The market study must have been completed within six (6) months of the Application Closing Date.

- I. **Capital Needs Assessment:** A Capital Needs Assessment (CNA) must be submitted with all application packages involving the acquisition of an existing building, rehabilitation, or adaptive reuse.

The CNA must be completed by a competent, independent third-party acceptable to the Agency, such as a licensed architect and/or engineer. The assessment must include a site visit and a physical inspection of the interior and exterior of all units and structures, as well as an interview with available on-site property management and maintenance personnel to inquire about past repairs and improvements, pending repairs, and existing or chronic physical deficiencies.

The assessment must consider the presence of environmental hazards such as asbestos, lead paint and mold on the site. The assessment must include an opinion as to the proposed budget for recommended improvements and should identify critical building systems or components that have reached or exceeded their expected useful lives. If the remaining useful life of any component is less than fifty percent (50%) of the expected useful life, immediate rehabilitation will be required unless capitalized. If the remaining useful life is less than the HOME Period of Affordability, the application package must provide for a practical way to finance the future replacement.

The assessment must also include a projection of recurring probable expenditures for significant systems and components impacting use and tenancy, which are not considered operation or maintenance expenses, to determine the appropriate replacement reserve deposits on a per unit per year basis. The assessment will examine and analyze the following:

- a) Site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, storm drainage, and gas and electric utilities and lines; and
  - b) Structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing system, and drainage; and
  - c) Interiors, including unit and common area finishes (i.e. carpeting, tile, plaster walls, paint condition, etc.), unit kitchen finishes, cabinets and appliances, unit bathroom finishes and fixtures, and common area lobbies and corridors; and
  - d) Mechanical systems, including plumbing and domestic hot water; HVAC, electrical, lighting fixtures, fire protection, and elevators.
- J. **Appraisal:** A project including acquisition costs or equity contributions of real estate anticipated to exceed fifteen percent (15%) of the project's Total Development Costs must attach an appraisal of the subject property to the application. The appraisal shall be completed no longer than six (6) months prior to the date of the application round's due date by a state-certified general real property appraiser, that supports the amount of acquisition.

## Cross-Cutting Exclusion

There are several broad Federal rules which must be adhered to while administering the program. While the Agency is responsible for implementing these rules, applicants and all the transaction's related entities must also be aware and actively ensure the Project complies.

Any applicant or proposed related party to a Project with substantial noncompliance, unresolved issues, or who have had substantial findings related to other Federal funds from the Agency including these Federal cross-cutting requirements within the last four years are not eligible to apply.

- 24 CFR 92.350 – Federal requirements set forth in 24 CFR part 5, subpart A: nondiscrimination, fair housing, and equal opportunity; disclosure requirements, debarred, suspended or ineligible contractors; drug-free work; and housing counseling
- 24 CFR 92.351 – Employment and Contracting; Affirmative marketing; minority outreach program; Section 3
- 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

## Scoring Deductions

Applications not meeting a minimum HOME Matching Contribution (Scoring Criteria D) will be subject to a point reduction.

Applications missing any Threshold Requirement after the application deadline will be deemed incomplete and be given a reasonable amount of time to submit the missing requirement. However, a five (5) point scoring deduction will be assessed for EACH missing requirement.

## 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 90 points to be eligible for funding.

Applicants may request no more than 70 percent of the Project's proposed hard construction costs from HOME.

**Initial Occupancy Rule:** HOME-Assisted Units restricted at HOME's 80% AMI limit shall be initially occupied by tenants with total household income at or below 60% AMI, subsequent occupants will then be subject-to household income limit at or below 80% AMI.

**HOME-Assisted Units Rule:** If a project has five (5) or more HOME-Assisted Units, a minimum of 20% of the HOME-Assisted Units must be restricted at HOME's 50% AMI limit with Low-HOME Rent for the entirety of the Period of Affordability.

- |  |                        |
|--|------------------------|
| <b>A. Restricted Units</b>   | <b>Up to 11 points</b> |
| Points awarded based on the number of proposed HOME-Assisted Units.            |                        |
| • Each proposed HOME-Assisted Unit, up to eleven (11) units .....              | 1 point                |
| <b>B. HOME-Assisted Units Calculation</b>                                      | <b>Up to 20 points</b> |
| • HOME-Assisted Units Calculation is equal-to or less-than eleven (11) .....   | 15 points              |
| • Proposed HOME-Assisted Units equals the HOME-Assisted Units Calculation..... | 5 points               |
| <b>C. Serves Developing Communities</b>  | <b>Up to 25 points</b> |

Points awarded when the proposed project is located in an incorporated city with a population less than 35,000 per the most recently available Annual Estimate of Residential Population for Incorporated Places provided by U.S. Census Bureau and is able to document to the satisfaction of the Agency an unmet housing need or housing shortage.

- Located within a Developing Community ..... 15 points
- Located within a Developing Rural Community..... 25 points

**D. HOME Matching Contribution Up to 25 points**

Points awarded for applications which include funding source(s), identified within the Exhibit A, sourced from a firm commitment from an eligible matching contribution, see 24 CFR 92.220.

- Combined value less than 25% of Total Development Costs .....20-point reduction
- Combined value of at least 25% of Total Development Costs ..... 25 points

**E. Readiness to Proceed Up to 25 points**

Applicants must provide 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 interest or commitment for all sources of project financing; ownership of the land; and availability of infrastructure will be considered in the award of points. Points will be awarded at the sole discretion of Agency in comparison to other projects competing in the application round.

**F. New Construction Up to 20 points**

Points awarded for applications which primarily propose to create new structure(s) which will contain rental housing. An application is eligible for points under Scoring Category F or Scoring Category G, not both.

- $\geq$  \$110,000 < \$145,000 HOME Funds per HOME-Assisted Unit ..... 10 points
- $\geq$  \$145,000 < \$175,000 HOME Funds per HOME-Assisted Unit ..... 15 points
- $\geq$  \$175,000 HOME Funds per HOME-Assisted Unit ..... 20 points

**G. Rehabilitation Up to 30 points**

Points awarded for applications which primarily propose to rehabilitate existing structure(s) that are currently, or at-risk of becoming, uninhabitable or obsolete. An application is eligible for points under Scoring Category F or Scoring Category G, not both.

- $\geq$  \$75,000 < \$110,000 HOME Funds per HOME-Assisted Unit ..... 5 points
- $\geq$  \$110,000 < \$145,000 HOME Funds per HOME-Assisted Unit ..... 10 points
- $\geq$  \$145,000 < \$175,000 HOME Funds per HOME-Assisted Unit ..... 20 points
- $\geq$  \$175,000 HOME Funds per HOME-Assisted Unit ..... 30 points

For purposes of scoring within this category: Proposals in which an appropriate project-specific level of due diligence (which shall be included within the application package) has led to the development team’s determination that demolition and replacement of existing structure(s) is a more appropriate and/or cost-effective development approach than rehabilitating the existing structure(s) shall qualify for scoring within this category. One-for-one unit replacement ratio minimum is required.

**H. Preserve Existing Affordability 5 - 10 points**

State or federally assisted projects, including those with expiring (within the next 36 months) project-based rental assistance contracts for 50 percent or more of the units, which are at-risk of being lost from the state’s affordable housing inventory, and were not LIHTC projects, will receive 10 points. Projects at risk of losing federal financial assistance because of default on their federal contract are also eligible for points under this category.

Existing LIHTC projects that are in year-15 or later and did not waive the ability to opt out of the extended use period, will receive 10 points. LIHTC projects that waived their ability to opt out of the extended use period will receive 5 points.

Project applications which have secured, at least conditionally, a transfer of project-based rental assistance under Section 8(bb) of the United States Housing Act of 1937 (42 U.S.C. 1437f(bb)) will receive 10 points.

Provide a copy of all relevant documents as applicable including, but not limited to:

- a) HAP Contract; and
- b) Regulatory Agreement; and
- c) Filing documents of intent to opt out; and
- d) Loan documents that describe the ability to pre-pay the financing including required approvals and/or penalties; and
- e) Copy of most recent REAC, MOR, or RD inspection report or other evidence of physical deterioration that would threaten the HAP contract; and
- f) At least three market comparables for each bedroom size to indicate what market rents might be achievable at the project without the federal assistance restrictions; and
- g) Narrative describing the dissolution of current ownership/management entity capacity.
- h) Proof of 8(bb) transfer to the proposed project.

**I. Tenant Support Coordinator**

**5 - 10 points**

Projects which are committed to supporting tenants with special needs affecting their long-term housing stability and which create an environment that encourages and provides service coordination.

- (1) Tenant Support Coordinator  
Projects which provide, either through direct employment or by contract with an experienced third party, a dedicated Tenant Support Coordinator (TSC) for at least one hour per project unit per month will receive 5 points. The TSC would be required to develop and maintain working relationships with tenants in the project. The TSC's role is to increase the ability of all tenants to maintain stability and uphold lease obligations through the following: facilitating provision of supportive services by connecting tenants with appropriate providers, identifying needs for assistance, and educating tenants on available resources.
- (2) Tenant Support Coordinator and Medicaid-Approved Service Provider  
Projects which provide the TSC provisions in the preceding paragraph (1) and also enter into a formal letter of intent with one or more qualified service agencies with demonstrated experience providing housing stability services consistent with the needs of the project's residents will receive 10 points. The service provider(s) must also be able to process for Medicaid reimbursement. The letter of intent must be detailed regarding the suite of supports and services to be made available to tenants who need and want them.

Projects receiving points under this category must include tenant support coordination capable of the following, at a minimum:

- Support the person to understand and maintain income and benefits to retain housing;
  - Household budgeting and financial management;
  - Assistance in applying for benefits related to housing affordability;
  - Establishment of payee/guardian services as needed;
  - Assistance with the income recertification process;
  - Wealth and asset building initiatives.
- Support the building of natural housing supports and resources in the community;
  - Encouragement of community activity;
  - Facilitation of meetings with a tenant support team.
- Identify and prevent behaviors that may jeopardize continued housing;
  - Coordination with parole and probation requirements;
  - Collaboration with law enforcement (i.e. the creation of safety plans);
  - Training on lease compliance, household management and best practices of successful tenants.
- Promote health and wellbeing that enable tenants to retain housing;
  - Connecting tenants with health providers;
  - Assistance in securing and increasing employment;
  - Assistance in securing childcare;
  - Identifying educational opportunities in areas such as nutrition, education, and physical wellness;

- Parenting supports;
- Life coaching via peer support specialists;
- Facilitating connections to Home and Community-Based Care services.

A tenant selection plan must be provided as part of the initial application. The tenant selection plan must describe in detail how individuals and/or families with special needs will be identified, affirmatively marketed to, and assisted in renting units at the project.

Projects which received 10 points under this scoring category will be required to submit a formal executed agreement with each provider identified in the letter(s) of intent at the time of project completion.

Compliance monitoring activities will include:

- Confirmation of hiring or contracting with a TSC;
- Confirmation of the provision of the services pledged at the time of application; and
- Review of marketing efforts targeted at special needs populations.

For purposes of this scoring category, tenants with special needs include individuals or families who:

- Suffer from serious or persistent mental illness;
- Suffer from substance use disorders;
- Have disabilities, including intellectual, physical, or developmental;
- Are experiencing long-term homelessness, or are at significant risk of long-term homelessness;
- Are justice involved; or

Are frail elderly, defined as those 62 years of age or older, who are unable to perform one or more “activities of daily living” without help. Activities of daily living comprise walking, eating, bathing, grooming, dressing, transferring, and home management activities. Assisted living, or projects serving a similar purpose, are not eligible under this Plan.



## HOME Statement of Assurances applicable to all HOME Activities

### 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 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. VAWA compliance guidance is available at <https://www.ndhfa.org/index.php/compliance/vawa/>.
- 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 down payment 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 Agency 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. Affirmative Fair Housing Marketing Plan Guidance is available online at <https://www.ndhfa.org/wp-content/uploads/2019/01/AffirmativeFairHousing.pdf>.

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 Agency.
- 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 Agency 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 Agency 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 Agency 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 Agency.

### **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.

**Completion of the environmental review process is MANDATORY before taking ANY action on a specific site or making a commitment or expenditure of HUD or any other non-HUD project funds for property acquisition or transfer, rehabilitation, conversion, lease, repair, inhabiting a property or construction activities. 24 CFR Part 58.22 describes limitations on activities pending clearance as (a) neither a Subrecipient nor any participant in the development process, including public or private non-profit or for-profit entities, or any of their contractors, may commit HUD or non-HUD assistance under a program listed in 58.1(b) on an activity or project until HUD has approved the Subrecipient's Request Release of Funds (RROF) and the Agency has issued the certification to use HOME funds to the Subrecipient. This certification will come in a letter through email addressed to the Subrecipient's contact person. If a violation occurs resulting in adverse environmental impact or limiting the choice of reasonable alternatives during this vital step in the NEPA process, funds will not be able to be utilized for the site that violated NEPA.**

- a) A **choice-limiting action** is ANY action done prior to the certification being issued by the Agency. This is not an all-inclusive list of choice-limiting actions: acquisition, purchase, moving tenants or homebuyers into property, rehabilitation, groundwork, lease, repair, demolition, landscaping, etc. The Subrecipient is to use "due diligence" that a violation does not occur during this step of the NEPA process, or the funds will be lost to the project site.
- b) The **ONLY** activities that can be initiated prior to the Agency releasing funds are costs associated with program administration, project delivery cost necessary to determine eligibility and underwrite the household, contracting for preliminary architectural/engineering fees, and costs associated with the

environmental review process. Keep in mind, even these exempt costs can only occur after the effective date of the contract. No costs incurred or obligated prior to the contract effective date are allowable HOME costs and could result in the loss of the Subrecipient's HOME award. When a Subrecipient spends money on these exempt costs, they are taking a financial risk because if the environmental review concludes that a site is not eligible, the Subrecipient will not be reimbursed for those costs spent.

- c) **For all other activities, Subrecipients cannot obligate or incur costs or draw down funds until the environmental review requirements are satisfied, and the Agency has issued a Release of Funds to the Project.**
- d) Each HOME activity or project must have a written record of the environmental review process that documents the steps taken for the project that completed the NEPA process according to rules and authorities. **This is the Environmental Review Record (ERR), which must be available for public review.**

#### **Uniform Relocation Act and Section 104 (d)**

Federal Law protects tenants from uncompensated displacement in certain areas.

Subrecipients/Developers ("recipients") who accept federal funding for acquisition and/or rehabilitation and reconstruction must minimize displacement of existing residents, advise them of their legal rights, provide relocation counseling and assistance, and compensate tenants in a timely manor for relocation made necessary by such activities.

HOME program recipients are subject to the Uniform Relocation Assistance and Real Property Policies Act of 1970 (URA) and in instances when funding demolishes a low-income dwelling, converts to a non-residential use, or make it unaffordable to low-income residents is also subject to Section 104 (d) of the Housing and Community Development Act of 1974, as amended (42 USC 5304 (d)) also known as Section 104 (d).

Agency and recipients of HOME funds are required to follow the requirements of the Agency URA Policy Guide. General principals include:

- a) The URA applies to all federally assisted acquisition, rehabilitation, and demolition projects (unless exempted like section 18)
- b) Section 104(d) applies to demolition or conversion of housing units to something other than lower-income dwellings in connection with a CDBG or HOME project
- c) Acquisition rules apply to every acquisition for the project (including most easements), whether or not the acquisition itself is federally funded
- d) Sellers of real property are to be informed in writing of property values **prior** to negotiating the purchase (exceptions at 49 CFR 24.101(b)(3)-(5))
- e) While not required by federal regulation, consider including a clause in any executed purchase agreement that gives the purchaser right to tenant access for notification purposes (to issue General Information Notices (GINs))
- f) HUD program regulations often expand tenant protections beyond the URA
- g) Recipients must follow an anti-displacement plan and take all reasonable steps to minimize displacement. For HOME projects, 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 completed project.
- h) All occupied and vacant-occupiable dwelling units removed from the housing stock through demolition or conversion must be replaced on a 1-for-1 basis.
- i) Project occupancy must be tracked from application to project completion.
- j) Notices are required for all occupants and proof of delivery must be maintained.

#### **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 non-construction 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:
  - i. Ensure that bid and contract documents contain required labor standards provisions and the appropriate Department of Labor wage determinations; and
  - ii. Conduct on-site inspections and employee interviews; and
  - iii. Collect and review certified weekly payroll reports; and
  - iv. Correct all labor standards violations promptly; and
  - v. Maintain documentation of administrative and enforcement activities; and
  - vi. 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:

- i. 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; and
- ii. 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; and
- iii. Whether the tenant protection requirements of §92.253 are being observed; and
- iv. Whether the affirmative marketing requirements of §92.351 are being observed and followed; and
- v. 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; and
- 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; and
- 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; and

- 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.; and
- 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.



## RESOURCES

- HUD Exchange - HOME Investment Partnership Program:  
<https://www.hudexchange.info/programs/home/>
- Electronic Code of Federal Regulations – Title 24, Subtitle A, Part 92:  
<https://www.ecfr.gov/cgi-bin/text-idx?SID=38711658c0fa5ce50d3e43055d19756c&mc=true&node=pt24.1.92&rgn=div5>
- Suspension of the HOME Commitment and CHDO Reservation Deadline:  
<https://www.hudexchange.info/news/suspension-of-the-home-commitment-and-chdo-reservation-deadline/>
- Notice CPD-18-10: Suspension of 24-month HOME Commitment Requirement:  
<https://www.hudexchange.info/resource/5746/notice-cpd1810-suspension-of-24month-home-commitment-requirement-for-deadlines-occurring-in-2016-2017-2018-2019-and-2020/>
- Notice CPD-20-01: Four-Year Completion Requirement for HOME-Assisted Projects:  
<https://files.hudexchange.info/resources/documents/Notice-CPD2001-Four-Year-Completion-Requirement-HOME-Assisted-Projects.pdf>
- Federal Registrar/Vol. 81, No. 232/December 2, 2016 - Changes to HOME Program Commitment Requirement Interim Final Rule:  
<https://www.govinfo.gov/content/pkg/FR-2016-12-02/pdf/2016-28591.pdf>
- FY 2013 HOME Final Rule – Amendment of HOME Program Regulations:  
<https://www.hudexchange.info/programs/home/home-final-rule/>
- Title II of the Cranston-Gonzalez National Affordable Housing Act:  
<https://www.hudexchange.info/resource/2647/title-ii-of-the-cranston-gonzalez-national-affordable-housing-act/>